

GUIDE FOR THE EFFECTIVE INVESTIGATION AND PROSECUTION OF MONEY LAUNDERING AND TERRORIST FINANCING IN PAKISTAN

RSIL | RESEARCH SOCIETY OF
INTERNATIONAL LAW
IMPARTIAL ANALYSIS • LEGAL SOLUTIONS



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ABOUT THE SINDH JUDICIAL ACADEMY

The Sindh Judicial Academy (SJA) is a pioneering public sector educational institution that was set up in 1992 by the then Chief Justice and Judges of the High Court of Sindh with the mission of imparting legal education and training justice and public sector actors from all over Pakistan on various complex legal issues.

Today, under the leadership of Mr. Justice Muhammad Ali Mazhar, Judge High Court of Sindh and Acting Director General SJA, the SJA has evolved into an elite research and training body with highly qualified research and faculty staff possessing a broad spectrum of specializations including but not limited to mediation and ADR, civil and criminal law and administrative and management issues relating to the justice sector in Pakistan. As a realization towards its mandate, a training calendar is designed annually to cater to the need of each justice sector stakeholder.

Till date, the academy has conducted 45 training programs targeting about 1600 trainees from all over the country.

A recent landmark initiative spearheaded by the SJA under the leadership of Mr. Justice Muhammad Ali Mazhar in collaboration with the Research Society for International Law (RSIL) was the development of a comprehensive training guide on the effective investigation and prosecution of Countering Financing of Terrorism (CFT) and Anti Money Laundering (AML) cases in Pakistan. Over the past 20 months, researchers from SJA and RSIL have conducted extensive field research and compiled data across Pakistan on the CFT/AML legal regime in Pakistan and conducted trainings of 120 justice sector actors (judges, investigators and prosecutors) at the SJA premises in Karachi. This Guide is the cumulative outcome of this comprehensive effort and will remain an integral part of the SJA's training curriculum in the years to come.

PREFACE



The Financial Action Task Force (FATF) 'Grey-Listing' of Pakistan has dominated the political, economic, and legislative landscape in the country since June 2018. The Action Plan developed by FATF for Pakistan to address its strategic deficiencies in the field of money laundering and terrorism financing have required legal, regulatory, and operational reforms -across the spectrum of governance at the federal and provincial level. The state machinery in Pakistan has made a concerted effort to rise to this challenge but faces an uphill task in implementation given the highly technical and wide-ranging nature of the reform effort.

The effective investigation and prosecution of money laundering and terrorism financing cases is the cornerstone of the global regime on Anti-Money Laundering and Counter Terrorism Financing (AML/CTF). This is a daunting challenge, given that Pakistan's criminal justice system in general is plagued by antiquated laws and procedures as well as a poor track record of investigation and prosecution. The nature of terrorism financing and money laundering today requires expertise in specialist investigative techniques and reliance on evidence that goes beyond traditional ocular testimony and confessions.

It is in this context that the Sindh Judicial Academy with support from the Research Society of International Law, Pakistan (RSIL) and the American Bar Association – Rule of Law Initiative (ABA-ROLI) in February 2019 began the process to develop a guide for the effective investigation and prosecution of money laundering and terrorism financing in Pakistan. Following a comprehensive assessment of the existing capacity of criminal justice actors in all four provinces in Pakistan, a draft Guide was prepared by our research team with input from international experts. This was followed by trainings in all four provinces in Pakistan involving over 200 investigators, prosecutors and judges who gave substantive feedback on the content and structure of the draft Guide.

This Guide provides an overview of the global legal framework on AML/CTF with a focus on FATF and its methodology. It clarifies key concepts relating to the offence of money laundering and terrorism financing, the nature of terrorism financing in Pakistan and unique legal considerations applying to foreign terrorist fighters. It then explains the legislative and administrative framework for compliance with UN Security Council Resolutions relating to AML/CTF especially UNSCR 1267 and 1373. The domestic legal framework on AML/CTF is explained in detail, including the elements of each offence and the evidentiary standards required to prove each element. Special emphasis is placed on powers of investigators and the special investigative techniques available under Pakistani law. The legal basis and implementing mechanism for international cooperation is also a core focus and detailed templates and checklists are provided for mutual legal assistance requests.

I would like to acknowledge the hard work and professionalism of our faculty members and research team at the Sindh Judicial Academy, who have had put in much hard work to develop this Guide. I wish to extend special thanks to the exceptional research support provided to us by RSIL to constantly update this Guide, as laws and procedures in Pakistan have rapidly evolved in this area, especially in the past year. I am also grateful to ABA-ROLI for its support and guidance throughout this process. I am confident that this Guide will prove to be of immense value to criminal justice actors in Pakistan and will also provide clarity to policymakers in relevant institutions. At the same time, it is hoped that such endeavors will also help dissolve misconceptions regarding Pakistan's efforts to abide by its international obligations.

Justice Muhammad Ali Mazhar,
Judge High Court of Sindh and
Acting Director General,
Sindh Judicial Academy
November 2020

MESSAGE BY PRESIDENT, RSIL



For almost three decades RSIL has been at the forefront of generating knowledge products and creating the basis for further research in areas vital to Pakistan's future. At this critical juncture, when Pakistan finds itself 'Grey-Listed' by the Financial Action Task Force and is in the midst of addressing serious concerns with its international anti-money laundering and counter-terrorism financing obligations, RSIL has once again played its part in the national debate by developing this Guide on the 'Effective Investigation and Prosecution of Money Laundering and Terrorism Financing'. I would like to congratulate the exceptional research team whose efforts over the past year and a half have culminated in this thorough and detailed Guide. I am confident this Guide will prove useful not only to members of law enforcement bodies and prosecutors but also to government policy makers and members of Pakistan's legislative bodies.

In 1993, when I registered the society, despite limited resources and only a handful of part-time researchers, I was nonetheless clear that RSIL's destiny lay in becoming a pioneering think tank dedicated to research on International Law. I am proud today that this resolve has been fully realized by the RSIL team. Today, RSIL boasts a team of 30 researchers across three dedicated research centers – the Conflict Law Centre (CLC), the Centre for Criminal Justice Reform and Capacity-building (C3), and the Centre for Human Rights – in offices in both Islamabad and Lahore. As the largest legal think tank in Pakistan, RSIL has a responsibility to raise the standard of legal research in the country and ensure continuous innovation in all its activities and publications. This aim has been attained through consistent improvement in research approaches, introducing the latest research methods, and by incorporating technology in its various activities.

I must also take this opportunity to thank our partners in this endeavor – the American Bar Association – Rule of Law Initiative (ABA-ROLI). The support offered by ABA-ROLI throughout the development of this Guide as well as the accompanying capacity-building activities that RSIL undertook over the past year, have been immensely beneficial and have enriched our outputs.

A handwritten signature in black ink, appearing to read 'Ahmer Bilal Soofi'.

Ahmer Bilal Soofi,
President RSIL
November 2020

RESEARCH TEAM

SUPERVISORS

Ahmer Bilal Soofi
President, RSIL

Jamal Aziz
Executive Director, RSIL

Muhammad Oves Anwar
Director Research, RSIL

Zainab Mustafa
Senior Visiting Fellow, RSIL

Muhammad Shahid Shafiq
District & Sessions Judge/
Senior Faculty Member, SJA

Hillary Forden
Senior Technical Advisor,
American Bar Association
Rule of Law Initiative

AUTHORS

Hira Arif Riar
Project Lead
Research Fellow

Noor Waheed
Research Associate

Noor Fatima Iftikhar
Research Associate

Shayan Ahmed Khan
Sr. Research Associate

Abraze Aqil
Research Associate

Ayesha Malik
Research Fellow

Umar Mehmood Khan
Advocate High Court

Dan Suter
Director, iJust

ACKNOWLEDGEMENTS

Kamran Adil
Honorary Visiting Fellow
RSIL

Mary Greer
American Bar Association,
Rule of Law Initiative

Muhammad Usman Gill
American Bar Association,
Rule of Law Initiative

Jordan Long
American Bar Association,
Rule of Law Initiative

Alexandria Farris
American Bar Association,
Rule of Law Initiative

Imran Aslam
Lead Designer
Dot Matrix, Islamabad

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INTRODUCTION

In this chapter, you will learn the fundamental terms and concepts that are essential to the understanding of terrorism financing and money laundering, with a specific focus on their interplay with human rights obligations on Pakistan, both internationally and domestically. In order to understand why countering financing of terrorism and money laundering are stressed with urgency, it is important to understand the context i.e. relationship between Pakistan and the Financial Action Task Force (FATF), the implications of Pakistan being on FATF's grey-list, and why it is important for Pakistan to strengthen its counter-financing of terrorism/anti-money laundering (AML/CFT) regime. The chapter covers essential terms such as "terrorism financing," "money laundering," "predicate offences," "proceeds of crime," and the difference between money laundering and terrorism financing and the overlap between them. The final part of this chapter discusses Pakistan's duties under the Anti-Terrorism Act, 1997 and how they need to be in consonance with fundamental protections. It serves as the foundation that will facilitate better understanding of the subsequent chapters.

LEARNING OUTCOMES

By the end of this chapter you should be able to:

- Define terrorism financing (TF);
- Define money laundering (ML);
- Understand what constitutes a predicate offense;
- Define proceeds of crime;
- Understand the difference between money laundering and terrorism financing;
- Understand the international legal human rights framework;
- Understand how the domestic AML/CFT regime has to maintain a balance with the protection of fundamental rights.

ESSENTIAL READING

- FATF Recommendations;
- Universal Declaration of Human Rights;
- International Covenant on Civil and Political Rights;
- Chapter 1: Fundamental Rights, Constitution of Pakistan.

1.1. CONTEXT

In June 2018¹, Pakistan was placed on the FATF's international list of "jurisdictions with strategic deficiencies" otherwise known as the "grey-list."² The cause of this is attributed to Pakistan's "structural deficiencies" in the Anti-Money Laundering (AML) and Countering Financing of Terrorism (CFT) regime.³

FATF bases entry on to the grey-list based on evaluation criteria that are derived from its assessment methodology. This methodology consists of two phases:⁴

1. Technical Compliance i.e. the existing legal and institutional framework including the powers and procedures of the compliant authorities.
2. Effectiveness Assessment i.e. the extent to which the existing legal and institutional framework is producing the requisite results.

Being placed on the FATF grey-list comes at great cost to Pakistan and holds certain adverse economic implications for the State. As a consequence of being on the grey-list, banking channels in Pakistan can be adversely impacted, and its imports, exports, remittances, and access to international lending can be negatively affected as well.⁵ Foreign financial institutions may also impose enhanced checking on transactions with Pakistani institutions and some may refuse to work with Pakistan altogether in fear of the institutional vulnerabilities that are implicit by association with a country that is on the FATF grey-list.⁶

Pakistan was provided 15 months, till October 2019, to implement the following action plan in order to be removed from the grey-list:⁷

1. The proper identification, assessment, and supervision of terrorism financing risks;
2. The application of remedial actions and sanctions to cases of money laundering and financing of terrorism violations;
3. Coordination between competent authorities to identify and take enforcement measures against illegal money or value transfers services;
4. Identification of cash couriers by authorities and the enforcement of controls on illicit movement of currency and understanding the risk of cash couriers being used for financing of terrorism;
5. The improvement of inter-agency coordination including between provincial and federal authorities on combating financing of terrorism risks;
6. The identification and investigation of financing of terrorism, and prosecution of related designated persons and entities by law enforcement agencies;
7. That prosecution of financing of terrorism results in applicable sanctions and enhancement of capacity and support for prosecutors and the judiciary;
8. Effective implementation of targeted financial sanctions against all designated terrorists;
9. Enforcement against financing of terrorism violations including administrative and criminal penalties and authorities cooperating on enforcement cases; and;
10. Deprivation of facilities, services, and other resources owned or controlled by designated persons.

After the October 2019 review by the FATF on Pakistan's compliance with recommendations, it was found that of the 40 recommendations, Pakistan is only fully compliant with 1, largely compliant in 9, partially compliant with 26, and non-compliant in 4 recommendations.⁸ While noting recent improvements, the FATF remains concerned with the overall lack of progress by Pakistan in addressing risks and FATF still maintains that there does not appear to be a proper understanding of the terrorism financing risks that Pakistan faces within domestic policy circles. Pakistan introduced key legislations and undertook reforms to ensure compliance with global AML/CFT frameworks. As a result, it was found to be compliant with 14 recommendations by February 2020, with varying degrees of compliance on other points from the 27-point Action Plan.

1 'Issue Brief On "FATF Grey List: Time For Pakistan To Take Bold Steps" | Institute Of Strategic Studies Islamabad' (Issi.org.pk, 2019) <<http://issi.org.pk/issue-brief-on-fatf-grey-list-time-for-pakistan-to-take-bold-steps/>>

2 Shahid Hayat, 'Pakistan On FATF'S Grey List: What, Why, And Why Now?' (DAWN.COM, 2019) <<https://www.dawn.com/news/1418143>>

3 Ibid.

4 'High Risk and Other Monitored Jurisdictions - Financial Action Task Force (FATF)' (Fatf-gafi.org, 2019) <[http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/more/more-on-high-risk-and-non-cooperative-jurisdictions.html?hf=10&b=0&s=desc\(fatf_releasedate\)>](http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/more/more-on-high-risk-and-non-cooperative-jurisdictions.html?hf=10&b=0&s=desc(fatf_releasedate)>)

5 Shahid Hayat, 'Pakistan On FATF'S Grey List: What, Why, And Why Now?' (DAWN.COM, 2019) <<https://www.dawn.com/news/1418143>>

6 Ibid.

7 'Improving CFT/AML Compliance - On Going Process 29 June 2018 Documents - Financial Action Task Force (FATF)' (Fatf-gafi.org, 2019) <<http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/documents/fatf-compliance-june-2018.html>>

8 Pakistan Mutual Evaluation Report, October 2019, Technical Compliance Index

If significant and sustainable progress is not made across the full spectrum of the Action Plan by the next plenary (scheduled for October 2020), there is a threat of Pakistan being placed on the FATF blacklist, potentially subjecting it to severe financial sanctions.⁹

Being placed among the Non-Cooperative Countries or Territories (NCCTs), or the 'FATF blacklist' has serious complications on the economy of a country.¹⁰ Once a country is blacklisted, other countries and jurisdictions are compelled by FATF to apply enhanced due diligence and counter measures against the blacklisted country.¹¹ These measures can have serious repercussions on trade and on the wider economy, making it extremely difficult and expensive to conduct business with international partners, resulting in low exports and flailing economic growth. In some cases, countries may even be asked to sever all trade ties with the blacklisted country altogether. At present, only North Korea and Iran have been placed on the FATF NCCT list.

1.2. WHAT IS TERRORISM FINANCING?

In order to understand the meaning of "terrorism financing", it is important to understand two central components: what constitutes an "act of terrorism" and who qualifies as a "terrorist."

According to the FATF Recommendations – International Standards on Combatting Money Laundering and the Financing of Terrorism and Proliferation,¹² the term terrorist refers to:

Any natural person who: (i) commits, or attempts to commit, terrorist acts by any means, directly or indirectly, unlawfully and willfully; (ii) participates as an accomplice in terrorist acts; (iii) organizes or directs others to commit terrorist acts; or (iv) contributes to the commission of terrorist acts by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act.¹³

A terrorist organization is described in similar terms; however, in the place of "natural person," the term "organization" is described i.e. as a "group of terrorists."¹⁴

In short, the Recommendations define "terrorist" as any person who commits or attempts to commit, or participate or contribute in anyway, shape or form, directly or indirectly, to an act of terrorism.

Additionally, the Recommendations go on to define an act of terrorism as:

- Any act, which constitutes an offense under [any of the stated ten international] treaties;¹⁵
- Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act.¹⁶

EXAMPLES

An Act of Terrorism

A group of four individuals, armed with guns and ammunition, hijacked a British Airways flight and took all fellow passengers' hostage. The four individuals claimed to be part of an extremist militant outfit in Afghanistan, and issued demands to release their commander, who was captured by joint US-British forces. These individuals

9 'Pakistan Given Final Lifeline, To Remain in FATF Grey List till February 2020' (DAWN.COM, 2019) <<https://www.dawn.com/news/1511558>> accessed 21 October 2019.

10 'High Risk and Other Monitored Jurisdictions - Financial Action Task Force (FATF)' (Fatf-gafi.org, 2019)

11 Ibid.

12 FATF, 'International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations' (FATF, October 2018) <www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>

13 Ibid

14 Ibid

15 The treaties specified are as follows: (i) Convention for the Suppression of Unlawful Seizure of Aircraft (1970); (ii) Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971); (iii) Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (1973); (iv) International Convention against the Taking of Hostages (1979); (v) Convention on the Physical Protection of Nuclear Material (1980); (vi) Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1988); (vii) Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (2005); (viii) Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf (2005); (ix) International Convention for the Suppression of Terrorist Bombings (1997); and (x) International Convention for the Suppression of the Financing of Terrorism (1999).

16 FATF, 'International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations' (FATF, October 2018) <www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>

further threatened to kill hostages every hour if their demand was not fulfilled, which created a sense of terror among not only the passengers on the airplane, but also the US-British governments.

Since this act was intended to cause death or serious bodily harm to civilians, and the aim behind the act was to intimidate a government and a population to further political goals, the act constitutes an act of terrorism. Furthermore, it is also an offence under the International Convention against the Taking of Hostages.

A Non-terrorist Act

A personal dispute arises between two individuals that escalates to violence. Person A, who is armed with a pistol, pulls out his Firearm and points the gun towards Person B. During this time, Person A is threatening to shoot Person B, and demands that Person B should hand over expensive items of jewelry that A claims are rightfully his. Person B resists, and is shot by Person A, causing Person B to sustain serious injuries.

The act by Person A was intended to cause death or serious bodily harm to Person B, with whom he had a personal dispute. The aim behind the act was not politically motivated, and neither was it designed to intimidate or terrorize a government, or a certain population. Therefore, this act cannot be considered a terrorist act.

In light of these definitions, terrorism financing is “the financing of terrorist acts, and of terrorists and terrorist organizations.”¹⁷

In Pakistan, while there is no explicit definition of “terrorism financing,” the Anti-Terrorism Act 1997, criminalizes any such activity which raises any reasonable suspicion that the funds raised and assets acquired (legally or illegally) are or will be used for the purposes of funding acts of terrorism or proscribed¹⁸ individuals and organizations.¹⁹

Which scenario(s) below count as terrorism financing?

1. Individual A is running an NGO that collects donations for the cause of children's education. However, the funds from the NGO are being channeled to finance Proscribed Organization B, allowing that organization to purchase materials and resources to plan a terrorist act.
2. Individual B works for a bank. Individual B has been a long-term supporter of Proscribed Individual C and donates money to C's madrasa where terrorist attacks are planned. Individual B is committing the offence of terrorism financing.
3. Individual C is regularly donating money to Proscribed Organization C, with knowledge that Organization C is on the list of Proscribed organizations. However, Individual C does not believe Proscribed Organization C is involved in terrorism financing.
4. Individual D is regularly donating money to Organization C, an NGO involved in providing vocational training to madrasa students. Organization C manages 80% of the funds itself but routinely transfers 20% funds to the madrasa, which are administered by the madrasa accountants. Some students from the madrasa have been linked to terrorist acts in the past, while the Imam (prayer leader) of the madrasa is sympathetic to the cause of terrorism, as purported in his speeches.

More information on terrorism financing methods in Pakistan can be found in Chapter 3 of the Guide.

1.3. WHAT IS MONEY LAUNDERING?

Money laundering is most notably defined in the UN Convention Against Transnational Organized Crime, which describes money laundering as:²⁰

¹⁷ Ibid

¹⁸ Proscription is the process by which the Federal Government publishes an order in the official Gazette listing an organization as a terrorist organization pursuant to Section 11-B, Anti-Terrorism Act 1997.

¹⁹ Proscription is the process by which the Federal Government publishes an order in the official Gazette listing an organization as a terrorist organization pursuant to Section 11-B, Anti-Terrorism Act 1997. Section 11-H, Anti-Terrorism Act, 1997

²⁰ 'About Anti-Money Laundering and Counter Terrorism Financing' Asia Pacific Group (Apgml.org) <<http://www.apgml.org/about-us/page.aspx?p=5620f71b-1858-4ca1-85d7-f9eae97210a7>>, 2019)

The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action; or the concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime.²¹

In short, Article 6 of the Convention identifies four actions that constitute as money laundering:

- Conversion or transfer of crime proceeds for the purpose of concealing their illicit origin;
- Concealment or disguise of crime proceeds;
- Acquisition, possession or use of crime proceeds; and
- Contributing indirectly to the commission of the offences outlined above, including participation in and conspiring or attempting to commit the offences in question.

To convert and conceal are essential elements of the laundering process; however, it is important to note that “laundered funds” never become legitimate.²² Such funds only have the appearance of legitimacy on account of a complicated and obscured money trail that would otherwise point towards the illegal source of origins of the funds.²³

Money laundering often involves a 3-stepscheme:

1. Placement – The introduction of money into the financial system in one way or another;
2. Layering – Financial transactions intended to conceal the illegitimate sources of the funds and to blend them with legitimate sources;
3. Integration – Obtaining funds generated through transactions involving illegitimate funds.²⁴

In the placement stage of money laundering, the perpetrator introduces illegal profits into the financial system. This step might be done by breaking up large amounts of cash into less conspicuous smaller sums that are then deposited directly into a bank account or by purchasing a series of monetary instruments (cheques, money orders, etc.) that are then collected and deposited into accounts at another location.

After the funds have entered the financial system, the layering stage commences. In this phase, the perpetrator engages in a series of conversions or movements of the funds to distance them from their source. The funds might be channeled through the purchase and sale of investment instruments, or the launderer might simply wire the funds through a series of accounts at various banks across the world. This use of widely scattered accounts for laundering is especially prevalent in those jurisdictions that do not co-operate in anti-money laundering investigations. In some instances, the launderer might disguise the transfers as payments for goods or services, thereby giving them a legitimate appearance.

Having successfully processed criminal profits through the first two phases, the perpetrator then moves them to the final stage – integration – in which the funds re-enter the legitimate economy. The perpetrator might choose to invest the funds into real estate, luxury assets, or business ventures.

More details on movement of funds to launder money can be found in Chapter 3 of the Guide.

1.4. WHAT IS THE DIFFERENCE BETWEEN MONEY LAUNDERING AND TERRORISM FINANCING?

In recent years, links have been found between terrorist financing and money laundering. While terrorist financing involves the collection or provision of funds for terrorist purposes, money laundering refers to “the process of concealing the illegal origin of profits from crime.”²⁵ Accordingly, the funds involved in money laundering will always be of illicit origin. However, when it comes to terrorist financing, funds can originate from either legal sources, illegal sources, or both.²⁶

²¹ Article 6, UN Convention Against Transnational Organized Crime

²² 'About Anti-Money Laundering and Counter Terrorism Financing' Asia Pacific Group (Apgml.org) <<http://www.apgml.org/about-us/page.aspx?p=5620f71b-1858-4ca1-85d7-f9eae97210a7>>, 2019)

²³ Ibid

²⁴ Anti-Money Laundering Compliance Unit (AMLCU) Department of Justice and Equality, 'Money Laundering & Terrorist Financing – Are you aware?' (AMLCU) <www.antimoneylaundering.gov.ie/en/AMLCU/Pages/Money_Laundering_Terrorist_Financing_Are_you_aware?>

²⁵ FATF, 'International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations' (FATF, October 2018) <www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf> accessed 30 April 2019

²⁶ Ibid

Terrorists can utilize the same techniques as money launderers “to evade authorities’ attention and to protect the identity of their sponsors and the ultimate beneficiaries of the funds.”²⁷ The term ‘money laundering’ is often used interchangeably with ‘financial crimes’ since it involves the use of the financial system (digital currencies, credit cards, and traditional currencies).²⁸ However, it is important to note that while money laundering does make use of the financial system, it is merely one example of a crime within the broader ambit of financial crimes.

Terrorist organizations, much like money launderers, often wish to conceal their illegitimate funds. They would, therefore, camouflage the illicit sources of their funds and try to generate more revenue from licit sources. As money laundering and terrorist financing both involve the need to disguise the illicit sources of funds, “terrorist financing has certain similarities with traditional money laundering, namely the use of the three steps: place, layer and integrate the funds in the international financial system.”²⁹

However, as opposed to many financial transactions concerned with money laundering, those associated with terrorist financing are usually in smaller amounts. When terrorist financing involves small quantities of funds raised from legitimate sources, it becomes considerably difficult to track and detect such funds.³⁰

It is crucial to note another major difference between money laundering and terrorist financing, relating to the purpose of the investigation. Investigations in cases of money laundering establish a connection between the funds and the criminal activity and thereby interrupt that activity, or prevent the principal and his accomplices from being able to gain any sort of monetary advantage from their criminal acts. Whereas, the purpose of investigation in terrorist financing cases, in addition to attempting to preventing loss of life and property, is largely to prevent terrorists from obtaining funds that could be used for financing terrorism.³¹

EXAMPLES

1. Falah-eh-Insaniyat Foundation (FIF) is the charity wing of Jamat-ul-Dawa (JuD). Raising funds for JuD is an example of terrorism financing without money laundering (since the source of funding i.e. donations and charity are legitimate). As of 2019, both these organizations have been proscribed and hence banned.
2. In September 2019, Iqbal Z Ahmad, an influential figure in the Liquefied Natural Gas (LNG) business, was arrested on grounds of money laundering after an inquiry revealed that he had received over Rs.100 billion in his account and was unable to demonstrate or provide a money trail for the said amount. The evidence provides a strong foundation to charge Ahmad with money laundering, though it does not demonstrate terrorism financing.

1.5. WHAT IS A PREDICATE OFFENCE?

A predicate offence is a crime that is often the component of another more serious crime.³² Crimes or actions may be considered predicate offences or predicate acts if they are “related to, pave the way for, or have the same or similar purpose of the larger crime.”³³ Predicate offences are considered as related offences i.e. they are not merely isolated actions but part of a chain of interconnected crimes.

In the case of money laundering, the steps taken to hide the origins of the money will be the primary offences but the illegal actions taken to raise the money in the first place would constitute predicate offences.

EXAMPLE

A drug-trafficker has made a profit of Rs. 1,000,000 through smuggling opium across the border from Afghanistan into Pakistan. In order to disguise the origin of the profit, he undertakes measures that would

27 Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), ‘What is terrorist financing?’ (FINTRAC, 8 November, 2018) <www.fintrac-canafe.gc.ca/fintrac-canafe/definitions/terrorist-terroriste-eng.asp> accessed 20 September 2019

28 Anti-Money Laundering Compliance Unit (AMLCU) Department of Justice and Equality, ‘Money Laundering & Terrorist Financing – Are you aware?’ (AMLCU) <www.antimoneylaundering.gov.ie/en/AMLCU/Pages/Money_Laundering_Terrorist_Financing_Are_you_aware?> accessed 20 September 2019

29 Ibid

30 Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), ‘What is terrorist financing?’ (FINTRAC, 8 November, 2018) <www.fintrac-canafe.gc.ca/fintrac-canafe/definitions/terrorist-terroriste-eng.asp> accessed 20 September 2019

31 Anti-Money Laundering Compliance Unit (AMLCU) Department of Justice and Equality, ‘Money Laundering & Terrorist Financing – Are you aware?’ (AMLCU) <www.antimoneylaundering.gov.ie/en/AMLCU/Pages/Money_Laundering_Terrorist_Financing_Are_you_aware?> accessed 20 September 2019

32 ‘Predicate Offence | AML-CFT’ (AML-CFT, 2019) <<https://aml-cft.net/library/predicate-offence/>>

33 ‘Predicate - Definition, Examples, Cases, Processes’ (Legal Dictionary, 2019) <<https://legaldictionary.net/predicate/>>

conceal the fact that the funds are proceeds of a crime. He “cleans” the money by putting money in accounts that are linked with some offshore companies. These companies then deposit the money in small increments to his personal bank account under the guise of “services rendered.” This evidence supports charging the drug trafficker with the offence of money laundering and the predicate offence of drug trafficking.

However, it is crucial to note that FATF Recommendations provide that the predicate offence need not be proven in order to convict for money laundering.³⁴ The Anti-Money Laundering Act, 2010, reflects this FATF Recommendation by stipulating that the accused does not have to be convicted of the predicate offence to be convicted for money laundering.³⁵ This means the prosecution needs only to show that the proceeds of crime have been derived from a criminal offence that is listed as a predicate offence in the schedule to the Act, but they do not necessarily need to prove the elements of the predicate offence.

Terrorism Financing as a Predicate Offence for Money Laundering

A predicate offence for money laundering is the underlying criminal activity that generates proceeds that (due to their illegal origins) result in the commission of the offence of money laundering. The offence of money laundering cannot be committed without the prior commitment of a predicate offence.

In domestic legal systems, terrorist-financing offences can also be included as predicate offences for money laundering. In Pakistan, terrorist financing offences are dealt with under the Anti-Terrorism Act (ATA), 1997, and such offences have also been included in the list of predicate offences in the Anti-Money Laundering Act, 2010. For example, the crime of kidnapping for ransom for the purposes of financing terrorist activity would constitute the predicate offence for money laundering.

Where the offence of money laundering is connected with a terrorist financing offence, it may be tried in the Anti-Terrorism Court³⁶ (a specialist court established under the ATA, 1997, in order to deal with terrorism-related offences) rather than the Court of Session (where money laundering offences are usually tried).

Money-Laundering as Predicate Offence to Terrorism Financing

Similarly, it is important to note that money-laundering itself can constitute a predicate offence to an act of terrorism financing, where laundered money is channeled to individuals and organizations intending to commit an act of terrorism.

For example, let us consider a case where the funds to support a terrorist act or organization are generated through drug trafficking. Due to the illegal nature of the source of funds, the person generating the money must conceal the origins. They do this by making the money trail as untraceable as possible. Here we revisit the three-part scheme: placement, layering, and integration. The money is placed back into the financial system perhaps through being deposited in cash to a bank account in small increments from different sources. The funds may then be layered by being transferred to another account internationally under a false pretense such as medical expenses or for render of goods and services. Finally, the funds may be channeled to finance terrorist activity by being integrated in the form of donations, front organizations, investment in property etc. In this case, both drug trafficking and money laundering are the predicate offences to terrorism financing.

1.6. PROCEEDS OF CRIME

Money laundering falls into the category of organized crime; the main goal of which is to generate profit through criminal activity. The proceeds of crime, therefore, are money or assets gained by perpetrators during the course of their criminal activity.³⁷

Under Pakistan's Anti-Money Laundering Act, 2010, the term “proceeds of crime” is defined as “any property derived or obtained directly or indirectly by the commission of a predicate offence or a foreign serious offence.”³⁸ The term “property” here is meant to include all property and assets of any description whether moveable or immoveable,

34 FATF Recommendation 3 Interpretative Note Paragraph 4: ‘When proving that property is the proceeds of crime, it should not be necessary that a person be convicted of a predicate offence’ <http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>

35 See Explanation II in section 3 Anti-Money Laundering Act 2010 - For the purposes of proving an offence under this section, the conviction of an accused for the respective predicate offence shall not be required

36 Anti-Money Laundering Act 2010, s 20 (a)

37 ‘Proceeds of Crime | The Crown Prosecution Service’ (Cps.gov.uk, 2019) <<https://www.cps.gov.uk/proceeds-crime>>

38 Anti-Money Laundering Act 2010, s 2(q)

tangible or intangible, including deeds and instruments that express ownership of any such asset and cash and monetary instruments.³⁹ All property involved in money laundering or gained through criminal activity constitutes proceeds of crime.

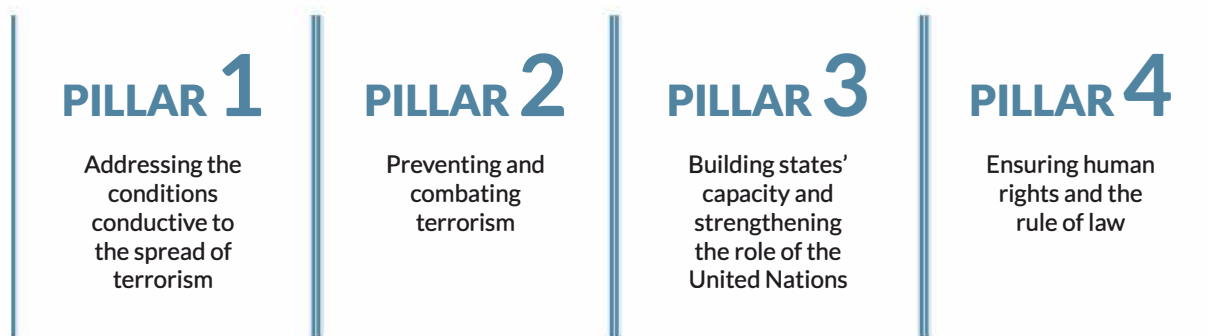
In the AML/CFT regime, the categorization of the proceeds of crime is critical since such proceeds will be subject to confiscation and can be attached, deposited, forfeited, and seized by law enforcement agencies during the investigation and prosecution of AML/CFT cases.

International Legal Framework

The international framework for terrorist financing comprises of international instruments originating from two main bodies, namely the United Nations, which has adopted various resolutions and conventions for combating terrorist financing, and the Financial Action Task Force (FATF), which has issued several recommendations relating to terrorism and terrorist financing. This section explores the interplay between international human rights law and the AML/CFT regime, with a focus on how the two competing responsibilities must be considered in tandem with one another. The following is a brief overview of these international laws and conventions pertaining to both of these.

1.7. THE INTERPLAY OF INTERNATIONAL HUMAN RIGHTS LAW AND AML/CFT

UN Global Counter-Terrorism Strategy



**Source: UN Office of Counter-Terrorism, un.org.*

With the rise in global terrorism, states are faced with the constant challenge of balancing national security concerns with human rights concerns, and more often than not, the scale tilts towards the former.

The UN General Assembly has created the “The UN Global Counter-Terrorism Strategy,” an instrument to enhance the efforts of the international community to counter terrorism along four-pillars. The UNGA Resolution 60/158⁴⁰ provides the fundamental framework to ensure that human rights and the rule of law are the bedrock of the fight against terrorism.

Other resolutions and conventions that have been the basis for AML/CFT related legislation complement the UNGA Resolution 60/158 by requiring compliance with human rights law:

1. UNSC Resolution 1269 emphasizes:

“the necessity to intensify the fight against terrorism at the national level and to strengthen, under the auspices of the United Nations, effective international cooperation in this field on the basis of the principles of the Charter of the United Nations and norms of international law, including respect for international humanitarian law and human rights.”⁴¹

³⁹ Anti-Money Laundering Act 2010, s 2(r)

⁴⁰ 'A/RES/60/158 - E - A/RES/60/158' (Undocs.org, 2019) <<https://undocs.org/en/A/RES/60/158>> accessed 21 October 2019.

⁴¹ 'Refworld | Security Council Resolution 1269 (1999) [Responsibility Of The Security Council In The Maintenance Of International Peace And Security]' (Refworld, 2019) <<https://www.refworld.org/docid/3b00f1d35a.html>> accessed 21 October 2019.

2. International Convention on the Suppression of Financing Terrorism⁴² provides:

Article 17: Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international human rights law.

Article 21: Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes of the Charter of the United Nations, international humanitarian law and other relevant conventions.

3. More recently, UNSC Resolution 2462 (2019),⁴³ demands stronger compliance with human rights law by:

Calling upon Member States to intensify and accelerate the timely exchange of relevant operational information and financial intelligence regarding actions or movements, and patterns of movements, of terrorists or terrorist networks, including Foreign Terrorist Fighters (FTFs) and FTF returnees and relocators, in compliance with international law, including international human rights law, and domestic law.

Ensuring that competent authorities can use financial intelligence shared by financial intelligence units, and relevant financial information obtained from the private sector, in compliance with international law, including international human rights law;

Considering the establishment of a mechanism by which competent authorities can obtain relevant information, including but not limited to bank accounts, to facilitate the detection of terrorist assets, in compliance with international law, including international human rights law;

Calling upon all States to enhance the traceability and transparency of financial transactions, in compliance with international law, including international human rights law and humanitarian law.

Furthermore, under international human rights law, there is a responsibility to take measures against terrorism that must be balanced with the protection of certain fundamental human rights. These rights can be found encapsulated within the ICCPR and its two Optional Protocols, the International Covenant on Economic, Social and Cultural Rights (ICESCR); the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment (CAT) and its Optional Protocol; and the International Convention for the Protection of All Persons from Enforced Disappearance. Pakistan is party to all of these international human rights instruments.

Despite emphasis on taking the most stringent measures to combat terrorism, there are certain non-derogable rights that cannot be compromised. The foremost of these is the right to life, a right enshrined in both Article 6 of the ICCPR and Article 3 of Universal Declaration of Human Rights (UDHR). Article 3 offers the additional caveat that while the right to life is non-derogable, use of lethal force is justified subject to certain conditions of necessity and proportionality (such as in self-defense). Under the ICCPR, use of the death penalty is considered a violation of the right to life, however, as of 2014, the moratorium on the death penalty was lifted in Pakistan and is presently used as a punishment for the offence of terrorism.

In the trial of terrorism cases, the offender must also be afforded the right to due process and fair trial i.e. right to an impartial independent tribunal, protection from self-incrimination, right to appeal, right to access to legal counsel, presumption of innocence etc.; the right to liberty i.e. right to challenge illegality of detention (as per Article 9 of ICCPR); and prohibition against torture (as per Article 3 of the Geneva Convention 1949 and CAT).

Article 8 of Pakistan's Constitution states that any law in contravention to the fundamental rights is void. Rights such as security of person, right to fair trial, prohibition against slavery/forced labor, protection against double punishment and self-incrimination, inviolability of dignity of man, and safeguards as to arrest and detention should be applied to all criminal offenders, including those charged with terrorism.⁴⁴ These domestically enshrined rights relate protections under international law that render certain rights non-derogable i.e. right to life, prohibition against torture and inhumane treatment, right to liberty and security of person.

42 (Treaties.un.org, 2019) <<https://treaties.un.org/doc/db/Terrorism/english-18-11.pdf>> accessed 21 October 2019.

43 (Securitycouncilreport.org, 2019) <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2462.pdf> accessed 21 October 2019.

44 Constitution of Pakistan, National Assembly Archive http://www.na.gov.pk/uploads/documents/1333523681_951.pdf

However, limitations exist, and some rights (e.g. right to assembly) may be infringed in the interest of national security, public safety, public order, and protection of public health, morals, or rights and freedoms of others.

An exemption under Article 8 of the Constitution states that if any law falls under Part 1 of the First Schedule of the Constitution, it will not be rendered void. The now defunct Protection of Pakistan Act, 2014, and Army Act, 1957, all fall under this Schedule and are therefore exempt from compliance with human rights requirements.⁴⁵

In Pakistan and in other States, the practice of preventive detention is a measure designed outside the ambit of arbitrary arrest in the interest of safeguarding national security. In a case of preventive detention, a suspect is detained not as punishment for a proven crime but on grounds of being a potential threat to national security.

While there are safeguards under Article 10 of the Pakistan Constitution, that state detainees are to be allowed representation, these safeguards are minimal.⁴⁶ The law does not distinguish between war and peacetime preventive detention, and there are no requirements that stipulate that a detained person be informed of grounds of detention, brought to speedy trial, or given access to a judicial authority. Often, the facts of the case are also concealed on grounds of 'national security.' These actions all contravene the right to a fair trial under the Constitution's Article 10A.⁴⁷ The State should ensure that the process of detention, trial or expulsion is fair, reasonable and non-arbitrary, as per the tenets of the Universal Declaration of Human Rights.⁴⁸ Any limitations imposed on rights of an individual must be necessary and proportional.⁴⁹

Right to Privacy

Surveillance, data protection, and the right to privacy prohibit States' parties from interfering with the privacy of those within their jurisdiction and require the State to protect those persons by law against arbitrary or unlawful interference with their privacy.⁵⁰ Security at airports, advanced intelligence services, strict screening, and searching of persons etc. interfere with the privacy of persons. However, measures that impact an individual's right to privacy must be authorized by law, in a manner that is reasonable, predictable, and not arbitrary.⁵¹ However, this does not mean States are free to act on their discretion. States are under an obligation to protect individuals against the arbitrary exercise of authorizations. In *Klass v. Germany* for instance, the European Court of Human Rights stated that it must be satisfied that any system of secret surveillance conducted by the State must be accompanied by adequate and effective guarantees against abuse.⁵²

1.8. INTERNATIONAL LEGAL FRAMEWORK OF AML/CFT

Treaties

The United Nations has adopted various instruments (i.e. Conventions or Protocols), and Resolutions imposing obligations on Member States to counter terrorist financing. The most important convention on the subject of terrorism financing is:

The International Convention for the Suppression of Financing of Terrorism aims to prevent the financing of terrorism by obliging States Parties to adopt a range of preventive measures, and others aimed at facilitating the effective investigation and prosecution of crimes related to terrorist financing.⁵³

UNSC Resolutions

The two most relevant United Nations Security Council Resolutions that call for the suppression of terrorism and the countering of financing of terrorism are:

- Resolution 1267 (1999) – which designated Osama bin Laden and his associates as terrorists and established a sanctions regime to cover individuals and entities associated with Al Qaeda and Osama bin Laden. The regime is composed of a UN Security Council Committee, that identifies and designates a "consolidated list" of people and

45 Ibid.

46 Ibid.

47 Ibid.

48 Universal Declaration of Human Rights – United Nations
<https://www.un.org/en/universal-declaration-human-rights/>

49 Ibid.

50 Human Rights, Terrorism, and Counter-Terrorism, Fact Sheet 32 (n.d.). Retrieved from <https://www.ohchr.org/Documents/Publications/Factsheet32EN.pdf>

51 See Human Rights Committee, views on communication N° 35/1978, AumeeruddyCziffra and Others v. Mauritius, 9 April 1981 (A/36/40, annex XIII, para. 9.2 (b) 2 (i) 8).

52 European Court of Human Rights, *Klass v. Germany*, N° 5029/71, Judgement of 6 September 1978, para. 50.

53 'UNITED NATIONS Office Of Counter-Terrorism' (Un.org, 2019) <<http://www.un.org/en/counterterrorism/legal-instruments.shtml>> accessed 21 October 2019.

entities that have been associated with Al-Qaeda or the Taliban, and evaluates laws that ought to be passed within each member nation in order to implement the sanctions.

- Resolution 1373 (2001) – which calls on States to prevent and suppress the financing of terrorism, inter alia, by criminalizing the collection and provision of funds for terrorist purposes and urges them to set up an effective mechanism to freeze funds and other financial assets of persons involved in or associated with terrorism.

FATF

The Financial Action Task Force is an inter-governmental body established by the G-7; the purpose of which is to set international standards relating, but not limited, to money laundering and terrorist financing. Although the FATF was previously concerned with money laundering, following 2001, it expanded its scope to cover the funding of terrorist organizations and individual terrorists, outlining a number of recommendations for this purpose.⁵⁴ These include recommendations pertaining to:

- The criminalization of terrorist financing (Recommendation 5);
- Targeted financial sanctions related to terrorism & terrorist financing (Recommendation 6);
- Measures to prevent the misuse of non-profit organizations (Recommendation 8).

The role of the United Nations and the FATF in combating terrorist financing has been dealt with in greater detail in Chapter 2 below.

SELF-ASSESSMENT QUESTIONS

- What is the primary difference between money laundering and other financial crimes?
- What is the primary difference between terrorism cases and other serious crimes?
- What is the primary difference between money laundering and terrorism financing?
- Why are the two terms often used in conjunction with one another?
- Why is it important for Pakistan to strengthen its AML/CFT regime?

More information on the international legal framework can be found in Chapter 2 of the Guide.

1.9. DOMESTIC LEGAL FRAMEWORK AND THE INTERPLAY WITH HUMAN RIGHTS

Overview

The Anti-Terrorism Act, 1997, and the Anti-Money Laundering Act, 2010, serve as primary legislations that deal with the domestic regime of AML/CFT. Both laws need to be balanced with the fundamental rights enshrined in the Constitution of the Islamic Republic of Pakistan. The principles of democracy, tolerance, and equality of status and of opportunity before law, as provided for in the Preamble of the Constitution, should be complied with under the AML/CFT regime.

Chapter 1, Part II of the Constitution of Pakistan includes a list of fundamental rights. The most significant substantive restriction on State power to legislate comes through the fundamental rights outlined in Articles 8 to 28 of the Constitution. Article 8 of the Constitution provides that any law that is inconsistent with the fundamental rights, shall, to the extent of the inconsistency, be void; making these rights justiciable, i.e., a state's action/inaction that leads to a violation of a person's fundamental rights can be challenged in front of the judiciary.

For instance, the right to life (Article 9) is the most fundamental of all rights. The word 'life' is very significant as it covers all facets of human existence; therefore, the scope of Article 9 is enlarged to encapsulate each and every aspect of human life as provided in the landmark judgement of *Shehla Zia v WAPDA* (PLD 1994 SC 693). The term "life" was defined to include all amenities and facilities which a person born in a free country is entitled to enjoy with dignity. Therefore, any law affecting human life or which may put an individual's life at risk must call for greater scrutiny.

Another right guaranteed by the Constitution is the protection against unlawful arrest and detention (Article 10). This Article guarantees a number of important criminal procedural rights, such as the right to be informed of the grounds of arrest, right to counsel, right to be produced before a magistrate within 24 hours, right to be defended etc. Similarly, in

⁵⁴ FATF (2012-2018), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, FATF, Paris, France, www.fatf-gafi.org/recommendations.html

Muhammad Usman v The State (PLD 1965 Lah 293), it was also held that a law which denies the right to be defended by a legal practitioner is void; this demonstrates the importance of making law compliant with fundamental rights.

The Supreme Court interpreted Article 10A (the right to a fair trial) in *Suo Motu Case No. 4 of 2010* (Contempt proceedings against Syed Yousaf Raza Gillani (PLD 2012 SC 553)) and stated that through Article 10A, the right had been 'raised to a higher pedestal; consequently, a law, or custom or usage having the force of law, which is inconsistent with the right to a 'fair trial' would be void by virtue of Article 8 of the Constitution.' Furthermore, the Constitution prohibits the violation of the dignity of a person and the infringement of privacy of a person's home (Article 14) and guarantees citizens the right to remain, enter and/or move freely throughout Pakistan, as well as to reside or settle in any part of the country (Article 15). In addition, it also provides other important rights such as right to assembly (Article 16), freedom of association (Article 17), freedom of expression (Article 19), the right to be treated equally (Article 25), and the right to acquire, hold and dispose of private property (Article 23), and any law in violation of these rights will be struck down on the basis of unconstitutionality.

Anti-Terrorism Act, 1997

The table below highlights the powers of law enforcement agencies to be utilized for terrorism financing and anti-money laundering investigations which have to be balanced with due process rights as provided for in domestic legislation and enshrined in the Constitution of Pakistan.

National Security, Human Rights,⁵⁵ and the challenge involved in balancing the two:

DUTIES OF THE EXECUTIVE	LAW	CORRESPONDING RIGHTS OF INDIVIDUALS	RELEVANT ARTICLES
Investigations, and power to enter and search	Section 21 B and Section 10 ATA 1997	Due process and right to fair trial	Articles 4 & 10A
		Right against torture and inhumane treatment	Article 14
		Right against arbitrary interference with private life and family	Article 14
		Right to be presumed innocent until proven guilty	Article 10A, General Comment No. 32
Arrest and Detention	Section 11EEE, ATA 1997	Right to liberty, security of person, and freedom of movement	Article 9
		Right to be informed of reason for arrest, detention and charges	Article 10A
		Due process, and right to fair trial within a reasonable time	Articles 4 & 10A

⁵⁵ (Ohchr.org, 2019) <<https://www.ohchr.org/Documents/Publications/training5Add3en.pdf>> accessed 21 October 2019. See also, Fundamental Rights, Constitution of the Islamic Republic of Pakistan, 1973; see also, International Covenant on Civil and Political Rights, 1966.

		Legality and Duration	Article 10A, Article 14 ICCPR
		Right to review	General Comment No. 32
		Access to court, and remedy	General Comment No. 32
		Right against torture, and inhumane treatment, and respect for inherent dignity of the person	Article 10A, General Comment No.32
		Right to be presumed innocent until proven guilty	Article 14, Article 10A, General Comment No. 32

Investigations

Section 21B, ATA, 1997, empowers a uniformed policeman, inter alia, to take the following measures:

- Enter and search premises if they suspect anyone concerned with terrorism is hiding there;
- Search and arrest any person reasonably suspected to be a terrorist;
- Prohibit or restrict access to a cordoned area;
- Take possession of any property in a cordoned area that they reasonably suspect is likely to be used for the purposes of terrorism.

These duties are to be balanced out with the following rights:

Article 14: Right to dignity, and subject to law, the privacy of home shall be inviolable. Right against torture for the purpose of extracting evidence.

The use of "subject to law" guides as to how the right can be made flexible in times of crises. A law that prescribes for derogation from privacy of home must be clear, and intelligible.

Furthermore, Pakistan's obligation under United Nations Convention Against Torture⁵⁶ makes it unlawful to use torture in all circumstances, including in a state of emergency, and not just for the purpose of extracting information.

Article 10A: Right to fair trial and due process.

In the event of entering premises, search, and arrest, due process must be followed. This entails that reasonable grounds must exist to enter and search, and once arrested, the individual must be informed of the reasons for arrest, and the charge against them.

Arrest and Detention:

Section 11EATA, 1997, empowers the Government to:

- Order in writing the detention of a proscribed person for a period as specified in the order;
- If necessary, extend the period of detention from time to time for a total period not extending 12 months.

The safeguard provided in this duty is the need for necessity. This section is to be balanced with the following fundamental rights:

⁵⁶ 'UNTC' (Treaties.un.org, 2019) <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&clang=_en> accessed 21 October 2019. Pakistan ratified the Convention on the 23rd of July, 2010.

Article 10A: Right to fair trial – this guarantees a number of criminal procedural rights. Such as, the individual will have to be informed of the proceedings that affect their rights. They must be informed of the reason of arrest/detention and the charge against them. They must be given the opportunity to defend themselves by having a right to counsel. They must be produced before the magistrate within 24 hours, and there must be reasonable assurance of the honesty of the impartiality of the court that has been constituted to adjudicate on the matter. Finally, they must have a right to review or make appeal against the decision passed.

Article 14: Right to dignity and right against torture for the purpose of extracting information.⁵⁷

Asset Freeze and Seizure:

Section 11O, ATA, 1997, provides:

- Upon proscription of organization/person, the assets of such organization or person shall be frozen or seized.
- The person carrying out the freeze or seizure shall submit a report containing details of the property and the persons affected by the freeze or seizure to such office of the Federal Government as may be notified in the official Gazette.

This section is to be balanced with the following fundamental rights:

Article 10A: Right to fair trial and due process.

This states that for determination of a person's civil rights and obligations or in any criminal charge against him, a person shall be entitled to a fair trial and due process.

Article 23: Right to Property.

This right is subject to reasonable limitations imposed by law in the public interest. It entitles citizens to acquire, hold, and dispose of any property in any part of Pakistan.

Article 24: Protection of Property rights.

It stipulates that no person shall be compulsorily deprived of his property, subject to limitations prescribed by law.

Section 11O is also to be balanced with Section 11OO, ATA, 1997, which provides:

“The Federal Government may permit a person to make available to a proscribed organization or proscribed person such services, money or other property as may be prescribed, including such money as may be required for meeting necessary medical and educational expenses and for subsistence allowance, and such person shall not be liable for an offence under this Act on account of provision of the prescribed services, money or other property.”

Kadi and Al Barakaat International Foundation v Council and Commission (2008) C-402/05,⁵⁸ involved Mr. Kadi, a Saudi resident, and Al Barakaat, a charity for Somali Refugees, with assets in Sweden, who claimed that the freezing of his assets was unlawful. They claimed their property was seized without a court hearing or right to redress. The EU Regulation that gave effect to the UNSC Resolution was at dispute. The Advocate General opined that EU did not have to unnecessarily bow to international law where the result would be a violation of basic constitutional principles. This opinion was upheld by the European Court of Justice.⁵⁹

Similarly, *Suleman vs. Manager Domestic Banking, Habib Bank Ltd.*⁶⁰ concerned the clash between the duty to freeze assets and the fundamental right to property and its protection. The State Bank of Pakistan (SBP) froze bank accounts of the petitioner under the United Nations (Security Council) Act, 1948. However, no action against the petitioner had been taken under ATA, 1997. Moreover, no material of alleged suspicion of financing terrorism had been conveyed nor the petitioner had been afforded the opportunity to confront the same. The petitioner claimed his fundamental rights under Articles 23 and 24 had been violated. It was held that the UNSC Resolution, particularly one violating fundamental rights, could not operate by its own force unless given effect by the Order of the Federal Government, and no such Order was made. Therefore, it was held that freezing the accounts was beyond the purview of the lawful powers of the SBP.

⁵⁷ Subject to UNCAT.

⁵⁸ Yassin Abdullah Kadi and Al Barakaat International Foundation v Council of the European Union and Commission of the European Communities, Joined Cases C-402/05 P and C-415/05 P, (n.d.). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?isOldUri=true&uri=CELEX:62005CJ0402>.

⁵⁹ ECJ gave a decision on the legality of the EU Regulation that gave effect to the UNSC Resolution, and not on the legality of the UNSC Resolution itself as it had no jurisdiction to do so.

⁶⁰ 2003 CLD 1797 Karachi-High Court-Sindh.

Travel Ban

Section 11E, ATA, 1997, provides measures to be taken against a proscribed person, and among the measures, the proscribed person is prohibited from travelling abroad.

This section has to be balanced with the following fundamental right:

Article 25: Equality of citizens.

Every person is entitled to equal protection under the law, without discrimination on the basis of sex.

Case Law illustration of the travel ban:

*Abdelrazik v. Canada (Minister of Foreign Affairs)*⁶¹ is a case concerning the travel ban under the sanction regime of UNSC 1267. Abdelrazik was Sudanese refugee in Canada who subsequently became a Canadian citizen. Abdelrazik returned to Sudan, claiming he had been continuously harassed by the Canadian Security Intelligence Service (the CSIS) in the wake of the September 11 attacks. He was detained in Sudan on Canada's request where he was in detention without charge for 11 months and was allegedly tortured by Sudanese authorities. His attempts to fly back to Canada were thwarted by Canadian authorities. He was then placed on the 1267 list which resulted in a travel ban and made it more difficult for him to make his return to Canada. He brought a case before the Federal Court that his citizenship rights under the Canadian Charter of Right and Freedoms had been violated. The Federal Court found in favour of Abdelrazik and ordered his return back to Canada.

Prohibition of incitement to terrorism

Section 11G, ATA 1997, provides:

"A person commits an offence if he: — (a) wears, carries or displays any article, symbol, or any flag or banner connected with or associated with any proscribed organisation; or (b) carries, wears or displays any uniform, item of clothing or dress in such a way or in such circumstances as to arouse reasonable suspicion that he is a member or supporter of a proscribed organisation."

This section has to be balanced with the following fundamental rights:

Article 19: Freedom of Speech.

This includes the freedom of every citizen with regards to speech and expression as well as the freedom of the press.

This right is subject to reasonable restriction/limitation in the interest of Islam, security or defence of Pakistan, public order, friendly relations with other states, decency or morality, or incitement to an offence.

Article 17: Freedom of Association

The right to association includes the right to form associations, unions, and to form or be a member of a political party.

This right is also subject to reasonable restrictions imposed by law in the interest of sovereignty or integrity of Pakistan, public order or morality.

In the case of *Independent Media Corporation (PVT.) Limited vs. Pakistan Electronic Media Regulatory Authority*,⁶² a notice was issued to a Media Corporation by PEMRA for airing a message of a leader of a banned organization, who was inciting hatred towards democracy, and threatening journalists, reporters and anchor persons. Section 11W, Anti-Terrorism Act 1997,⁶³ was attracted, and it was held that this act was not short of abetting and aiding of terrorists. In this circumstance, freedom of expression appears to be rightly prohibited as a legitimate threat from a proscribed organization existed, and it was necessary to counter it. The measure to counter the threat was authorized by law under the ATA 1997, therefore, it was a legal measure. This illustrates an exercise of drawing a line between the conflicting duties and rights.

61 *Abdelrazik v. Canada (Minister of Foreign Affairs)* [2010] 1 F.C.R. 267, Office of the Commissioner for Federal Judicial Affairs. (2018, July 13). Federal Courts Reports - Advanced Search. Retrieved from <https://reports.fja-cmf.gc.ca/fja-cmf/j/en/item/331230/index.do>.

62 2019 PCrLJ 262 Karachi-High Court-Sindh.

63 11W. Printing, publishing, or disseminating any material to incite hatred or giving projection to any person convicted for a terrorist act or any proscribed organization or an organization placed under observation or anyone concerned in terrorism.

CHAPTER 2

GLOBAL LEGAL FRAMEWORK

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INTRODUCTION

This chapter builds upon the aspects of international legal framework which were discussed earlier. In particular, Pakistan's grey-listing by the FATF is something which must be analyzed in greater detail. Accordingly, it is incumbent upon state institutions to comply with Recommendations that have been postulated by the FATF. In this respect, this chapter dissects the global legal framework from the standpoint of criminal justice actors i.e. prosecution, investigators and judges. Therefore, this chapter lays a specific emphasis on the actions that must be taken by criminal justice actors to address the deficiencies highlighted by FATF.

LEARNING OUTCOMES

By the end of this Chapter and the relevant readings you should be able to:

- Understand the interplay of international obligations in relation to AML/CFT
- Describe the actions that are expected of Criminal Justice Actors in order to be compliant with the FATF Recommendations
- Broadly understand how the FATF Evaluation takes place

ESSENTIAL READING

- United Nations Security Council Resolution 1373
- United Nations Security Council Resolution 2468
- International Convention for the Suppression and Financing of Terrorism, 1999 (ICSFT)
- FATF (2013-2019), Methodology for Assessing Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems, updated February 2019, FATF, Paris, France.

2.1. INTERNATIONAL OBLIGATIONS

International Conventions

The current international AML/CFT framework is a product of treaty law, namely, instruments that are binding under International Law, and are concluded between two or more international juridical persons. Treaties signify that the parties intend to create rights and obligations that are enforceable under International Law upon each other. Accordingly, it can be stated that conventions, agreements, protocols, and exchange of letters or notes may all constitute treaties.⁶⁴

The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)

The United Nations (UN), through its Drug Control Program, initiated an international agreement to combat drug trafficking and counter money laundering. Although the convention does not explicitly discuss the term “money laundering,” it defines the concept and calls upon countries to criminalize the activity. However, the convention does not address preventive aspects of money laundering, and the only predicate offenses for money laundering under the convention are crimes that are related to drug trafficking. This convention, nevertheless, serves as a precursor for several of the FATF recommendations on preventing, detecting, and prosecuting money laundering.

Pakistan ratified this treaty in October 1995. No reservations were expressed by Pakistan to the provisions of this treaty.⁶⁵

The United Nations Convention against Transnational Organized Crime (UNTOC, 2000)

The Convention contains a wide range of provisions designed to combat international organized crime. Specifically relating to money laundering, it obliges each ratifying country to:

- Criminalize money laundering and include at least all serious crimes (not just drug trafficking) as predicate offenses to money laundering;
- Establish regulatory and supervisory regimes to deter and detect all forms of money laundering;
- Cooperate and exchange information, both domestically and internationally, and consider the establishment of a financial intelligence unit; and
- Consider the implementation of feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across its borders.

Pakistan ratified this treaty in January 2010. It expressed a reservation, stating that it does not consider itself bound by paragraph 2 of article 35 of the Convention.⁶⁶

The International Convention for the Suppression of the Financing of Terrorism (ICSFT)

The ICSFT was adopted by the United Nations General Assembly (UNGA) on 9th December 1999 and entered into force on 10th April 2002. There are currently 188 States parties to this convention, and its primary aim is to require that ratifying countries criminalize terrorism, terrorist entities, and terrorist acts. It applies both to direct involvement, as well as complicity, in the provision or collection of funds, whether attempted or otherwise, with the intent or knowledge that any part of the funds may be used to carry out the offenses described in the convention, or any act intended to cause death or injury to any person not actively involved in an armed conflict, with a view of intimidating a population or compelling a government or an international organization to act (or not act, as the case may be) in a certain way. Such actions would be construed as an offense under the Convention, whether or not the funds gathered are actually used in the carrying out of the proscribed acts. The convention requires each country to take measures, in accordance with their own domestic legal systems, to detect, freeze, and seize funds used or allocated for the purposes of committing the described offenses.⁶⁷

⁶⁴ Page 67, United Nations Treaty Handbook – United Nations Publications
<https://treaties.un.org/doc/source/publications/THB/English.pdf>.

⁶⁵ The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), United Nations Treaty Collection, UNTC.
https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VI-19&chapter=6&clang=_en

⁶⁶ The United Nations Convention against Transnational Organized Crime (UNTOC, 2000), United Nations Treaty Collection, UNTC.
https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-12&chapter=18&clang=_en

⁶⁷ International Convention for the Suppression of the Financing of Terrorism, United Nations General Assembly, 1999.
<https://www.refworld.org/docid/3dda0b867.html>

This instrument requires Member States to adopt the below mentioned measures:

- Parties ought to take steps to prevent and counter the financing of terrorists, whether direct or indirect, through groups claiming to have charitable, social or cultural goals or those who also engage in illicit activities such as drug trafficking or gun running;
- Commits States to hold those who finance terrorism criminally, civilly or administratively liable for such acts; and
- Requires States to provide for the identification, freezing and seizure of funds allocated for terrorist activities, as well as for the sharing of the forfeited funds with other States on a case-by-case basis. Bank secrecy is no longer adequate justification for refusing to cooperate.

Relevant Provisions of the ICSFT:⁶⁸

Article 4	The Convention requires States Parties to introduce domestic legislation that criminalizes the financing of terrorism and to make such offences punishable by penalties “that tantamount to the grave nature of the offences.”
Article 6	This Article specifies that under the Convention, the perpetration of criminal acts may not be justified by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.
Article 7	States Parties are required to establish their jurisdiction over those offences. In that regard, the Convention lays down particularly broad bases for jurisdiction: territorial jurisdiction, “defensive” jurisdiction (taking into account the doctrine “of effects,” to wit, that the purpose or result of the act of financing – wherever it took place – was the commission of an offence on the State’s territory), active personal jurisdiction (covering stateless persons who have their habitual residence in the territory of a State Party), passive personal jurisdiction and universal jurisdiction where the alleged offender is present in the State’s territory.
Article 8	In addition to the prosecution of offenders, States Parties are required to adopt “appropriate measures for the identification, detection and freezing or seizure of any funds used or allocated for the purpose of committing the offences mentioned in the convention.”
Article 17	With a view of protecting individual human rights, the Convention provides that any person taken into custody or prosecuted in application of its provisions “shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international human rights law”
Article 18	In addition to the provisions aimed at punishing those crimes, that are its core provisions, the Convention also requires States Parties to adopt a variety of measures to prevent the financing of terrorist activities or groups, by requiring, among other things, greater transparency in financial transactions and better monitoring of financial transactions and flows.

Pakistan ratified this Convention in July 2009. Pakistan expressed reservations pertaining to Articles 11, 14 and 24 of the Treaty. The Government of Pakistan declared that it does not take this Convention as “the legal basis for cooperation on extradition with other States” (Article 11[2]). It also stated that extradition will be subjected to local

⁶⁸ International Convention for the Suppression of the Financing of Terrorism, United Nations General Assembly, 1999. <https://www.refworld.org/docid/3dda0b867.html>

laws (Article 14), and that in case of a dispute, all parties must be in agreement to be referred to the International Court of Justice (Article 24).⁶⁹

United Nations Security Council Resolutions

Building on the ICSFT, Security Council Resolution 1373 (2001), calls on States to prevent and suppress the financing of terrorism, inter alia, by criminalizing the collection and provision of funds for terrorist purposes, and urges them to set up an effective mechanism to freeze funds and other financial assets of persons involved in or associated with terrorism. It is pertinent to reiterate that even raising small funds significantly increases a terrorist organization's capacity to conduct terrorist activities. In its Resolution 2178 (2014), the Security Council urged Member States to disrupt terrorist-financing activities linked to foreign terrorist fighters (FTFs) and to criminalize the financing of FTF travel.

UNSC Resolution 1267

The United Security Council Resolution 1267 was adopted unanimously on the 15th of October 1999. After Resolutions 1189 (1998), 1193 (1998) and 1214 (1998) on the situation in Afghanistan, the Council required member states to freeze the assets of the Taliban. It was followed by Resolution 1333, which dealt specifically with the freezing of the assets of Osama bin Laden and Al Qaeda. Later Resolutions 1363, 1390, 1452, 1455 established monitoring arrangements, merged lists of assets to be frozen, and took other measures to improve implementation and further enhance monitoring of the sanctions' regime. This regime has since then been reaffirmed and modified by a dozen further UN Security Council Resolutions. Since the US invasion of Afghanistan in 2001, the sanctions have been applied to individuals and organizations in all parts of the world.

Resolution 1267 also established a sanctions committee, known as the "Al Qaeda and Taliban Sanctions Committee," (or the '1267 Committee'), to fully implement the provisions of Resolution 1267 and document individuals and entities whose assets are to be frozen in light of terrorism financing threats.⁷⁰ It is further assisted by a Monitoring Team, based on eight members who have expertise in counter terrorism financing and arm embargoes, to further improve implementation of sanctions mechanisms as required.⁷¹

The 1267 Sanctions Committee also identifies, designates and compiles the Al Qaeda Sanctions List (previously known as "Consolidated List") of people and entities that have been associated with Al Qaeda or the Taliban,⁷² and evaluates laws that ought to be passed within each member nation in order to implement the sanctions. The Committee receives reports from each State as to their progress and is able to vary the conditions imposed on any individual as it sees fit.

Initially, the 1267 Sanctions Committee focused on both Al Qaeda and the Taliban. However, in 2011, pursuant to Resolution 1988 (2011), a separate sanctions regime and Sanctions Committee was formed to oversee sanctions for the Taliban.⁷³ A consequent resolution (Resolution 1989) thereby formalized the reduction of the scope of the 1267 Sanctions Committee to focus on Al Qaeda and all associated individuals and entities, and to consolidate all information in the re-named 'Al Qaeda Sanctions List'.⁷⁴

UNSC Resolution 1373

On 11th September 2001, the Security Council unanimously adopted a wide-ranging, comprehensive resolution that outlines strategies to combat international terrorism. In Resolution 1373 (2001) the Security Council also established another committee, known as the United Nations Security Council Counter-Terrorism Committee, which aims to "prevent terrorist acts both within [State] borders and across regions."⁷⁵ The Counter-Terrorism Committee also monitored the Resolution's implementation and called upon all States to report on remedial actions they had taken in light of the Resolution, no later than 90 days.⁷⁶

Under Resolution 1373, the Council directed all States to prevent and suppress the financing of terrorism, as well as criminalize the willful provision or collection of funds for such acts. The funds, financial assets and economic resources

⁶⁹ The International Convention for the Suppression of the Financing of Terrorism (ICSFT), United Nations Treaty Collection, UN TC. https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-11&chapter=18&clang=en

⁷⁰ "Main webpage of The Security Council Committee established pursuant to resolution 1267 (1999)". UN. Archived from the original on 7 April 2007. Retrieved 3 April 2007.

⁷¹ UN Security Council Committee pursuant to UNSCR 1267, 1989, 2253 – Overview, United Nations <https://www.un.org/securitycouncil/sanctions/1267>.

⁷² Ibid.

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ United Nations Security Council – Counter Terrorism Committee, United Nations, <https://www.un.org/sc/ctc/>

⁷⁶ "Main webpage of The Security Council Committee established pursuant to resolution 1267 (1999)". UN. Archived from the original on 7 April 2007. Retrieved 3 April 2007.

of those who commit or attempt to commit terrorist acts or facilitate the commission of terrorist acts or act on behalf of a proscribed organization or person were required to be frozen without delay.

Under this Resolution, the States ought to prohibit their nationals or persons or entities in their territories from transferring funds, financial assets, economic resources, financial or other related services available to persons who commit or attempt to commit, facilitate or participate in the commission of terrorist acts. States are also obliged to refrain from providing any form of support to entities or persons involved in terrorist acts. States also ought to adopt preventive measures against those who finance, plan, facilitate or commit terrorist acts from within its jurisdiction against other countries and its citizens.

The Council further directs the States to use effective methods to trace the exchange of information amongst terrorists and increase the monitoring of suspicious transactions including the use of forged documents used to facilitate raising and transferring of funds for terrorist acts. States are also mandated to ensure that before granting refugee status to asylum seekers, appropriate measures are undertaken to verify their identity to rule out their affiliation with any terrorist organization.

The Resolution also highlights the close connection between international terrorism and transnational organized crime, illicit drugs, money laundering and illegal movement of nuclear, chemical, biological and other deadly materials. In that regard, it emphasized the need to enhance the coordination of national, sub-regional, regional and international efforts to strengthen a global response to that threat to international security.

UNSC Resolution 2462

The resolution urges that all countries implement FATF Recommendations, including adopting standards to assess terrorism-financing risks that they face. The Resolution also requires that countries ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice, and to additionally ensure that funding support is criminalized, even in the absence of a specific link to a terrorist act.

It further notes that terrorist groups raise funding through a variety of means, inter alia, legitimate commercial enterprises, exploitation of natural resources, non-profit organizations, donations, crowd-funding, and proceeds of criminal activities, and that innovations in financial technologies, in particular new and nascent industries that present avenues for significant economic growth, also present possible openings for terrorism funding, and so states must be vigilant and proactive in regulating such ventures.

2.2. FINANCIAL ACTION TASK FORCE

The FATF is an inter-governmental body established in 1989; its objectives are to set standards and promote effective implementation of legal, regulatory, and operational measures for combating money laundering, terrorist financing, and other threats to the integrity of the international financial system. FATF's forty Recommendations on Money Laundering and its nine Special Recommendations on Terrorist Financing constitute the international standards on AML/CFT. The legal framework for a country's AML/CFT regime should be largely consistent with the FATF standards.⁷⁷

Meeting the FATF standards invariably requires legislative action, and it is of the utmost importance that variations between a State's national statutes, regulations, and court decisions, be harmonized in line with the FATF Recommendations. Any State laws or jurisprudence, inconsistent or in direct conflict with international standards, may have the effect of neutralizing aspects of the AML/CFT regime. Therefore, it is important to examine a State's legal framework in its entirety to ensure minimization of conflicts, and to suggest additional legal or legislative actions where such conflicts do exist.⁷⁸

The FATF recognizes that each State has a unique legal character, and so the solutions must not necessarily be uniform, but instead must be adopted according to the individual legal systems of the State. Accordingly, FATF's international standards are established as principles, so that each State may adopt laws consistent with its own legal norms, cultural characteristics, and economic circumstances. Hence, in light of the broader legal framework, the countries are

⁷⁷ Financial Action Task Force (FATF) – About. <https://www.fatf-gafi.org/about/>

⁷⁸ Ibid.

mandated to implement the following measures:⁷⁹

- Identify terrorism financing and money laundering related risks, and develop policies and domestic coordination mechanisms accordingly;
- Pursue investigation against money laundering, terrorist financing and the financing of proliferation;
- Apply preventive measures within the financial and other designated sectors;
- Establish roles and responsibilities for the competent authorities (e.g. investigative, law enforcement and supervisory authorities);
- Apply preventive measures within the financial sector and other designate sectors;
- Increase the dissemination of information related to terrorist organizations amongst the legal institutions; and
- Facilitate international cooperation.

Asia Pacific Group

In February 1997, the Asia/Pacific Group on Money Laundering (APG) was officially established as an autonomous regional anti-money laundering body by unanimous agreement among 13 original founding members. The APG has grown considerably since 1997 and is part of a global network of similar bodies, referred to as Financial Action Task Force-Style Regional Bodies (FSRBs) and is the largest in terms of membership numbers and geographical size. The APG also has a large number of observers (both jurisdictions and supporting organizations) that participate in its programs and activities. Some of the key international organizations that support the APG include the International Monetary Fund, World Bank, the Organization for Economic Cooperation and Development, United Nations Office on Drugs and Crime, the UN's Counter Terrorism Executive Directorate, Asian Development Bank, Commonwealth Secretariat, INTERPOL and the Egmont Group of Financial Intelligence Units. In order to fulfill its obligation to combat money laundering and terrorism financing, Pakistan joined the APG in May 2000.

The APG summarizes its role and purpose in primarily five functions that have an impact on national AML/CFT frameworks as well as global policy. These include conducting mutual evaluations, providing technical assistance and training, typologies research, global policy development and private sector engagement. In Pakistan's case, the first three purposes are particularly useful in enhancing its AML/CFT frameworks.⁸⁰

Membership in the APG would allow the country and its coordinating institutions to gain from technical assistance and typologies research to better understand AML/CFT risks and methods prevalent in the country, as well as be acquainted with all analytical tools required to properly measure and assess risks and vulnerabilities in the country. Having recognized these areas, national agencies can further devise capacity building programs to address any gaps in application, while enabling Pakistan's AML/CFT regime to align with the prevalent global standards. This will additionally improve Pakistan's standing with the Financial Action Task Force, allowing it to exit the grey-list as well.

Summary of the FATF Obligations

The Recommendations have been elaborated upon in more detail later in this chapter. However, the following table illustrates some of the relevant issues which the Recommendations focus upon:

INTERNATIONAL STANDARD	FATF RECOMMENDATION
Criminalization of money laundering on the basis of The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and The International Convention against Transnational Organized Crime.	Recommendation 3
Criminalization of terrorist financing and associated money laundering.	Recommendations 3, 5, 6 & 8 Special Recommendations 1 & 2

⁷⁹ Ibid.

⁸⁰ Ibid.

Predicate offenses: criminal offenses to be included as predicate offenses for money laundering.	Recommendation 3
Freezing, seizing, and confiscating proceeds of crime.	Recommendation 4 & 30 Special Recommendation 3
Powers of Law Enforcement Agency	Recommendation 31
International Cooperation (Mutual Legal Assistance)	Recommendation 37

(I) Predicate Offences and FATF

FATF Recommendation 3 contains important concepts for a country to use when designating predicate offenses for money laundering. It calls upon each country to include at least all serious offenses, not just those that are drug related. The FATF describes the types or categories of criminal conduct that should be designated as predicate offenses for money laundering but leaves it to the discretion of each State to decide the specific Mode of designation.

When the “threshold approach” is used, the predicate offenses should at a minimum cover all offenses designated as “serious offenses” under national law or should include offenses that are punishable by:

- A maximum term of imprisonment of more than one year, for States with maximum penalties; or
- A minimum term of imprisonment of more than six months, for States with minimum penalties.

In both cases, the penalties cited are the minimums that apply to “serious offenses” for money laundering purposes under the international standards. States may choose to include crimes with less severe penalties as predicate offenses for money laundering.

FATF Recommendation 3 provides that, regardless of the approach used in designating predicate offenses, each State should include a “range of offenses within each of the designated categories of offenses.”⁸¹ For the categories listed below, each country may decide, in accordance with its domestic law, how it will define the offenses and what elements of those offenses make them serious:

- Participation in an organized criminal group and racketeering
- Terrorism, including terrorist financing
- Trafficking in human beings and migrant smuggling
- Sexual exploitation, including sexual exploitation of children
- Illicit trafficking in narcotic drugs and psychotropic substances
- Illicit arms trafficking
- Illicit trafficking in stolen and other goods
- Corruption and bribery
- Fraud
- Counterfeiting currency
- Counterfeiting and piracy of products
- Environmental crime
- Murder, grievous bodily injury
- Kidnapping, illegal restraint, and hostage-taking

81 Interpretive Note to FATF Recommendation 3, <https://www.cfatf-gaifc.org/index.php/documents/fatf-40r/368-fatf-recommendation-3-money-laundering-offence> (accessed 4 October 2019).

- Robbery or theft
- Smuggling
- Tax crimes
- Extortion
- Forgery
- Piracy
- Insider trading and market manipulation

2.3. INTERPLAY OF INTERNATIONAL OBLIGATIONS

As has been expounded upon above, the international framework comprises of: treaties; FATF Recommendations; and UNSC Resolutions. These obligations have been tailored in a way where they correlate with one another, either tangentially or directly. The following matrix has been devised to illustrate the same:

SCOPE OF THE OBLIGATION	INTERNATIONAL CONVENTIONS	UNSCRs	FATF RECOMMENDATIONS
Criminalization of financing of terrorism and money laundering	a. ICSFT b. UNTOC c. UNCAC d. UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances	a. 1373 b. 2462	a. No. 3 b. No. 5 c. SR No. I d. SR No. II
Freezing and Confiscating assets	a. ICSFT b. UNTOC c. UNCAC d. UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances	a. 1267 b. 1373 c. 2462	a. No. 4 b. No. 6 c. No. 7 d. No. 8 e. No. 30 f. No. 38 g. SR No. III
Measures of International Cooperation	a. ICSFT b. UNTOC c. UNCAC d. UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances	a. 1267 b. 1373 c. 2462	a. No. 36 b. No. 37 c. No. 38 d. No. 39 e. No. 40 f. SR No. I g. SR No. III
Operational and Law Enforcement Obligations to investigate and prosecute	a. ICSFT b. UNTOC c. UNCAC	d. 1373 e. 2462	f. No. 30 g. No. 31

2.4. FATF METHODOLOGY

In order to assess technical compliance of States with the FATF Recommendations, FATF has developed a document entitled 'Methodology for Assessing the Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems'.⁸² This document provides the relevant criteria on the basis of which such assessments are made. The Mutual Evaluations of States are broadly based on two components:

Technical Compliance: These relate to the relevant legal and institutional frameworks as well as the powers and procedures of the competent authorities. This is rated in the following way:

Compliant	No shortcomings
Largely Compliant	Only minor shortcomings
Partially Compliant	Moderate shortcomings
Non-Compliant	Major shortcomings
Not Applicable	A requirement does not apply, due to the structural, legal or institutional features of a country

Effectiveness Assessment: It aims to ascertain the extent to which a country has established a robust AML/CFT system and seeks to establish as to what result has been obtained as a result of the technical compliance. In order to ascertain the same, assessors should set out clearly the extent to which they consider the 11 Immediate Outcomes (see below) to be achieved. Following is the rating system that is in place vis-à-vis effectiveness:

High level of effectiveness	The Immediate Outcome is achieved to a very large extent. Minor improvements needed.
Substantial level of effectiveness	The Immediate Outcome is achieved to a large extent. Moderate improvements needed.
<u>Moderate level of effectiveness</u>	The Immediate Outcome is achieved to some extent. Major improvements needed.
Low level of effectiveness	The Immediate Outcome is not achieved or achieved to a negligible extent. Fundamental improvements needed.

⁸² FATF (2013-2019), Methodology for Assessing Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems, updated February 2019, FATF, Paris, France (hereinafter 'FATF Methodology').

Compliance Assessment: The Role of Criminal Justice Actors

National Cooperation and Coordination (Recommendation No. 2)

Criterion 2.2 of FATF Methodology⁸³ requires that States designate an authority or have co-ordination in place for AML/CFT policies. Similarly, Criterion 2.3 of the Methodology requires that the Terrorist Financing Investigation Unit (FIU), Law Enforcement Agency (LEA) and other authorities co-operate and co-ordinate in exchanging information and the same must apply at both a policymaking level and an operational level.

Responsibilities of Law Enforcement and Investigative Authorities (Recommendation No. 30)

This recommendation mandates that LEAs should properly investigate money laundering offences and terrorist financing offences,⁸⁴ be able to conduct investigations of any related ML/TF offences during a parallel financial investigation.⁸⁵ A 'Financial Investigation' refers to the enquiry into financial affairs relating to a criminal activity with a view of:

- Identifying the extent of criminal networks and/or the scale of criminality
- Identifying and tracing the proceeds of crime, terrorist funds or any other assets that are, or may become, subject to confiscation; and
- Developing evidence which can be used in criminal proceedings.⁸⁶

The concept of parallel financial investigation refers to adopting a focused approach to predicate offences and money laundering offences simultaneously. In respect to terrorism, it refers to simultaneously focusing on the terrorism offence and the terrorist financing offence.⁸⁷

Finally, LEAs should have sufficient powers to identify, trace and initiate the freezing and confiscation of assets.⁸⁸

Self-Assessment Question

List the international legal instruments which require the freezing and seizure of assets.

Powers of Law Enforcement Authorities and Investigative Authorities (Recommendation No. 31)

Criterion 31.1 of the FATF Methodology⁸⁹ requires that competent authorities should be able to access relevant documents and information so as to use in investigations and, subsequently, in prosecution of crimes associated to money laundering, associated predicate offences and terrorist financing. This includes, inter alia, search of persons, witness statements and the seizing and obtaining of evidence.

In addition, Special Investigation Techniques must also be utilized by LEAs. According to Criterion 31.2, these include:

- Undercover Operations;
- Intercepting Communications;
- Accessing Computer Systems; and
- Controlled Delivery.

These have been elaborated upon in Chapter 8. Finally, such LEAs must be able to request from the Financial Monitoring Unit (FMU) all relevant information vis-à-vis the investigation.

Mutual Legal Assistance (Recommendation No. 37)⁹⁰

Criterion 37.8 of the FATF Methodology⁹¹ relates to the powers and techniques of the LEAs and stipulates that the same

⁸³ Criterion 2.2 of the FATF Methodology.

⁸⁴ Criterion 30.1 of the FATF Methodology.

⁸⁵ Criterion 30.2 of the FATF Methodology.

⁸⁶ FATF (2012-2019), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, FATF, Paris, France.

⁸⁷ Operational Issues Financial Investigations Guidance (FATF-gafi.org, 2012).

⁸⁸ Criterion 30.3 and 30.5 of the FATF Methodology.

⁸⁹ Criterion 31.1 of the FATF Methodology.

⁹⁰ See also SR No. V.

⁹¹ Criterion 37.8 of the FATF Methodology.

powers mandated under Recommendation No. 31 must be made available in respect to MLA. Such powers include:

All those relating to production, search and seizure of information, documents or evidence (including financial records) from natural or legal persons and financial institutions. The same is dealt with in Chapter 10.

Other Forms of International Co-operation (Recommendation No. 40)⁹²

The FATF methodology, with respect to international cooperation, stipulates that the LEAs from different jurisdictions must be able to exchange information between one another for intelligence and investigative purposes. To that end, the Interpretive Note to Recommendation No. 40 stipulates that the requesting State must ensure that proper and complete information is provided to the requested State, who must then provide feedback to the requesting State on the use and usefulness of the information obtained.⁹³

Likewise, LEAs should also be empowered to use their powers to conduct inquiries and obtain information when such information is requested by LEAs from another jurisdiction.⁹⁴ Similarly, LEAs should be able to constitute cross-jurisdictional Joint Investigation Teams (JITs), and to this end, sign bilateral and multilateral frameworks.⁹⁵

Applied Learning Question

In the course of your duties, have you ever encountered cases which could have been strengthened through the use of international cooperation?

Effectiveness Assessment: The Role of Criminal Justice Actors

Immediate Outcome 1 (IO1)⁹⁶

Immediate Outcomes are stipulated in FATF Methodology under the section on Effectiveness Assessment. IO1 relates to Recommendation No. 2 and, inter alia, requires countries to illustrate the extent to which competent authorities (including investigatory bodies) have co-operated and coordinated with one another in respect of the implementation of policies and in activities to combat ML/TF.⁹⁷ The LEAs must use a wide range of reliable information sources and to communicate and implement AML/CFT policies in a coordinated way across appropriate channels.

In order to evaluate this, the assessors observe the level of understanding a country possesses in terms of ML/TF risks. Further, the mechanisms or bodies that are being utilized to ensure co-operation and co-ordination at policymaking and operational levels are also taken into consideration. Pakistan's compliance to Immediate Outcome 1 has been discussed in further detail in Chapter 5.

Immediate Outcome 2

IO2, which deals with international co-operation including the delivery of appropriate information, financial intelligence, evidence and facilitation of action against criminals and their assets, relates back to Recommendations No. 37 and 40. Recommendations 37 and 40 deal with mutual legal assistance and other methods of international cooperation respectively.

In order to assess these issues, countries must demonstrate the following:

- a. Evidence of the number of requests handled;
- b. Examples of making requests and providing successful international cooperation;
- c. Information on the investigations, prosecutions, confiscation and sharing of assets;
- d. How authorities ensure that only relevant information is transmitted to the requested State;
- e. How authorities ensure that details of the person of interest are clear and made available to requesting countries;

⁹² Ibid.

⁹³ FATF (2012-2019), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, FATF, Paris, France at 109.

⁹⁴ Ibid.

⁹⁵ Criterion 40.19 of the FATF Methodology.

⁹⁶ Immediate Outcome 1, Effectiveness Assessment, FATF Methodology.

⁹⁷ Criterion 1.5 of the IO1.

- f. The extent to which informal means of cooperation are being used; and
- g. The level of resources available to handle international cooperation.

Immediate Outcome 6

IO6 relates back to Recommendations No. 30 and 31. It requires the investigative authorities to make use of the intelligence that is received by the FMU. The core issues which IO6 addresses include the use of such intelligence in investigations relating to ML/TF, the extent to which investigators are receiving or requesting reports through Suspicious Transaction Report (STRs),⁹⁸ Currency Transaction Report (CTRs), etc. and the extent to which FMU and competent authorities coordinate with one another.

This requires, inter alia, the competence of investigative authorities in financial intelligence and the extent to which they are used as extensive tools. Finally, the assessors also look to concrete examples of cooperation between FMU and LEAs on the use of financial intelligence.

Immediate Outcome 7 and 9

These IOs relate to the investigation and prosecution of money laundering and terror financing offences. Among the many recommendations, for our purposes, they relate back to FATF Recommendations No. 30 and 31. This entails obligations for all three of the criminal justice actors and this is as follows:

Investigators	Offences must be investigated
Prosecutors	Offenders must be successfully prosecuted
Judges	Courts must apply effective, proportionate and dissuasive sanctions to those convicted

Specifically, in relation to TF, the following are used as specific factors to help the assessors in arriving at their ratings. They are however, not exhaustive:

1. Measures to identify, initiate and prioritize TF cases
2. The quickness with which FMU can be moved by LEAs to obtain relevant information
3. Inter-agency coordination

2.5. OVERVIEW OF PAKISTAN'S COMPLIANCE

Pakistan's Ten Point Action Plan

In June 2018, Pakistan devised a ten-point action plan and committed to work on the same so as to strengthen its AML/CFT regime and to address the deficiencies in this area. The following five action point plans related to the criminal justice actors:

1. TF risks must be properly identified, assessed, and supervision should be applied on a risk-sensitive basis;
2. Demonstrate that competent authorities cooperate and take action against illegal money or value transfer services;
3. Improve inter-agency coordination including that between provincial and federal authorities;
4. LEAs identify and investigate the widest range of TF activities and that TF investigations and prosecutions target designated persons and entities; and
5. TF prosecutions result in effective and proportionate sanctions and the capacity of the judiciary is enhanced.

⁹⁸ Suspicious Transaction Reports (STRs) are sent by the reporting entity if it suspects or has reason to suspect that the transaction or a pattern of transactions of which the transaction is a part of: (a) involves funds derived from illegal activities that may be intended to disguise proceeds of crime; (b) has no apparent lawful purpose after the available facts are examined including the background and possible purpose of the transaction; (c) involves financing of terrorism, including funds collected, provided or used for a terrorist act or to fund the activities of a terrorist organization or an individual concerned with terrorism. Currency transaction reports are generated upon a suspicious transaction of cash beyond a certain amount or multiple suspicious transactions of cash beyond a certain amount taking place. (For more detail on STRs see Chapter 4).

Mutual Evaluation Report (MER) - Pakistan (2019)

The FATF, through its regional bodies, conducts peer reviews of each member on an ongoing basis in order to assess the extent to which the recommendations are being implemented. The Report serves as a basis to provide an in-depth description and analysis of a country's system so as to ascertain if it is susceptible to abuse in the TF/ML domain.⁹⁹ MER is conducted pursuant to the FATF methodology which has been discussed above. The evaluation process allows the assessors to evaluate a Country's compliance with the FATF recommendations and immediate outcomes.

As per the October 2019 MER Report, the following was a breakdown of the FATF's findings for Pakistan relating to the Recommendations listed above.

Recommendation No. 30

The MER noted that Pakistan was in compliance with Criterion 30.1 (see above). In relation to both AML/CFT, Pakistan has designated LEAs. For the former, they include National Accountability Bureau (NAB), Anti-Narcotics Force (ANF), Federal Investigation Agency (FIA), and Federal Board of Revenue (FBR). For the latter, on the provincial level, the (Counter Terrorism Department (CTD) and the FIA may investigate TF offences under the ATA, whereas for cross-provincial TF cases the relevant authority is the FIA.

Similarly, Criterion 30.3 was also mostly met by Pakistan. For ML, the AML regime¹⁰⁰ lays out powers of the investigators to provisionally attach property as well as to freeze and seize assets. Likewise, powers of tracing and freezing have also been enshrined in the establishment laws of the investigators under AML. This includes powers that have been given under the National Accountability Bureau Ordinance, 1999; Control of Narcotic Substances Act, 1997; Federal Investigation Act, 1974; etc. This has been discussed in detail in Chapter 7.

Overall, Pakistan was rated partially compliant with this recommendation, the assessors found gaps in areas of parallel financial investigation.¹⁰¹

Recommendation No. 31

Criterion 31.1 (see above) was mostly met. Broad powers have been given to investigating authorities, mentioned in the section above, for ML/TF offences. These powers include the taking of witness statements, obtaining evidence, etc. and have been discussed in detail in Chapter 7.

Special Investigation Techniques, which have been highlighted in Chapter 8, form part of Criterion 31.2. Although the FBR, NAB and ANF were noted to have powers through their respective constituting acts, the same was not the case for CTDs under the ATA. Therefore, this criterion was mostly met by Pakistan in the 2019 MER.

Finally, in relation to criterion 31.4, it was noted that a number of LEAs were able to obtain information from the FMU. These included NAB, ANF and FBR. However, the provincial police have not been made privy to obtain this information without a court order. Therefore, this criterion was only partly met. The coordination and the powers of LEAs, particularly the CTDs under Section 21 EE, have been discussed in further detail in Chapter 7.

Much like Recommendation No. 30, Pakistan was rated partially compliant and the assessors pointed out gaps in areas of special investigative techniques and a lack of legal provisions to request information held by the FMU, particularly when it comes to the CTD.

Immediate Outcome 1

When it comes to understanding the TF risks, it was observed that there are varying levels of understanding when it comes to the LEAs. The CTD Punjab, for example, had a reasonable comprehension of the issue in comparison to other provincial CTDs. The Provincial CTDs, as per the assessors, had a clearer understanding of the sources, methodology, channels and end-users, but this clarity was not observed in areas such as the raising and moving of funds as well the method in which they are used for terrorism abroad.

99 'Topic: Mutual Evaluations' (fatf-gafi.org) <[http://www.fatf-gafi.org/publications/mutualevaluations/?hf=10&b=0&s=desc\(fatf_releasedate\)](http://www.fatf-gafi.org/publications/mutualevaluations/?hf=10&b=0&s=desc(fatf_releasedate))> accessed 5 September 2019

100 See ss. 8-15 of the Anti-Money Laundering Act, 2010

101 Parallel financial investigations represent, in relation to financial investigations, focusing on the predicate offence and the money laundering offence at the same time. Criterion 30.2 of the FATF Methodology.

At the same time, the MER noted that steps are being taken to raise awareness of TF. In particular, it acknowledged that the SOPs on the use of JITs are a positive development towards tackling TF in a coordinated manner. In the same vein, it also praised the promulgation of the National AML/CFT Strategy 2018. The national strategy document includes short, medium and long-term actions in relation to six areas: general issues; legal; law enforcement; financial sector; governance, and international cooperation issues. The main objectives of the national strategy are to:

- Review and strengthen the legal framework concerning AML/CFT;
- Make the regulatory/supervisory regime more effective through increased implementation and enforcement;
- Strengthen the disclosure and declaration regime to check cross-border transportation of currencies and bearer negotiable instruments;
- Develop an effective reporting regime and build systems and processes for reporting by non-financial businesses and professions;
- Build the capacities and skills of all stakeholders engaged in AML/CFT law, policy and implementation, including investigators, prosecutors and judges;
- Enhance national coordination and build an international cooperation framework; and
- Build AML/CFT awareness in the general public and carry out advocacy campaigns.

In relation to national coordination and cooperation, the MER noted that Pakistan has a multi-agency approach to deal with ML/TF issues. Specifically, it is as follows:

AML/CFT policy is coordinated by the National Executive Committee (NEC), chaired by the Minister of Finance. Members include the Minister of Foreign Affairs, Minister of Law and Justice, Minister of Interior, Governor SBP, Chairman SECP, and Director General FMU (who also acts as secretary). The mandate of the NEC is to develop, review and oversee the implementation of national strategy to fight money laundering and financing of terrorism.

Immediate Outcome 9

In respect to IO9, the MER noted that LEAs have been actively investigating a number of TF matters; however, the authorities need to do more in terms of identifying and investigating the widest range of TF activity. The following is a breakdown of the TF risks that existed in each of the provinces:

Punjab:

- Most cases pertain to collection of donations by individuals found to be affiliated with organizations such as Al Qaeda, Jamaat ul Ahrar (JuA), Sipah-e-Sahaba Pakistan (SSP), Jaish e Muhammad (JeM), Lashkar e Jhangvi (LeJ), Ahlus Sunnah Wal Jamaah (ASWJ), Daesh, etc.

Sindh and Khyber Pakhtunkhwa:

- Investigations in these provinces pertain to extortion and kidnapping for ransom by persons affiliated with Al Qaeda, ISIS and Tehreek e Taliban Pakistan (TTP), etc.

Balochistan

- Investigations have been associated with ISIS, TTP and LeJ.

2.6 PAKISTAN'S PROGRESS ON FATF'S 27 POINT ACTION PLAN SINCE OCTOBER 2019

As of Pakistan's previous evaluation in February 2020, done by the Joint Working Group (JWG), it was expected to comply with 13 points from the 27-point action plan by October 2020. Pakistan had been expected to report its progress by June 2020, but because of the COVID-19 pandemic, the deadline was extended until October 2020. The 13 out of the 27 point action plan that Pakistan has to comply with are as follows: (1) Pakistan will have to demonstrate effectiveness of sanctions, including remedial actions to curb terrorist financing in the country; (2) Pakistan will have to ensure improved effectiveness for terror financing of financial institutions with particular focus on banned outfits; (3) Pakistan will have to take actions against illegal Money or Value Transfer Services (MVTs) such as Hundi-Hawala; (4) Pakistan will have to put in place a sanctions regime against cash couriers; (5) Pakistan will have to ensure logical conclusions from ongoing terror financing investigations of law enforcing agencies (LEAs) against banned outfits and proscribed persons; (6) Pakistani authorities will have to ensure international cooperation based investigations and

convictions against banned organizations (list provided to Pakistan) and proscribed persons (list provided to Pakistan); (7) The country will have to put in place effective domestic cooperation between the Financial Monitoring Unit (FMU) and LEAs in investigation of terror financing; (8) Prosecute banned outfits and proscribed persons (list provided to Pakistan); (9) Demonstrate adjudications by courts of law of banned outfits and proscribed persons (list provided to Pakistan); (10) Demonstrate seizure of properties of banned outfits and proscribed persons (list provided to Pakistan); (11) Convert madrassas into schools and health units into official formations (list provided to Pakistan); (12) Cut off funding to banned outfits and proscribed persons; and (13) Pakistan will have to put in place a permanent mechanism for management of properties and assets seized from the banned outfits and proscribed persons.

Some of the measures taken by the national government in light of its obligations have been reflected below:

I. Points 3 and 4 (Movement of Funds)

- (1) Pakistan will have to take actions against illegal Money or Value Transfer Services (MVTs) such as Hundi-Hawala;
- (2) Pakistan will have to put in place a sanctions regime against cash couriers;

On July 11, Adviser to the Prime Minister on Finance and Revenue, Abdul Hafeez Shaikh gave his statement to the High Level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda to contribute to the implementation of the 2030 Agenda for Sustainable Development. He stated that Pakistan continues to ensure earliest completion of the FATF Action Plan through increasing the effectiveness of its AML/CFT Regime. He further stated that Pakistan had taken measures to contain illicit financial flows through strengthening of the AML/CFT regulations on Customer Due Diligence (CDD) and Know Your Customer (KYC). He elaborated on the range of predicate offences that have been added to the schedule of the AML Act to include corruption, narcotics, terrorism and human trafficking. He further outlined that violations of Section 4(1) (un-authorized FX business) and Section 5 (Illegal transfers) of Foreign Exchange Regulation Act, 1947, had been incorporated into the schedule of Anti Money Laundering (AML) Act, 2010, through which those offences may also be punishable under AML Act, 2010. He further stated that amendments to the Protection of Economic Reforms Act, 1992, had been incorporated to restrict feeding of foreign currency accounts by Non-Tax Filing Pakistani Residents. The Pakistan Remittances Initiative (PRI) was also highlighted, which is intended to facilitate inflow of home remittance into Pakistan through formal channels. Other steps include the automation of Electronic Import Form (EIF) and Electronic Export Form (EEF) by banks through Pakistan Customs' software - Web Based One Customs (WeBOC) to synchronize import and export of goods and payments by banks. Furthermore, he said the State Bank of Pakistan and Federal Investigation Agency of Pakistan were continuing to identify illegal MVTs (hawala/hundi operators) and taking enforcement measures, including closure, investigation and prosecution of these operators.¹⁰²

The government had also proposed some changes for nonprofit organizations (NPOs) and trusts related to income tax laws in order to comply with the FATF requirements.¹⁰³ Meanwhile, the FBR gave a December 31 deadline to big shopping malls and restaurants for installing new Point of Sale (POS) software on their premises or face forced closure.

The Minister for Industries, Hammad Azhar, in his budget speech on June 12 stated that Pakistan's government has put in unprecedented efforts at all levels to improve its AML/CFT regime to meet the requirements of the FATF Action Plan. In this regard, he said that he has been entrusted with the responsibility of National FATF Coordination Committee, and a comprehensive process of legislative, technical and operational improvements has been initiated. He further stated that significant results have been achieved in the areas of financial sector supervision, investigations, prosecutions and international cooperation. Resultantly, he said, "we have progressed significantly on 27 actionable items included in the FATF Action Plan. Within a period of one year, 14 items have been largely addressed and 11 partially addressed whereas in two areas, concerted efforts are being made for implementation."

Legislation Introduced

Five government bills were introduced to the Parliament during August, 2020, namely The Tax Laws (Amendment) Ordinance, The SBP Banking Services Corporation (Amendment) Bill, 2019, The Post Office Cash Certificate (Amendment) Bill, 2020, The Post Office National Savings Certificate (Amendment) Bill, 2020 and The Government Savings Bank (Amendment) Bill, 2020.¹⁰⁴ Other proposed bills include Anti-Terrorism (Amendment) Bill, 2020 and Finance Bill, 2020-2021. As of September 2020, none of these bills had been enacted. In the Post Office National

¹⁰² <https://www.thenews.com.pk/print/685105->

¹⁰³ <https://www.thenews.com.pk/print/677468->

¹⁰⁴ <https://www.pakistantoday.com.pk/2020/03/12/na-committee-defers-five-bills-protest-finance-advisers-absence/>

Savings Certificates (Amendment) Bill, two amendments were proposed, under which new saving schemes were proposed to be launched in the country, with a revised rate of profit in saving schemes.¹⁰⁵ In the Post Office Cash Certificate (Amendment) Bill, the Post Office Cash Certificate Act, 1917 was proposed to be amended to comply with the instructions of the Cabinet Division to replace the “Federal Government” with the Finance Division with the approval of the Minister-in-Charge.

Anti-Terrorism (Amendment) Bill, 2020¹⁰⁶ (This Bill further amends the Anti-Terrorism Act, 2020 and is currently pending at the Senate for deliberation.)

According to the bill passed by the National Assembly, amendments have been made to Section 11EE (2), adding a clause that prohibits the provision of loans or financial assistance to those associated with banned organizations and restricting all banks and financial institutions from issuing credit cards to individuals on the proscribed persons list. It further provides that arms licenses already issued to such individuals be revoked and any weapons already in their possession confiscated. No new licenses will be issued to proscribed individuals or those associated with banned organizations, and such persons will be penalized for carrying weapons.

Furthermore, according to Section 11-J, a person commits an offence if s/he facilitates the travel of an individual for the purpose of perpetrating, participating in, assisting or preparing for a terrorist act or for providing or receiving training for terrorist activities. Fines have further been revised to fifty million rupees under Section 11-N.

Moreover, changes have been made to Section 11-O, further strengthening freezing and seizure of assets, by ensuring within 48 hours that the seized property or assets will not be made available in any way to the proscribed person or organization, or other affiliates – and that documentation will be kept to that effect. The state will also have the power to freeze the accounts and travel documents of those found to be involved in terrorist activities.

A new sub-section (6A) will be added to Section 11-Q: “(6A) Where the court is satisfied that property subject to forfeiture under this section cannot be forfeited, it may order the forfeiture of any other property of the accused of an equivalent value to the property subject to forfeiture which stands identified or located in another jurisdiction.” Lastly, in Section 19, it is now recommended that members of the JIT be able to co-opt any additional person from Federal or provincial institutions to aid in investigations.

Finance Bill, 2020-2021

On June 12, the government announced monetary penalties and imprisonment for individuals found involved in the smuggling of goods. Under the Finance Bill 2020/21, it was sought that any goods smuggled into or out of Pakistan be liable to confiscation and any person concerned in the offence be liable to face penalty and imprisonment.¹⁰⁷ Under Finance Bill 2020-21 tabled in Parliament, the Federal Board of Revenue (FBR) also sought powers to legally bind the Border Military Police (BMP) operating in DG Khan and Rajanpur to assist the Pakistan's Customs in checking smuggling.¹⁰⁸ The Customs lacks proper workforce to undertake an anti-smuggling drive, which is why Border Military Police (BMP) is sought to assist custom officials in curbing increased smuggling.

Legislation Passed

Legislation passed in pursuance of fulfilling the FATF requirements includes The Anti Money Laundering (Amendment) Act, 2020 (passed in February), The Anti-Terrorism (Amendment) Act, 2020 (passed in July 2020), and The Anti-Terrorism (Amendment) Bill, 2020 (passed in August 2020). The Control of Narcotic Substances (Amendment) Act, 2020 and The Limited Liability Partnership (Amendment) Act, 2020 (both passed in August 2020).

Anti-Money Laundering (Amendment) Act, 2020¹⁰⁹

This Act amends the Anti-Money Laundering Act, 2010. It enhances the fine for money laundering from one million to five million rupees. It further amends the responsibility of reporting entities to maintain all records related to Suspicious Transaction Reports (STRs) and Currency Transaction Reports (CTRs) filed by it after reporting of the

¹⁰⁵ <https://www.dawn.com/news/1531740>.

¹⁰⁶ Anti-Terrorism (Amendment) Act, 2020, As Passed by the National Assembly: http://na.gov.pk/uploads/documents/1597315154_463.pdf.

¹⁰⁷ <https://www.thenews.com.pk/print/672122>.

¹⁰⁸ <https://www.thenews.com.pk/print/673436>.

¹⁰⁹ Anti-Money Laundering (Amendment) Act, 2020, As published in the Gazette - http://senate.gov.pk/uploads/documents/1594966135_597.pdf.

transaction for a period of ten years, instead of previous duration of five years. Reporting entities are prohibited from disclosing to any person involved in the transaction that it has been reported as suspicious. The penalty for contravention of this law has been enhanced from three to five years of imprisonment, and the fine has been increased from five hundred thousand to two million rupees. The liability for failure to file a STR has also been increased to up to a five-year imprisonment and a fine of up to five hundred thousand rupees or both.

Anti-Terrorism (Amendment) Act, 2020¹¹⁰

A new section, entitled Section 11-OOO, enforces the decisions of United Nations Security Council Resolutions 1267 and 1373, pertaining to counter-terrorism measures to check terrorism financing by making and enforcing such provisions in the domestic laws. According to Section 11-OOO, any refusal or non-compliance with the orders of the federal government under section 2 of the United Nations (Security Council) Act, 1948 is a punishable offence under Section 11-OO. Violation of the UN Security Council Resolutions are punishable with imprisonment of up to ten years, or a fine of up to twenty-five million rupees, or both. Moreover, the fines and penalties that can be imposed upon any natural person/legal person or body corporate under Section 11 O (2) have been increased from 10 million to a fine of 25 million with conviction of up to 10 years. This amendment allows greater control over seizing and freezing of assets including monitoring the transfer and conversion of funds associated with proscribed individuals.

Control of Narcotics Substance (Amendment) Act, 2020¹¹¹

Pakistan's 2019 FATF Mutual Evaluation Report (MER) observed a minor deficiency in Section 12 of Control of Narcotics Substances Act, 1997 with regard to concealment or disguise by making false declaration. This Bill corrects this. As per section 12(c) of CNS Act, 1997, the scope/applicability of the said section has been confined to "making false declaration with regard to ownership, source, location or true nature of assets".

Limited Liability Partnership (Amendment) Act, 2020¹¹²

The Limited Liability Partnership Amendment Act, 2020, seeks to make sure details pertaining to ownership are transparent and the money trail can be traced to the rightful owners, further curbing benamidaars. Amendments to section 8 make it necessary for partnerships to "obtain, maintain and timely update particulars of ultimate beneficial owner, including any change therein, of any person who is a partner in limited liability partnership in such form, manner and submit such declaration to the registrar as may be specified." Further subsections of section 8 introduce a penalty of up to one million rupees for a person, or ten million rupees for a limited liability partnership upon failure to comply with the requirements of this section.

Finance Act, 2020-2021¹¹³

The Finance Act, 2020-21 amended Section 7 of the Customs Act, 1969, to empower the Federal Board of Revenue (FBR) to mandate the Border Military Police (BMP) to assist Pakistan's Customs in checking and curbing smuggling activities. The definition of smuggling in Section 2(s) of the Customs Act was also made more comprehensive by including "carrying, transporting, removing, depositing, harbouring, keeping or concealing" of smuggled goods in it. Section 156 of the Customs Act, 1969, has also been amended, which includes offences relating to the smuggling of currency and goods, as well as their prescribed punishments, including monetary penalties and imprisonment according to the value of goods or currency. Section 179 has also been amended to decrease the time limit for adjudicating cases of smuggling under Section 2 from 90 to 30 days to make them consistent with the COVID-19 (Prevention of Smuggling) Ordinance, 2020. In addition, Section 187 was amended to place the burden of proving the evidence of lawful possession of any property acquired by a person in his own name or in the name of someone else by the proceeds of smuggling, and to enable customs authorities to proceed against the properties acquired in this manner. Section 194B was also amended to decrease the time for deciding appeals in cases of smuggling from sixty to thirty days.

The Act also amends the Income Tax Ordinance, 2001, in a number of ways. Firstly, it states that arrangements shall be made by NADRA, FIA Bureau of Emigration and Overseas Employment, land record and development authorities, Excise and Taxation departments. Furthermore, the utility companies are to provide real-time access to information, and NADRA's database is also to provide information to the Board. It further states that the Commissioner or any other

110 Anti-Terrorism (Amendment) Act, 2020, As published in the Gazette - http://senate.gov.pk/uploads/documents/1594966135_597.pdf

111 Control of Narcotic Substances (Amendment) Act, 2020, As Passed by the National Assembly: http://na.gov.pk/uploads/documents/1597315556_537.pdf

112 Limited Liability Partnership (Amendment) Act, 2020, As Passed by the National Assembly: http://na.gov.pk/uploads/documents/1597315310_140.pdf

113 <http://download1.fbr.gov.pk/Docs/2020731075425133GazetteofTheFinanceAct2020.pdf>

authorized officer may access such information; they may also make an audit of a taxpayer or survey of persons liable to tax. The Board may make rules on this accordingly. The Act also amends the Income Tax Ordinance to define the term “integrated enterprise” in line with the aforementioned draft of SRO 296, providing Fiscal Electronic Device rules for online integration of business in the Income Tax Rules 2002. Moreover, Section 107 of the Ordinance, which empowers the government to enter into any tax treaty, agreement or convention for the avoidance of double taxation or fiscal evasion, was amended to include “spontaneous” along with automatic exchange of information with respect to taxes on income. Section 111(1) has also been amended, and now the Act provides that any suppressed amount of production, sales or any amount would be treated as income from business instead of income from other sources, if not adequately explained in the Commissioner’s opinion.

The Sales Tax Act, 1990: This law has been amended to empower authorized officers to real-time electronic access to records under Section 38 of the Act. While officers already had free access to business or manufacturing premises or any place where record is maintained, the Act has extended the scope of this access to include real-time electronic access to records of registered persons. The Board has also been given the power to frame rules accordingly.

Tax Laws (Second Amendment) Ordinance, 2019 - Ordinance No. XXVI Of 2019:¹¹⁴ This Ordinance was passed in December 2019, which amended the Customs Act, 1969. Section 7 was amended to state that the assistance to be provided to officers of customs by all federal and provincial governments, including Inland Revenue, Police, National Highways and Pakistan Motorway Police, Civil Armed Forces, and officers engaged in the collection of land-revenue, is now binding and mandatory if requested. It also inserted provisions relating to the smuggling of currency of all types, prescribing confiscation and penalties according to the value of the currency. Upon cognizance of offences by Special Judges, the amendment stated that the case must be disposed of within six months of the receipt of report or within an extended period by the Special Judge for which reasons must be recorded.

Income Tax Ordinance, 2001: was also amended through this Ordinance. Regarding the disclosure of information by a public servant, the amended law now allows such a disclosure to the Financial Monitoring Unit (FMU) for the purpose of performing functions as laid down in the Anti-Money Laundering Act, 2010, thus aiding in coordination between law enforcement agencies.

The Tax Laws (Amendment) Act, 2020:¹¹⁵ The Act adopts similar measures as the aforementioned Ordinance, since an Ordinance lapses within 120 days. It amends Section 7 of the Customs Act 1969 to state that the assistance provided to customs officers shall be binding. It inserts Section 3CCA to the Customs Act, 1969 to elaborate on the Directorate General of Law and Prosecution, stating that it will include as many Directors, Additional, Deputy and Assistant Directors, Special Public Prosecutors and other officers as the Board may notify. It further inserts provisions relating to smuggling of currency of all types and outlines confiscation and punishment provisions according to the value of the currency. It further adds that such cases must be disposed of within six months of the receipt of the report, and may only be extended by the Special Judge for reasons recorded in writing. It further adds provisions relating to the Appellate Tribunal, including the appointment of members of the Customs Appellate Tribunal and their qualifications. Moreover, it also amends the Sales Tax Act, 1990, to include offences relating to the failure of a person required to integrate his business for monitoring, tracking or reporting of sales or transactions to register himself under the Act, and prescribes the penalties for them, including embargos, fines and confiscation of goods. Lastly, it amends the Income Tax Ordinance, 2001 and includes, among others, a penalty for failure to get a business license by the FBR for any profession or vocation. It states that, in addition to a fine, the Commissioner may also order the cancellation of the person’s license. It also inserts a clause in Section 216 that states that public servants must disclose to the Financial Monitoring Unit any information for performing their functions under the Anti-Money Laundering Act, 2010.

COVID-19 (Prevention of Smuggling) Ordinance, 2020 - Ordinance No. III of 2020:¹¹⁶ While the Ordinance has been issued in the wake of COVID-19 and an increased likelihood of smuggling, the Ordinance imposes heavy fines and pecuniary penalties to deter smuggling of foreign currency as well as that occurring at international borders. According to the Ordinance, if a person is involved in the smuggling of foreign currency of up to \$10,000 US dollars, s/he shall be punishable with imprisonment of up to two years. If the value of the currency is between \$10,000 and \$20,000, the person could be punished with imprisonment from two to three years. If the amount of the currency is between \$20,001

¹¹⁴ http://www.na.gov.pk/uploads/documents/1580444882_360.pdf.

¹¹⁵ [http://download1.fbr.gov.pk/Docs/20204201545016485TaxLaws\(Amendment\)Act,2020withdisclaimer.pdf](http://download1.fbr.gov.pk/Docs/20204201545016485TaxLaws(Amendment)Act,2020withdisclaimer.pdf).

¹¹⁶ http://www.na.gov.pk/uploads/documents/1591693942_810.pdf.

and \$50,000, the term for imprisonment would be up to five years. If the amount of the currency is between \$50,001 and \$100,000, the offence would be punishable by a term of up to ten years. If the amount exceeds \$100,000 in value, any person found smuggling or attempting to smuggle the currency would be punished with imprisonment of up to fourteen years. The Act empowers officials, including the Assistant Collector of Customs or an officer of any other department, authority or agency including the security or law enforcement agencies notified by the FBR, to search and seize smuggled articles from the person suspected to have carrying them.

Foreign Exchange Regulation (Amendment) Act, 2020:¹¹⁷ The Foreign Exchange Regulation Act, 1947, was amended through this Act. The penalty under Section 23 for contravening the provisions of the Act, including unauthorized dealing of foreign currency, was enhanced to a “rigorous” imprisonment of five years, instead of the previous two-year simple imprisonment. It further added a proviso stating that a written complaint by a person authorized by the central government or SBP will not be required if any person involved in an illegal foreign exchange is to be investigated. It further established a time limit by adding that the tribunal must conclude the proceedings within six months and may only extend the period by six months after giving cogent reasons in writing.

Other Measures and Regulations

FBR SRO 296(I)/2020: Online Integration of Businesses:¹¹⁸

On 9th April 2020, the Federal Board of Revenue, through the SRO, proposed the insertion of Chapter VIIA to the Income Tax Rules, 2002, titled “Online Integration of Businesses” through which installation of an Electronic Fiscal Device has been made mandatory for companies, including courier services, as well as non-companies. Through this installation, the tasks to be performed include receiving, recording, analyzing and storing fiscal data. It further ensures the transmission of fiscal data to FBR's computerized system through secure means as well.

Margins on Remittances Raised by State Bank of Pakistan:¹¹⁹ In order to manage foreign exchange reserves better and mitigate the risk of a striking drop in foreign currency inflows due to Covid-19, the State Bank of Pakistan, on April 16, increased profit margins of international and domestic commercial banks and currency dealers on bringing worker's remittances through legal channels. The government has doubled the fund transfer fee to around \$5 to be paid to the international fund transfer firms on transactions amounting to \$100-200 to Pakistan. This was also done to address the concern of FATF, since the doubling of the transaction fee is aimed to control illegal transactions and illegal channels of Hawala/Hundi operators. Hawala/Hundi system has been extensively used because it entails a better rupee-dollar exchange rate and no transaction fee is required from senders; doubling the transaction fee will render this option less attractive than it was before.

Public Awareness Message by SBP on Hawala/Hundi:¹²⁰ The State Bank of Pakistan also published a public awareness message for the general public stating that the sale, purchase and transfer of foreign currency through Hawala/Hundi operators is illegal. It also cautioned illegal foreign exchange operators against the unauthorized sale, purchase and transfer of foreign currency through the Hawala/Hundi business and stated that this is an offence punishable under the Foreign Exchange Regulation Act, 1947 and Anti-Money Laundering Act, 2010.

New initiative by SBP to Discourage Use of Hawala/Hundi:¹²¹ Launched to facilitate secure, cheap and rapid remittances by overseas Pakistanis, the Pakistan Remittance Initiative (PRI) is a joint initiative of the State Bank of Pakistan, Ministry of Overseas Pakistanis and Ministry of Finance. This initiative allows beneficiaries to collect their payments free of charge from post office locations using the National Bank of Pakistan portal. The PRI initiative works with banks to increase the share of formal remittance receipts and reduce the use of informal procedures for money laundering and terror financing.

117 http://www.na.gov.pk/uploads/documents/1584020439_648.pdf.

118 <https://www.fbr.gov.pk/ShowSROs?Department=Income%20Tax>.

119 <https://tribune.com.pk/story/2198927/state-bank-pakistan-raises-margins-remittances>.

120 <http://www.sbp.org.pk/warnings/pdf/2019/Statebank-Ad-Eng.jpg>.

121 <https://www.globalvillagespace.com/sbp-initiative-allows-hassle-free-remittance-collection-from-js-bank/>.

II. Point 2 (Measures Pertaining to Financial Institutions)

1. *Pakistan will have to ensure improved effectiveness for terror financing of financial institutions with particular to banned outfits*

The State Bank of Pakistan has issued updated guidance to its Regulated Entities to ensure adoption of a Risk-Based Approach in line with international standards and best practices, including devising AML/CFT controls and measures recommended by FATF to strengthen its AML/CFT regime and address its counter-terrorist financing related deficiencies.

Accordingly, Banks/DFIs (Development Finance Institutions)/MFBs (Microfinance Banks) are obligated to issue an entity level internal risk assessment report covering ML/TF risks including Transnational Terrorist Financing, and Proliferation Financing and other emerging risks to and from the State Bank of Pakistan's Reporting Entities. The assessment report assesses major international/domestic financial crimes and terrorist incidents which have a probability of posing ML/TF/PF risks to the entity, State Bank of Pakistan Reporting Entities and Pakistan's financial sector.

Measures Pertaining to Customer Due Diligence

The State Bank of Pakistan recently imposed a monetary penalty of Rs. 1.68 billion upon 15 commercial banks for violations of AML/CFT regulations during the period from March 2020 to June 2020. Twelve of the 15 banks were fined for procedural violations of Know Your Customer (KYC) and Customer Due Diligence (CDD). All the banks were advised to strengthen their processes related to CDD/KYC to avoid recurrence of such violations in future.¹²²

The State Bank of Pakistan from July 2019 has started publicly disclosing its penal actions against banks. In December 2019, the State Bank of Pakistan enforced a cumulative fine worth Rs. 219.14 million on five commercial banks, including Bank Alfalah, NBP, MCB Bank, Habib Metropolitan Bank and Summit Bank for violations of its regulations. Furthermore, in October 2019, HBL was fined Rs. 35.6 million on grounds of flaws in foreign trade operations and CDD. Additionally, in September 2018, Meezan Bank Limited, Askari Bank Limited, and MCB Islamic Bank Limited were penalized a total Rs. 133.3 million for violations related to KYC and CDD. Lastly, in August 2019, the State Bank of Pakistan imposed a fine of Rs. 805 million on 10 banks for violating AML/CFT regulations.¹²³

Legislation Passed

Another measure taken pertaining to financial institutions is the Foreign Exchange Regulation (Amendment) Act, 2020. Originally intended to create a standardized regime allowing the State Bank of Pakistan to act as a regulator in this field and to implement stricter punishments, this law further strengthens the role of Tribunal, with the addition in section 23 of sub-section 3B, stating that a Tribunal taking cognizance under subsection (1) will conclude proceedings within 6 months, and extensions may be requested by writing.

The Act proposes amending Section 11EE (2) by adding a clause that prohibits the provision of loans or financial assistance to those associated with banned organizations and restricting all banks and financial institutions from issuing credit cards to individuals on the proscribed persons list.

Moreover, the Anti-Terrorism (Amendment) Act, 2020 prohibits the provision of loans or financial assistance to those associated with the banned organizations. More specifically, pertaining to the financial institutions, it bans all banks and other institutions from issuing credit cards to individuals on the proscribed persons list. Besides these measures, it aims to deter terrorism by scrutinizing the possession of arms and by restricting travel.

III. Points 5, 8 and 9 (Ongoing or Completed Investigations, Prosecutions and Convictions of TF Cases)

- (1) *Pakistan will have to ensure logical conclusion from ongoing terror financing investigation of law enforcing agencies (LEAs) against banned outfits and proscribed persons;*
- (2) *Prosecution of banned outfits and proscribed persons;*
- (3) *Demonstrate convictions from court of law of banned outfits and proscribed persons;*

¹²² The Daily Times, 'SBP Levies Rs 1.68Bn Monetary Penalty On At Least 15 Commercial Banks' (2020). <https://dailymail.com.pk/639627/sbp-levies-rs-1-68bn-monetary-penalty-on-at-least-15-commercial-banks/>.

¹²³ Meiryum Ali, 'SBP Imposes Rs219m Fine On Five Commercial Banks' Pakistan Today (2020). <https://profit.pakistantoday.com.pk/2020/01/14/sbp-imposes-rs219m-fine-on-five-commercial-banks/>.

Legislation Introduced:

If enacted, the **Code of Criminal Procedure (Amendment) Bill, 2020**¹²⁴ will enable the Law Enforcement Authorities to engage in undercover operations with the permission of the Court to curb money laundering and terror financing. It proposes the insertion of Section 156-C: Application of investigation techniques to the Code of Criminal Procedure, 1898. This section states that the investigating officer may, with the permission of the Court, within 60 days of receiving the permission, use techniques, including but not limited to undercover operations, intercepting communications, assessing computer systems and controlled delivery, as provided in the rules for investigation of offences of money laundering, associated predicate offences and financing of terrorism under the law in force. It further states that the period may be extended by the Court. The section grants the Federal Government the authority to frame rules to regulate the procedure and execution of order for the purposes of this section.

The Bill has not been passed by the National Assembly or the Senate yet.

Conviction of Hafiz Saeed, Malik Zafar Iqbal, and Four Close Aides; Other Arrests

The most significant development in this regard was the conviction of Hafiz Saeed and his close aide Malik Zafar Iqbal in February 2020 to five and a half years in prison for financing terrorist operations.¹²⁵ Moreover, on 18th June 2020, four close aides of Hafiz Saeed were sentenced for terror financing, including Hafiz Abdul Rehman Makki, Malik Zafar Iqbal, Yayha Aziz and Abdul Salam, who were indicted on June 9.¹²⁶ The details of the aforementioned cases have been discussed subsequently.

CASE STUDY

The State v. Hafiz Muhammad Saeed and Malik Zafar Iqbal, Case FIR No. 32/2019 dated 01.7.2019 PS CTD Gujranwala, Court of Arshad Hussain Bhutta, Judge Anti-Terrorism Court No. 1, Lahore
Summary

On February 12, an Anti-Terrorism Court in Lahore sentenced Hafiz Mohammad Saeed, the man accused of masterminding the 2008 Mumbai terror attacks, to five and a half years in prison for financing terrorist operations. Malik Zafar Iqbal, the secretary of Al-Anfaal Trust, was also convicted in the same case and was awarded a similar punishment. They were convicted under the Anti-Terrorism Act Section 11-F(2) – pertaining to membership, support and meetings relating to a proscribed organization – and 11-N.¹²⁷

According to the CTD, JuD was using funds collected through non-profit organizations and trusts, including Al-Anfaal Trust, Dawatul Irshad Trust, Muaz Bin Jabal Trust, etc., to finance terrorism. These non-profit organizations were banned in April 2019 as the CTD, during detailed investigations, found that they had links with the JuD and its top leadership.

During the trial of both cases, the court recorded the statements of 23 witnesses. The prosecution provided revenue records and utility bills for a smaller madrassa in Mandi Bahauddin in central Punjab to prove that Hafiz Saeed and Zafar Iqbal had links with the madrassa and belonged to a proscribed organization.

Details of the Case:

Arrest and trial

The terror financing cases were filed by the Counter-Terrorism Department's (CTD) Lahore and Gujranwala chapters. The case filed by CTD's Gujranwala chapter was initially being heard in a Gujranwala ATC but was shifted to Lahore on the direction of the Lahore High Court.

124 http://www.na.gov.pk/uploads/documents/1595864770_207.pdf

125 The State v. Hafiz Muhammad Saeed and Malik Zafar Iqbal, Case FIR No. 32/2019 dated 01.7.2019 PS CTD Gujranwala, Court of Arshad Hussain Bhutta, Judge Anti-Terrorism Court No. 1, Lahore.

126 <https://nation.com.pk/19-Jun-2020/4-jud-leaders-convicted-for-terror-financing>.

127 <https://www.dawn.com/news/1534025>.

The JuD chief was arrested by CTD in July 2019, while he was travelling from Lahore to Gujranwala. Prior to his arrest, 23 First Information Reports had been registered against JuD leaders, including Saeed and JuD Naib Emir Abdul Rehman Makki, at CTD police stations of Lahore, Gujranwala, Multan, Faisalabad and Sargodha in July 2019.

Allegations: It was alleged by Sikander Hayat, while lodging the complaint, that Lashkar-e-Taiba, Dawat-ul-Irshad Trust and Organization Dawat-ul-Irshad and its subsidiary organizations, are all involved in terrorism financing. He accused Malik Zafar Iqbal and Hafiz Muhammad Saeed of being trustees of Tanzeem Dawat-ul-Irshad Trust. This trust acquired property situated at Usman Chowk (Rana Town), Mohalla Fazalabad, Malikwal from Muhammad Ali through Waqf. A building was erected there, kept in possession for the propagation of terrorism and used for collecting funds for terrorist financing.

Evidence:

- **Proscription:** Certified copies of the notifications proscribing LeT, JuD, Tanzeem Markaz Dawat-ul-Irshad and Hafiz Saeed were produced.
- **Property ownership:** A record copy of the mutation number and a copy of the record of rights of the aforesaid property were also produced. A perusal of the documents showed that the property was registered in the name of Tanzeem Markaz Dawat-ul-Irshad Pakistan. The prosecution further established that the Tanzeem was registered on the application of Hafiz Saeed. Certified copies of documents showed that he, along with Malik Zafar, remained office bearers of the Tanzeem in different years.
- **Funding arrangements:** The prosecution did not prove or provide evidence and detail of funding arrangements and the manner in which they were made.
- **Photographic evidence:** Inconsequential to the prosecution because the IO did not have the original source from which the photographs were downloaded. Nor were the photos referred to the Punjab Forensic Science Agency to determine genuineness. The accused were also not referred to the PFSA for the photogrammetry test. The specific date on which the photographs were shot was also not mentioned in the frame.

Perusal of Evidence: While statements of Sikander Hayat and Mumtaz Ahmad (prosecution witnesses) illustrate that they were not firsthand witnesses, they maintained that their source disclosed to them that the property mentioned was acquired by Tanzeem Markaz Dawat-ul-Irshad, which is a proscribed organization. Since the prosecution also produced documentary proof that the property was owned by the Tanzeem, the testimonies of said witnesses to this extent are not hearsay. The prosecution also established through documentary evidence that both of the accused were office bearers of the Tanzeem, and there was no denial to this fact by the defence. While recording statements under S. 342 Cr.P.C, both the accused further admitted ownership of property by the Tanzeem. The prosecution established that both the accused belong to proscribed organizations JuD and Tanzeem Markaz Dawat-ul-Irshad.

Offences:

Section 11-F(1): The prosecution established that the accused were guilty under Section 11-F(1) of ATA, which criminalizes belonging to a proscribed organization.

Section 11-I(2): The prosecution further established that the accused were guilty under Section 11-I(2)(a) of the ATA, which criminalizes possessing property for the purpose of terrorist financing. There is sufficient and reasonable cause to believe that the property acquired by the Tanzeem by way of Waqf may be used to collect funds for militant activities, thus fulfilling the ingredients of Section 11-I(2) of ATA.

Section 11-H: The court found that the prosecution had failed to prove the charge of Section 11-H that deals with fundraising.

Section 11-J: The court concluded that the prosecution had failed to prove the charge of Section 11-J that deals with funding arrangements and the manner in which they are made.

Punishment:

- Punishment for Section 11-F(1) is prescribed under 11-F(2), pursuant to which the accused were each sentenced to imprisonment for six months and a fine of Rs. 5000, in default of which each convict shall further undergo ten days.
- Punishment for Section 11-F(2) is prescribed under Section 11-N, under which the accused were each sentenced to five years' imprisonment and a fine of Rs. 10,000, in default of which each convict shall undergo six further months.
- Both sentences shall run concurrently and the benefit of Section 382-B CrPC (reduction of period of sentence of imprisonment) would be extended in favour of both benefits.

CONVICTION OF FOUR CLOSE AIDES OF HAFIZ SAEED

The Anti-Terrorism Court on June 18th convicted four leaders of Jamatud Dawa (JuD) in one of the terror financing cases registered against the organization by the Counter Terrorism Department (CTD) in different cities of Punjab. These included Malik Zafar Iqbal, Muhammad Yahya Aziz, Abdul Rehman Makki and Abdul Salam. The CTD spokesman said three of the convicts were also 'UN Designated Persons' involved in terrorism financing.¹²⁸

FIR: The CTD had in 2019 registered the FIR against the convicts and others under sections 11-F (2)(5)(6), 11-H(2), H-I, 11-I, 11-N, and J-2 of the ATA 1997. The CTD had registered total 23 FIRs against the JuD.

Trial and Prosecution: While initially the trial was held before Sahiwal ATC, it was later shifted to Lahore following an order passed by the Lahore High Court upon request of the convicts. The prosecution alleged that the convicts, being office-bearers of proscribed Al-Anfaal Trust, had possessed property in Okara for the purpose of terrorism and to support terrorist activities. A seminary, namely "Madressah Jamia Sataria", was constructed on the said land.

Defence: The convicts had, through their counsel, denied the charges levelled against them, alleging that they had been implicated in the case due to malice and ulterior motives. They said the authorities in the country had turned hostile towards them since a long time. They further stated they were not the office-bearers when the organization was proscribed by the government.

Judgment: To the extent of Section 11-H of the ATA, the ATC-III Presiding Judge Ijaz Ahmad Buttar observed in the decision that the provision dealt with fundraising, and the investigating officer categorically maintained that he had not collected any evidence to substantiate the fact of fundraising. Therefore, the Court found that "...so prosecution has failed to prove charge u/s 11-H of ATA 1997."

The judge also observed that the convicts admitted that they were members of the proscribed organization prior to its proscription, but denied its hostile activities. He noted that the property in question remained in the control and possession of the convicts for the purposes of terrorism. He stated that "there was a strong suspicion that the said property was used or suspected to have been used for the purpose of terror financing".

Punishment: The Court convicted Malik Zafar Iqbal and Muhammad Yahya Aziz under Section 11-N, read with 11-I(2) (b) of Anti-Terrorism Act 1997, and handed down sentences of five-year rigorous imprisonment for each defendant with a fine of Rs50,000. The judge also sentenced Abdul Rehman Makki and Abdul Salam to one-year imprisonment each under section 11-F (6) of the ATA with Rs20,000 fine. The judge further stated in the order that the sentences of the convicts would run concurrently with their previous sentences, if any. He also ordered the government to confiscate the property in question.

IV. Point 6 (Mutual Legal Assistance (MLA) Reforms)

Pakistani authorities will have to ensure international cooperation-based investigations and convictions against banned organizations (list provided to Pakistan) and proscribed persons (list provided to Pakistan);

¹²⁸ <https://www.dawn.com/news/1564431>

Pakistani authorities will have to ensure international cooperation-based investigations and convictions against banned organizations (list provided to Pakistan) and proscribed persons (list provided to Pakistan).

Legislations Passed

V. Mutual Legal Assistance (Criminal Matters) Act, 2020¹²⁹

The MLA Act 2020, formalizes the processes of requesting and providing legal assistance to and from foreign governments when investigating criminal conduct. Section 3 of the Act states that the manner of MLA may be provided on the basis of a reciprocal agreement or other arrangements, and if both do not exist, then the provisions of the MLA Act will prevail.

As per Section 7, Pakistan would receive and act upon requests relating to a criminal offence either committed or suspected to have been committed in a foreign country when notified. Section 4 lays out the functions of central authority in coordinating MLA requests. After an MLA request has been sought by Pakistan, the central authority may authorize temporary detention in Pakistan of the offender, if he has been in detention in the sending state. Section 17 stipulates that Pakistan may refuse a request of assistance from a foreign government if it jeopardizes Pakistan's national security interests, if the request made is contrary to the laws of Pakistan, if it is prejudicial to an investigation or on-going proceedings, or if it violates international conventions of human rights.

This Act was designed to accommodate international cooperation in criminal matters through mutual legal assistance. In the statement of objectives and reasons, it is mentioned that the Act intends to bridge existing gaps in countries towards effective law enforcement.

SECP Guidelines for Cooperation and Assistance to Foreign Regulatory Authorities (Revised as on 24th April, 2020)¹³⁰

These SECP guidelines have been revised to bolster the framework of international cooperation that is found under Section 42D of the SECP Act. The revised portions of the guidelines, which are relevant to the AML/CFT regime, are as follows:

1. The guidelines now explicitly include 'AML/CFT information' as part of the scope of cooperation under Section 42D.
2. Specific provision has been inserted which caters to issues pertaining to beneficial ownership:
 - a. *'obtaining public or non-public information or document, for example, about a license holder, company (private/public), management, directors, shareholder, record that identify the beneficial owner or a person exercising control over a license holder or a company'*
3. After FATF's criticism of the broad grounds for refusal for cooperation¹³¹ on the basis of a lack of definition of the term 'public interest', the guidelines were amended to define the same:
 - a. *'...Anything detrimental to the public interest may be refused. Public interest means the general welfare of the public that warrants recognition and protection, something in which the public as a whole has a stake especially an interest that justifies governmental regulation.'*

Despite the vagueness of the term, public interest is claimed generally by governments in matters of state secrecy and confidentiality. The purpose of government and law is to serve the common people therefore anything that is repugnant to its purpose may be refused. SECP while considering a request, shall weigh the effects of disclosure on public interest. The Commission reserves to withhold information in case it is detrimental to public interest.

The provision of exchange of information or assistance should not be refused on the grounds that:

- a) *the request is also considered to involve fiscal matters;*

¹²⁹ (http://www.na.gov.pk/uploads/documents/1578569409_518.pdf).

¹³⁰ (<https://www.secp.gov.pk/document/secp-guidelines-for-cooperation-and-assistance-to-foreign-regulatory-authorities/?wpdmdl=39167&refresh=5f155a62e60fa1595234914>).

¹³¹ Para. 677 MER 2019 Pakistan.

- b) laws require financial institutions to maintain secrecy or confidentiality;*
- c) there is an inquiry, investigation or proceeding underway, unless the assistance would impede that inquiry, investigation or proceeding; and/or*
- d) the nature or status (civil, administrative, law enforcement, etc.) of the requesting counterpart authority is different.*

For all correspondence with foreign regulatory authorities, it appears that the SECP has made an International Relations Department, which will serve as the point of contact for international cooperation.

Other Measures

Sindh Sets Up Provincial Level International Cooperation Cell¹³²

The Sindh Home Department, in light of the letter received from the Ministry of Interior, Government of Pakistan's, has constituted the provincial level International Cooperation Cell with composition as Additional Secretary (Internal Security), Home Department, Section Officer (FATF), Home Department and Senior Superintendent of Police Counter Terrorism Department. According to its terms of reference, the provincial level International Cooperation Cell will collect, process, coordinate, liaise and respond to the Mutual Legal Assistance requests received from Ministry of Interior, Government of Pakistan, as well as requests received from Law Enforcement Agencies (LEAs), for onward sharing with Ministry of Interior, Government of Pakistan.

VI. Point 7: Effective Domestic Coordination

The country will have to place effective domestic cooperation between Financial Monitoring Unit (FMU) and LEAs in investigation of terror financing;

Legislation Passed

National Counter Terrorism Authority (NACTA) (Amendment) Act, 2020

The National Counter Terrorism Authority (NACTA) Act was amended by way of a Presidential Ordinance, coming into immediate effect on 8th November 2019 for 120 days. A formal Act was then introduced and has been passed by both houses. The amendments herein mainly concerned changes in the hierarchy of governmental actors in order to streamline the process of coordination with various law enforcement actors.

VII. Points 1, 10 and 12 (Effectiveness of Sanctions and the Freezing and Seizing of Assets)

- 1. Pakistan will have to demonstrate effectiveness of sanctions including remedial actions to curb terrorist financing in the country.*
- 2. Seizure of properties of banned outfits and proscribed persons (list provided to Pakistan)*
- 3. To cut off funding of banned outfits and proscribed persons*

The United Nations Security Council 1267 sanctions regime obliges all States to freeze assets (targeted financial sanctions), embargo arms, and ban the travel of individuals and entities designated by the Sanctions Committee on the UN Consolidated List.

Legislation Passed

To further the goals of the UNSCR sanctions regime, the National Assembly of Pakistan recently passed two Acts that have been mentioned above, i.e. the Anti-Terrorism (Amendment) Act, 2020 (salient points have been highlighted above), and The United Nations (Security Council) (Amendment) Act, 2020, to fulfill its obligation to the Financial Action Task Force.

As highlighted above, the Anti-Terrorism (Amendment) Act, 2020, proposes to enforce the decision of the UNSCRs 1267 and 1373 pertaining to counter-terrorism measures in an effort to monitor terrorism financing by drafting and enforcing such provisions in the domestic legal framework. Accordingly, the Bill makes the refusal or non-compliance of the orders of the Federal Government under Section 2 of the United Nations (Security Council) Act, 1948 as a

¹³² <https://www.urdupoint.com/en/pakistan/sindh-sets-up-provincial-level-international-975454.html>

punishable offence. Furthermore, if a public servant is found to be negligent in complying with these provisions, the respective authority is empowered to take appropriate administrative actions against him.¹³³

The United Nations (Security Council) (Amendment) Act, 2020 on the other hand, amends the United Nations (Security Council) Act, 1948, in order to ensure the effective implementation of the resolution of the UNSC. The amendment has included new sections pertaining to indemnity, power to make rules and delegation of powers.

"Section on indemnity states: "No suit, prosecution or other legal proceedings shall lie against any person in respect of anything which is in good faith done or intended to be done under this Act."

Other regulations issued

The government issued two notifications (SRO 741/2020 and 742/2020) on August 18, 2020 adding key figures of terror outfits such as 26/11 Mumbai attack mastermind and Jamaat-ud-Dawa (JuD) chief Saeed, Jaish-e-Mohammed (JeM) Chief Azhar, and underworld don Ibrahim to the sanctions list, as reflected in the UN Sanctions List. Ibrahim, who heads a vast and multifaceted illegal business, has emerged as India's most wanted terrorist after the 1993 Mumbai bombings.¹³⁴ It is pertinent to mention here that the 88 terrorists were included in the terrorists' list issued by the United Nations a few days back. In a statement, the Foreign Office said: "The sanctions are being implemented by Pakistan in compliance with the relevant UNSC resolutions and we hope that other countries will also follow suit."¹³⁵

VIII. Points 11 and 13

1. Conversion of madrassas to schools and health units into official formations (list provided to Pakistan);
2. Pakistan will have to put in place a permanent mechanism for management of properties and assets owned by the banned outfits and proscribed persons.

On 24th August 2020, the Sindh government announced that it had decided to register all Madrassas in the province as educational institutions. According to the spokesperson for Sindh Chief Minister, Murad Ali Shah, the decision was taken in a meeting of the apex committee of the provincial government in the light of the National Action Plan and other related issues. The Sindh Police Chief said there were 8,195 religious schools in the province. The committee members subsequently decided that all religious schools in the province would be regularized as educational institutions by the Sindh Education and Literacy Department. According to former Pakistan Madrasa Education Board Chairman, Dr Aamir Tuaseen, almost all madrassas in Sindh are registered under Section 21 of the Societies Registration Act 1860, but hundreds of unregistered seminaries are also operating across the province.

Other measures

Afghan Taliban Chief, Mulla Akhtar Mansour's five properties of over Rs32 million in Karachi were seized by the Anti-Terrorism Court for auction in May 2020. Mulla Mansour, who was killed in a drone strike along the Pakistan-Iran border on May 21, 2016, had purchased five properties, including plots and houses, in Karachi. This revelation came in a report submitted by the Federal Investigation Agency to the ATC-II in July last year regarding an investigation into a case related to alleged fundraising by the slain Afghan Taliban leader and his accomplices through the purchase of properties on the back of forged identities.

Since January, the court had been directing the investigation officer (IO) to complete the process of attachment of Mulla Mansour's properties and proclamation of his two alleged absconding accomplices — Akhtar Mohammad and Amaar — under sections 87 and 88 of the Criminal Procedure Code. On April 24, the court ordered the Nazir (a court official) to take over the properties of Mulla Mansour after the IO submitted a compliance report regarding completion of the attachment process of the properties by the Federal Investigation Agency. The court had ordered the Nazir to auction those properties and get advertisements published in newspapers.¹³⁶

Legislation Introduced/ Passed

In 2016, the Sindh Counter Terrorism Department (CTD) had drafted a "Deeni Madaris Act". The draft was the first-ever proposed law on the registration of madrassas in Pakistan. The proposed legislation was aimed at creating a formal

¹³³ Section 7 of the Anti-Terrorism (Amendment) Bill 2020.

¹³⁴ <https://economictimes.indiatimes.com/topic/Dawood-Ibrahim>.

¹³⁵ <https://timesofindia.indiatimes.com/world/pakistan/in-race-to-avoid-fatf-blacklist-pak-sanctions-over-80-terrorists-from-daesh-al-qaida-and-taliban/articleshow/77680107.cms>.

¹³⁶ <https://www.dawn.com/news/1555423>.

mechanism for registering, regulating and facilitating religious seminaries in the province. The madrassa regulation bill was one of the major components of the National Action Plan devised by the Centre to counter religious extremism in the country. Sindh had been the first province to start the process of registering madrassas.¹³⁷

21 August 2020 - The Sindh Seized and Freezed Facilities (Hospitals and Dispensaries) Bill and the Sindh Seized and Freezed Institutions (Madaris and Schools) Bill were passed after the federal interior ministry had listed Jamaatud Dawa (JuD), Falah-e-Insaniat Foundation (FIF) and other outfits as proscribed organizations in order to meet FATF requirements. According to the newly passed legislation, these institutions would now be run by two boards, to be constituted under the provincial education and health secretaries, respectively. While the government did not provide an official tally of the education and health facilities to be seized, officials in the Sindh government disclosed that around 56 such facilities belonged to JuD and FIF.

Another piece of legislation, the Sindh Trusts Bill, was also passed. According to this law, all trusts will now be registered with the provincial government and will have to provide details about their funding and other necessary information at the time of registration.¹³⁸

¹³⁷ <https://www.thenews.com.pk/print/705591-sindh-to-register-madrassas-as-educational-institutions>.

¹³⁸ <https://tribune.com.pk/story/2260636/sindh-govt-to-seize-banned-outfits-facilities>.

CHAPTER 3

NATURE OF TERRORISM FINANCING IN PAKISTAN (i.e. RISK PROFILE, TRENDS, CHARACTERISTICS)

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INTRODUCTION

The following chapter elaborates on the nature of terrorism and terrorism financing in Pakistan by identifying and discussing the common methods through which the financing of terrorism occurs. The chapter also examines the involvement of international linkages, as terrorism financing and money laundering are trans-boundary issues.

LEARNING OUTCOMES

By the end of this chapter you should be able to:

- Understand the difference between the raising of funds and movement of funds
- Understand the elements of terrorism financing and money laundering crimes
- Understand the relation of domestic activities such as kidnapping for ransom, drug trafficking, charities etc. with terrorist financing and money laundering crimes
- Recognize the formal and informal methods of money laundering
- Recognize vulnerable sectors within Pakistan's economy where TF/ML risks arise

ESSENTIAL READING

- FATF Recommendations – International Standards on Combating TF/ML (2019)
- FATF-Pakistan – Mutual Evaluation Report (MER) 2019
- Scoping the Illegal Economy in Pakistan – Sustainable Development Policy Institute (2011)
- Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT – IMF)

3.1. TERRORISM FINANCING METHODS

Terrorism and the financing have had a severe impact on Pakistan. According to the Global Terrorism Index 2018 report, Pakistan is ranked fifth amongst States most impacted by terrorism in 2017.¹³⁹ International organizations like the Financial Action Task Force (FATF) promote “effective implementation of legal, regulatory and operational measures”¹⁴⁰ for combating money laundering and terrorist financing. The FATF accomplishes this by setting global standards to be followed by national governments in curbing money laundering and terrorist financing.

Furthermore, the FATF, working alongside state-level partners, also evaluates responses to terrorism financing and identifies nation-wide vulnerabilities that can enhance the threat of terrorist financing. Thus, it is imperative to dedicate several institutions in the law enforcement regime to finding the source(s) of funding these activities so that they can more effectively develop mechanisms to cut off terrorist financing at the root.

Self-Assessment Question

List three potential methods for interrupting or preventing the raising of funding streams for terrorist efforts.

This chapter provides a detailed understanding of terrorism financing in the context of Pakistan and sheds light upon how terrorist organizations have attempted to procure monetary support in financing their operations.

3.2. RAISING FUNDS

Terrorist fund-raising implies the gathering of money, property and other convertible resources that could be used to potentially finance terrorist activities and operations. Funds can be collected by terrorist organizations within a State (e.g. through donation collected by front organizations and charities) or can be transferred from outside the country using informal and formal money-transfer systems.

There is a need to differentiate between raising of funds and movement of funds. Fund raising is conducted when seeking financial support for any enterprise, or terrorist activity in this case. It can be conducted in a variety of ways, including through direct receipt of money (e.g. as donations), or through wire transfers. Whenever a transaction takes place that requires the usage of a monetary system, formally or informally, to transfer or receive an amount, that constitutes 'movement of funds,' which will be discussed in detail later in the chapter. One example would be the usage of hawala/hundi to send and receive an amount from abroad to be used by a terrorist organization.

A collection of reports, ranging from the Mutual Evaluation Report,¹⁴¹ an analysis by the Financial Monitoring Unit and other agencies' publications have highlighted certain areas, including professions and activities both domestically and internationally, that contribute to raising terrorist funds. These include (but are not limited to):

- Foreign Involvement/International Linkages
- Drug Smuggling
- Human Trafficking, Kidnapping and Extortion
- Exploitation of Natural Resources
- Role of Charities and NGOs
- Other illegal activities

International Linkages

Terrorist funding can come from outside Pakistan. Law enforcement agencies of other countries with tense relations have also been found to be directly involved in inciting terrorism on Pakistani soil.¹⁴²

¹³⁹ Global Terrorism Index 2018, Institute for Economics and Peace, 2018.

¹⁴⁰ FATF Recommendations – International Standards on Combating AML/CFT – June 2019
<http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>.

¹⁴¹ Pakistan-FATF Mutual Evaluation Report (MER) – 2019. Financial Action Task Force.

¹⁴² Terrorism Caused by Interference from Foreign Powers - Pakistan President (Express Tribune), 2017. <https://tribune.com.pk/story/1591842/1-terrorism-caused-interference-foreign-powers-president-mamnoon/>

But apart from State-supported terrorism, expatriates and larger organizations also funnel money into terrorist activities and offer financial support to the terrorist outfits.¹⁴³ For example, the Global Relief Fund (GRF) started operating in the United States of America (USA) as an NGO to give philanthropic care to war-affected Muslim states, such as Bosnia, Afghanistan, Lebanon, etc. However, the U.S. Department of Treasury reported in 2002 that "GRF has affiliations with al-Qaeda, Osama bin Laden and other terrorists and has also backed them economically."¹⁴⁴

- **Local Criminal Activities - Drug Smuggling**

In order to raise funds for their terrorist activities, groups in Pakistan take advantage of existing licit and illicit economic activity. Having understood the kinds of support organizations may have, it is now important to take a closer look at the different ways in which the groups in Pakistan attempt to raise funds in the domestic sphere.

The most prevalent method of terrorist fundraising in areas such as Khyber Pakhtunkhwa (KP) and former Federally Administered Tribal Areas (FATA), is drug trafficking. It is a convenient source of fund-raising due to accessibility and proximity to the Pak-Afghan border, especially as Afghanistan produces nearly 90% of the world's opium. Poppy production is extremely profitable, and the geography of Afghanistan and some parts of KP are conducive to its growth. One hectare of opium can earn as much as USD 4622, compared to only USD 266 for wheat – which is why many terrorist outfits turn to opium production to finance their activities.¹⁴⁵

Due to poor control of customs authorities in KP and little oversight in the former FATA region, most of this opium is smuggled to Pakistan, which serves as a transit point for the rest of the world.¹⁴⁶ Not only are the drugs (especially heroine, which is derived from opium) locally distributed, but in 2009, many terrorists were arrested for exporting drugs to other countries through Karachi.¹⁴⁷ In various analyses and reports, Pakistan recognizes drug smuggling as a considerable threat in its efforts to combat terrorist financing.

- **Human Trafficking, Kidnapping and Extortion**

A report by the Financial Monitoring Unit (FMU), an intelligence unit within the Ministry of Finance, identifies that the main sources of income for terrorists in Pakistan include foreign funding, drug trafficking, kidnapping for ransom, extortion from business and vehicle snatching.¹⁴⁸

These activities have proven to be very lucrative for groups like the Tehreek-Taliban Pakistan (TTP), which has conducted mass abductions in Karachi, Islamabad, Lahore, Peshawar and Quetta.¹⁴⁹ Terrorist organizations such as Al Qaeda in the past and the Islamic State more recently have also been known to collect archaic taxes called jizya from non-Muslims in the areas under their control.¹⁵⁰ The Gulf region in particular is also a hub for such illicit activities, with funds being diverted towards terrorist financing in Pakistan. The Afghan Taliban and their militant partners, the Haqqani network, are said to earn "significant funds" through UAE-based businesses, either via extortion from the large Pashtun community in the UAE, or by kidnapping Pashtun businessmen in a bid to fund terrorist activities.¹⁵¹

Therefore, Section 6 of the ATA 1997 describes both kidnapping and extortion (Bhatta) as offences that, under certain circumstances, can be tried by the terrorism courts. This is due to the fact that both of these activities are typically used as methods of terrorism financing as terrorist groups kidnap individuals and utilize the ransom amount to fund their activities.

CASE STUDY

A major case of Terror Financing was worked out by the Counter-Terrorism Department, Peshawar, during a kidnapping case of a trader in which an amount of Rs. 30 million was paid. The ransom paid was later used for

143 Ibid.

144 Money Laundering, Terrorist Financing and FATF: Implications for Pakistan <http://www.ipripak.org/wp-content/uploads/2018/10/Article-2-2-Oct-2018-ED-SSA.pdf>.

145 Scoping the Illegal Economy in Pakistan - SDPI (2011) <https://sdpi.org/publications/files/Examining%20the%20dimensions%20scale%20and%20dynamics%20of%20illegal%20economy.pdf>.

146 Ibid.

147 Terror Financing and Growth of Terrorist Groups: A Case Study of Tehrik e Taliban Pakistan', Saqib Muhammad, National Defense University, Islamabad, 2007. https://ndu.edu.pk/issra/issra_pub/articles/ndu-journal/NDU-Journal-2017/5-Terror-Financing-and-Growth-of-Terrorist-Groups.pdf.

148 Report: Pakistan Terror Groups get rich from crime, money laundering. Voice of America, March 2017. <https://www.voanews.com/a/report-pakistan-terror-groups-get-rich-crime-money-laundering/3779316.html>

149 Ibid.

150 Islamic State warns Christians: convert, pay tax, leave or die, Forbes Magazine, July 19, 2014.

<https://www.forbes.com/sites/kellyphillips/2014/07/19/islamic-state-warns-christians-convert-pay-tax-leave-or-die/#7fddb3c52c25>

151 Wikileaks Cables Saudi Terrorist Funding - The Guardian - 2010 <https://www.theguardian.com/world/2010/dec/05/wikileaks-cables-saudi-terrorist-funding>

financing the terrorist attack on the Agriculture Training Institute. The attack at the institute was carried out by three or four gunmen and resulted in nine people being killed while 35 were injured. This was believed to have been the work of the TTP.

- **The Relationship between Non-Profit Organizations (NPOs), Charities and NGOs and Terrorism Financing in Pakistan**

Charities possess characteristics that make them attractive for terrorist organizations and vulnerable to terrorist financing. Charities have easy access to a substantial amount of funds from various sources, and their “activities are often cash-intensive.”¹⁵² Furthermore, charities, due to their characteristics, usually undergo much lighter regulatory requirements as compared to financial institutions or publicly held corporate entities. For instance, charities are often subject to lighter checks when “starting capital, professional certification or background checks for staff and trustees at registration, or for ongoing record keeping, reporting and monitoring.”¹⁵³ Certain charities may also be exempted from tax requirements, which makes it easier to evade financial regulatory bodies and engage in activities pertaining to terrorist financing and/or money laundering.¹⁵⁴ Realizing the potential risk of charities in proliferation of terrorism financing, the FATF recommends action to regulate charities and other non-profit organizations in Recommendation 8.¹⁵⁵

Additionally, individuals who sympathize with the extremist agendas of militant organizations support them in less direct ways. The annual mandatory payment of Zakat, for example, is exploited by terrorist organizations to encourage people to donate money to their cause, either knowingly or unknowingly (such as to a charity that the terrorist organization controls or influences). Two examples illustrating these include 'Harkat-ul-Mujahedeen' led by Maulana Fazal-ur-Rehman Khaleel and 'Jammāt-ul-Furqan' commanded by Maulana Abdullah Shah Mazhar, two banned militant organizations associated with the TTP and al-Qaeda. These organizations set up fundraising networks through donations and charities from their supporters and sympathizers with new names Ansar-ul-Ummah and Tehrik-e-Ghalba-e-Islam.¹⁵⁶ This allowed for collection of funds directly for terrorism activities, often by placing donation boxes in areas of commercial activity (shops, stores, etc.) under names of illegally founded charities or NGOs that solicit funds for terrorist groups.¹⁵⁷ Lashkar-e-Taiba, similarly, maintains schools, daycare centers, welfare institutions and clinics all over Pakistan, with fundraising being conducted in the form of charity and welfare funds for humanitarian purposes – diverting these collections towards funding terrorism.¹⁵⁸

Funds are also sent in from the Pakistani diaspora abroad, with most capital flowing from Britain and the Gulf States.¹⁵⁹ Terrorist outfits also operate designated charity offshoots, whose sole purpose is to collect funds for humanitarian purposes. An example of this is Jamaat-ud-Dawa's (JuD) Falah-e-Insaniyat Foundation (FIF), which is a social welfare organization that collected funds under the auspices of JuD, particularly for victims of flooding and earthquakes.¹⁶⁰

Previously, charities and non-profit organizations (NPOs) in Pakistan were hardly subject to any regulatory or legislative requirements. The Mutual Evaluation Report (MER) conducted in coordination with FATF's Asia-Pacific Group and Pakistani authorities specifically discussed the lack of regulation within the NPO sector in Pakistan.¹⁶¹

In response, certain regulatory requirements have been introduced for NPOs in Pakistan, particularly the Anti-Money Laundering/Countering the Financing of Terrorism (AML/CFT) Guidelines for Non-Profit Organizations (NPOs) 2018, so that they are not susceptible to terrorist financing. However, the MER conducted in 2019 continues to highlight that relevant due diligence procedures as prescribed by FATF Recommendations (specifically 10, 11 and 12¹⁶²) were not

152 FATF, 'Terrorist Financing' (FATF) page 11 <www.fatf-gafi.org/publications/fatfgeneral/documents/terroristfinancing.html>

153 Ibid.

154 Money Laundering, Terrorist Financing and FATF: Implications for Pakistan
<http://www.ipripak.org/wp-content/uploads/2018/10/Article-2-2-Oct-2018-ED-SSA.pdf>

155 International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation – FATF Recommendations (June 2019)
<http://www.fatfgafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>.

156 Ibid.

157 FIF ban not fully enforced, Daily Times, February 2019. <https://dailytimes.com.pk/357982/ban-not-fully-enforced/>.

158 LeT charity wing conducting flood relief work – August 2010. Reuters

<https://www.reuters.com/article/us-pakistan-floods-militants/factbox-lashkar-e-taiba-charity-wing-in-flood-relief-work-idUSTRE67O3RL20100826>
<https://www.reuters.com/article/us-pakistan-floods-militants/factbox-lashkar-e-taiba-charity-wing-in-flood-relief-work-idUSTRE67O3RL20100826>

159 Richest Terror Organizations in the World, Forbes Magazine, January 2018.

<https://www.forbes.com/sites/forbesinternational/2018/01/24/the-richest-terror-organizations-in-the-world/#53ea06937fd1>.

160 Over 500 JuD-FIF properties confiscated under NAP, May 2019, The News. <https://www.thenews.com.pk/print/469873-over-500-jud-fif-properties-confiscated-under-nap>.

161 Chapter 1, Pakistan-FATF: Mutual Evaluation Report (MER) – 2019. Financial Action Task Force.

162 International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation – FATF Recommendations (June 2019)
<http://www.fatfgafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>.

applied to the NPO sector, and the authorities generally had poor understanding of terrorist financing risks in this area. This is therefore an important area that requires more legislation and regulatory measures.¹⁶³

- **Exploitation of Natural Resources and other Illegal Means:**

In Pakistan, there have been instances where militant outfits in Khyber Pakhtunkhwa (and the former FATA region) assumed control over small regions, with the aim to use natural resources in the area for terrorism financing purposes.

Groups such as the TTP aimed to gain monopoly over the gemstone (specifically emerald mines in Swat Valley¹⁶⁴) and the marble industry (located in Mohmand Agency). Additionally, militants have been involved in stealing and exploiting artifacts at the archaeological sites in the KP region. They have also maintained strong relations with Swat's timber mafia in order for them to generate more capital through selling wood in the market.¹⁶⁵

The FMU Report also suggests that terrorist groups loot vehicles and shipments carrying military supplies and equipment and sell them to other organizations.

3.3. MOVEMENT OF FUNDS THROUGH MONEY LAUNDERING

The act of laundering money involves taking the funds obtained through illegal means and placing them in the formal financial system, layering them with other licit or already laundered funds, and integrating them into accounts, resources, or investments. Often it involves transferring the money from account to account until it becomes impossible or very difficult to trace back to the illegal source. The International Monetary Fund (IMF) states that, 'Money laundering requires an underlying, primary, profit-making crime (such as corruption, drug trafficking, market manipulation, fraud, tax evasion), along with the intent to conceal the proceeds of the crime or to further the criminal enterprise.'¹⁶⁶

Money laundering is criminalized in Pakistan under the AMLA 2010 and is penalized under Section 4:

4. Punishment for money laundering: Whoever commits the offence of money laundering shall be punishable with rigorous imprisonment for a term which shall not be less than one year but may extend to ten years and shall also be liable to fine which may extend to one million rupees and shall also be liable to forfeiture of property involved in money laundering or property of corresponding value.

The money laundering process can be used by terrorist organizations to hide the source or destination of funds, but these are generally quite distinct processes. Funds to finance terrorist objectives often pass through this process and so the preamble of the Act talks about money laundering together with terrorism financing. In this context, it is also necessary to mention the role of benami transactions as they aid in money laundering activities. According to the FBR, a benami transaction "encompasses where a property is transferred to, or held by, a person and the consideration for such property has been provided, or paid by, another person." This can include trustees, wife, children, siblings, etc. to whom property has been transferred.

Also included within the purview of benami transactions are those transactions and arrangements in respect of a property carried out or made in a fictitious name, where its owner is unaware or denies knowledge, or in cases where the person providing consideration is not traceable or is fictitious. In real estate, when money launderers attempt to conceal property or remove themselves from the illicit property, they often make use of benami transactions to mislead investigators or dodge suspicion.

In 2019, the Benami Transaction (Prohibition) Rules were enacted, outlawing any benami activity and sanctioning such activities with criminal proceedings carrying an imprisonment term of up to seven years. A well-known example of an on-going money laundering case is that of the Pakistani Model, Ayyan Ali.

¹⁶³ Chapter 1, Pakistan-FATF, Mutual Evaluation Report (MER) – 2019, Financial Action Task Force.

¹⁶⁴ Terror Financing and Growth of Terrorist Groups: A case Study of Tehrik e Taliban Pakistan', Saqib Muhammad, National Defense University, Islamabad, 2007. https://ndu.edu.pk/issra/issra_publications/ndu-journal/NDU-Journal-2017/5-Terror-Financing-and-Growth-of-Terrorist-Groups.pdf.

¹⁶⁵ Ibid.

¹⁶⁶ IMF, Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT). <https://www.imf.org/external/np/leg/amlcft/eng/>.

CASE STUDY

In March 2015, a Model from Pakistan, Ayyan Ali, was arrested at Benazir Bhutto Shaheed International Airport Islamabad for travelling with upwards of USD 500,000 in her luggage, where the maximum limit one is allowed to carry in cash when traveling internationally is USD 10,000.¹⁶⁷ Ayyan Ali claimed in her statements that high-level politicians, including former Minister of Interior, Rehman Malik, were directly involved in such activities – nevertheless, she was charged with money laundering. An investigation of her finances further revealed her bank accounts were linked to fictitious and other benami accounts, through which ill-gotten means were likely laundered.¹⁶⁸ Currently, she is based in the UAE while on bail, pending return to Pakistan for further legal proceedings.¹⁶⁹

3.4. MODES OF MOVEMENT OF FUNDS

As mentioned earlier, while funds can be raised in many ways, it is also necessary to see how they are managed in both formal and financial systems. FATF Recommendations 10 and 11 illustrate the need for customer due diligence (CDD) and record-keeping, whereas Recommendations 13 through 16 further look at regulation banking and money transfer systems for risks associated with terrorism financing, use of new technologies and wire transfers, amongst others.¹⁷⁰ In line with these Recommendations, it becomes necessary to review how formal and informal monetary systems are engaged for terrorist financing, and additionally, how the rise of crypto-currencies around the world also poses considerable threats.

Formal

Moving through a formalized financial system implies working through financial institutions, such as banks, and transferring ill-gotten money to the desired destination. Regardless of the crime, users of this system (especially money launderers) resort to placement, layering, and integration in the process of turning illicit proceeds into apparently legal monies or goods.

¹⁶⁷ Ashfaq Ahmed, Pakistan Supermodel Wanted in Currency Smuggling Case, 2019, GULF NEWS.

<https://gulfnnews.com/world/asia/pakistan/pakistan-superMODel-ayyan-who-lives-in-dubai-is-now-wanted-person-in-currency-smuggling-case-1.62572511>

¹⁶⁸ Azaz Syed, FIA Finds Ayyan Ali Role in Money Laundering Case, (2018). GEO NEWS. <https://www.geo.tv/latest/214301-fia-finds-ayyan-alis-role-in-money-laundering-case-sources#>

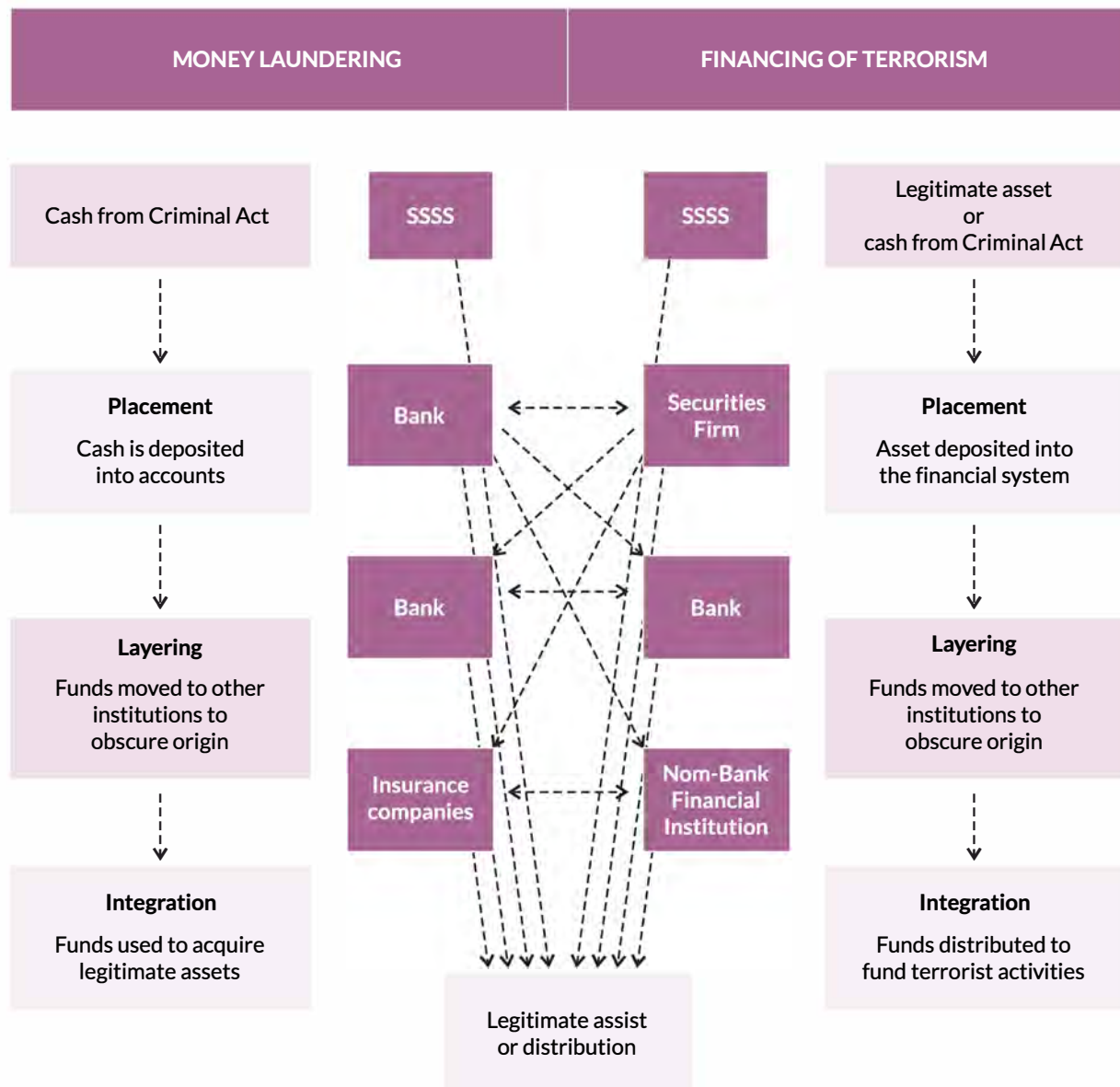
¹⁶⁹ Ashfaq Ahmed, Pakistan Supermodel Wanted in Currency Smuggling Case, 2019, GULF NEWS.

<https://gulfnnews.com/world/asia/pakistan/pakistan-superMODel-ayyan-who-lives-in-dubai-is-now-wanted-person-in-currency-smuggling-case-1.62572511>

¹⁷⁰ International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation – FATF Recommendations (June 2019). <http://www.fatfgafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>

The diagram below shows one example of how the processes of placement, layering and integration are applied.¹⁷¹

The Process of Money Laundering and Financing of Terrorism



¹⁷¹ World Bank - Reference Guide to Anti Money Laundering and Combating Terrorist Financing
<http://documents.worldbank.org/curated/en/558401468134391014/pdf/350520Referenc1Money01OFFICIAL0USE1.pdf>.

clients. We can see that Shawn is in communication with Mindy and hopes to transfer her some cash. Shawn transfers said cash to Sally, the hundi operator, who communicates with Zoe, another hundi operator, with whom she has a trust-based relationship. Zoe, then, with the understanding that Sally will eventually return the favor, transfers cash to Mindy. The same transaction is repeated the other way around with Henry and Matthew. We can see that even though no cash has passed through any borders, two sets of transactions have nonetheless taken place.

Cryptocurrency

A cryptocurrency is a digital currency in which encryption techniques are used to regulate the generation of units of currency and verify the transfer of funds, operating independently of a central bank.

Table 1: Payment System with a Central Authority

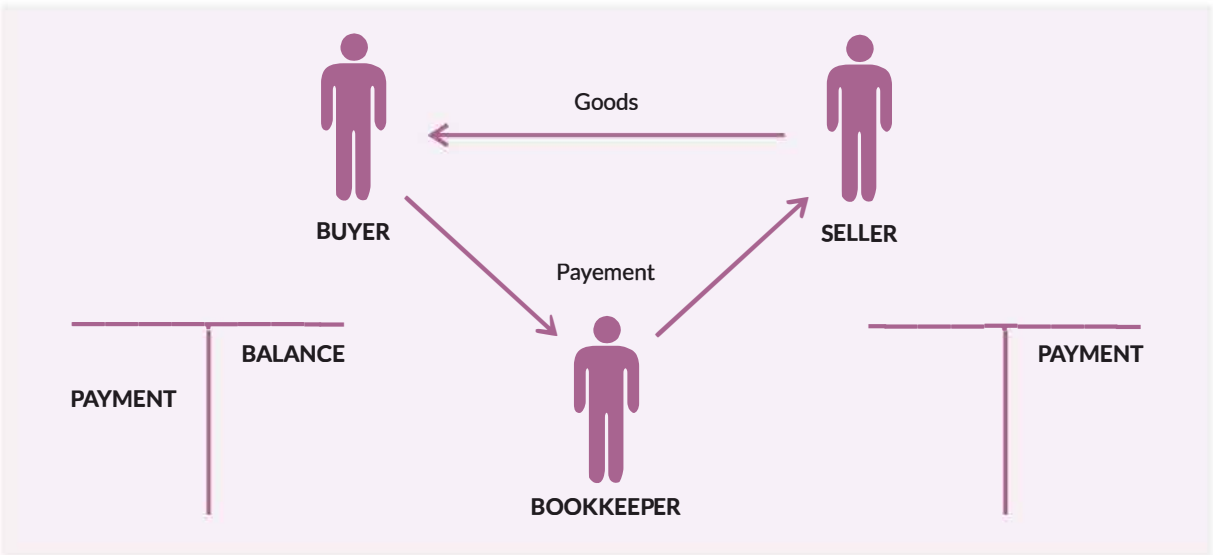
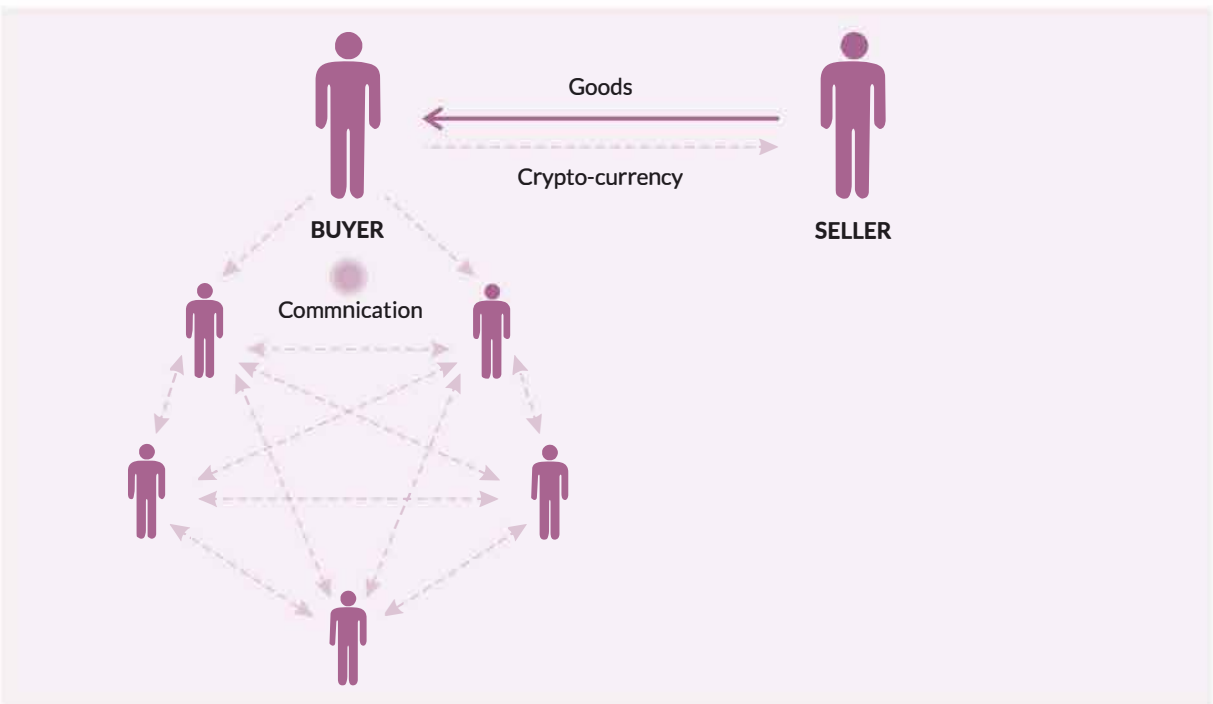


Table 1 serves as a simplified illustration of how a transaction occurs in a system with a central monetary authority, such as the State Bank of Pakistan. The buyer and seller may exchange goods for payment, but it is done through a system whereby the central authority serves a regulatory and monitoring role.

Table 2: Payment System with a Distributed Ledger



Cryptocurrencies instead rely on a distributed ledger system, whereby a person transferring any sum of cryptocurrency results in an input in the distributed ledger, which is then propagated throughout the system. A distributed ledger is a database that is consensually shared and synchronized across multiple sites, institutions, and geographical locations. The transactions thus conducted are anonymous and nearly impossible to trace if they are not at some point in the transaction chain, converted into fiat currency regulated by a central authority.

The risk of cryptocurrencies being used to fund terrorism is particularly severe due to the transnational and anonymous nature of these currencies. Traditional modes of enforcement as are applied in Pakistan through the issuance of STRs/CTRs and subsequent prosecution in the formal sector, and the raiding and prosecution of illegal hundi/hawala nodes in the informal sector prove to be ineffective when dealing with a currency system that is spread out throughout the world, completely anonymous, and untraceable.

Examples from around the world show the glaring rise in the use of crypto-currencies in terrorism operations, in tandem with other online platforms. In 2015, 26 members of the Qatari royal family were kidnapped and held for ransom by local Shiite militia in Iraq. In return for their release, Qatar was compelled to pay a sum generated in crypto-currency that amounted to nearly a USD 1 billion.¹⁷⁹

Similarly, the Wall Street Journal reported in 2017 that American intelligence agencies had uncovered an international network run by ISIS (Daa'esh) that used fake eBay and PayPal accounts to transfer funds to operatives in the United States.¹⁸⁰ Thus, crypto-currencies, particularly on the Darkweb,¹⁸¹ have proven to be an effective way of terrorist financing.

In its recommendations, the FATF has noted the rise of challenges posed by technology and online platforms when countering financing of terrorism, particularly delineated in Recommendation 15 ("New Technologies").¹⁸² The 2019 Interpretative Note describes how countries and obliged entities must comply with the relevant FATF Recommendations to prevent the misuse of virtual assets for money laundering and terrorist financing and the financing of proliferation.¹⁸³

CASE STUDY

ISIS (Islamic State of Iraq and Syria)

According to Forbes, ISIS was the fifth richest terrorist organization in the world. It was able to operate at this scale due to the abundance of resources and funds.

ISIS had several main sources of funds:

1. The Islamic State frequently loots banks and other institutions in its locality.
2. It had a monopoly over oil reserves in Iraq and sold this natural resource to finance much of its operation.
3. ISIS is known to be engaged in activities such as smuggling (people, drugs and archaeological artifacts), racketeering and tax levying. In certain areas such as those that are densely populated, this can lead to significant revenue generation.¹
4. ISIS generates a lot of money through donations from various organizations and people alike.

Laundering Money

Because ISIS operates far beyond its territories, it often needs to employ different methods to launder money. For example, if supplies need to be purchased in the legitimate market, it is reasonable to assume that the money ISIS uses to pay for them has been laundered beyond all traceability. They may disguise funds and let them back into the economy (having been washed).

179 Richest Terror Organizations in the World, Forbes Magazine, January 2018.

<https://www.forbes.com/sites/forbesinternational/2018/01/24/the-richest-terror-organizations-in-the-world/#53ea06937fd1>

180 Ibid.

181 The dark web forms a small part of the deep web, the part of the world wide web not indexed by search engines Andy Greenberg, 19 November 2014, Hacker Lexicon: What is the dark web?

182 International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation – FATF Recommendations (June 2019)

<http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>

Also see FATF Guidance on Virtual Assets and Virtual Asset Providers (21 June 2019): <https://www.fatf-gafi.org/publications/fatfrecommendations/documents/guidance-rba-virtual-assets.html> and the FATF Public

183 Statement on Virtual Assets and Related Providers: <http://www.fatf-gafi.org/publications/fatfrecommendations/documents/public-statement-virtual-assets.html>

ISIS has adopted new and creative methods to launder money. For example, it has been known to send money across borders accompanied by people (cash couriers). Another interesting incident that surfaced in 2018 was about a woman based in New York who was arrested under charges of laundering money, and admitted that she had sent large sums of money to ISIS through the cryptocurrency 'Bitcoin.'

Self-Assessment Questions

- List any 4 methods via which terrorist organizations raise funds in Pakistan.
- How does the system of hawala work in helping terrorists to transfer funds?

3.5. AT RISK SECTORS AND INSTITUTIONS

This discussion on terrorist financing and money laundering in Pakistan cannot be complete without an analysis of the economy of Pakistan that gives rise to ML and TF threats. As mentioned above, most ML threats arise from predicate crimes of corruption, smuggling, narcotics trafficking, etc., where the proceeds of crimes are transferred out of Pakistan through the informal/alternative remittance operators (hawala/hundi). Concerns regarding terrorism (and terrorist financing) continue to exist owing to instability in Afghanistan, as well as involvement of foreign agencies and governments in the country.

Recently, provincial counter-terrorism departments have investigated multiple cases of hawala/hundi, launching proceedings against accused persons for covertly operating hawala/hundi systems, transferring ransom money intranationally, and for channeling funds to various terrorist leaderships outside Pakistan.¹⁸⁴

An analysis of Pakistan's economy broadly reveals six sectors with critical weaknesses and vulnerabilities that allow for the ML/TF to seep through the system. Some of these sectors have been referred to above, but this part of the chapter focuses explicitly on how oversight, implementation and compliance mechanisms are susceptible to ML/TF activities and what can be done further to strengthen them.

Sector-Based Vulnerability

Exchange Companies/Hawala Hundi Operators

As mentioned before, small exchange companies using the hawala/hundi system face substantially high ML risks. This is because hawala/hundi systems operate in informal circles, with large sums being traded in multiple transactions to avoid regulatory thresholds, while there is very little regulatory oversight from the State Bank of Pakistan (SBP) and Securities and Exchange Commission of Pakistan (SECP). The lack of formalized compliance departments renders exchange companies a haven for mobilizing tainted money and conducting illegal transactions. The foreign exchange company Khanani and Kalia (K&K) serves as an example. K&K was closed down in 2008 as part of the Forex Scam case, where it was found to have been operating illegal hawala/hundi networks and aiding money laundering despite being a licensed operation by the SBP.¹⁸⁵

In 2018, significant amendments were made to Standard Operating Procedures (SOPs) and other regulations to tighten the grasp on informal exchange companies, as will be expanded upon in later chapters. While the MER (2019) appreciates the "high-risk" designation afforded to the informal hawala/hundi system, it also states that there is a need to further identify how the use of this delivery channel may differ in relation to terrorist groups and/or the location of fund-raisers and end-users.¹⁸⁶

Real Estate Market

Law enforcement investigators and FBR officials have stated that medium to high ML risks exist in the real estate market, as investments in land and property allowed for the parking of cash earned from illicit activities. Despite relevant legislative changes, there remains a lack of robust oversight mechanisms that result in higher risks of ML. A

¹⁸⁴ Pakistan submissions to the FATF – APG-MER Report, 2019

¹⁸⁵ The Endless Case of Khanani and Kalia, DAWN, 2019.
<https://www.dawn.com/news/1294802>

¹⁸⁶ Chapter 1, Pakistan-FATF Mutual Evaluation Report (MER) – 2019. Financial Action Task Force.

recent example, though highlighting a positive development, is the confiscation of roughly 500 properties registered under JuD and FIF, which were brought using illicit means and funds.¹⁸⁷

In the AML/CFT Regulations issued by the SECP (2018), financial institutions have been instructed to deem real estate dealers as 'high risk' in their risk assessments. Thus far, there are no such directives particular to law enforcement agencies for operationally countering the risk of ML/TF in real estate.¹⁸⁸

Precious Metals and Stones Market

Similar to the real estate market, medium to high risks exist in the precious metals and stones sector as well. Primarily, this is due to high value dealings carried out with walk-in customers usually on a cash only basis and with little to no verification or due diligence mechanisms in place. Further exacerbating this is a complete lack of systematic oversight by any official body, apart from periodic STRs reported to the FMU. Some examples of high-value metals and stones include gold, diamonds and other precious stones used in jewelry-making, which is an important part of Pakistan's wedding culture.¹⁸⁹ There are attempts being made by the FBR to document this sector of the economy and to track all gold purchases.¹⁹⁰ As with the real estate sector, new SECP regulations also compel financial institutions to designate a 'high risk rating' to precious metal enterprises as well.¹⁹¹

Banking

The banking sector continues to face a medium-level risk despite SBP's oversight and the extent of its AML/CFT frameworks. Increased financial inclusion in recent years has enhanced the demand and scope of banking services, thereby exposing the banking sector to more risks. In line with this, banks developed rigorous internal regulations and safeguards to address ML/TF risks, including the necessary due diligence for high-risk customers, STR mechanisms and strict value thresholds as per relevant FATF recommendations.¹⁹² According to the State Bank of Pakistan (SBP), factors that result in a high-risk designation for customers include politically exposed persons (PEPs), those with high value bank accounts and high value transactions, and those with unclear sources of funding.¹⁹³

In 2018, the SBP issued circulars requiring banks to further strengthen rules to prevent ML/TF by implementing a "Fit and Proper Test" criterion for transactions,¹⁹⁴ fool-proofing branchless banking, creating robust governance frameworks, etc.¹⁹⁵ Overall, banks have a reasonable understanding of ML risks, with banks being the only entities from the private sector to have conclusive risk assessment frameworks internally. However, there remains a need to improve knowledge around TF risks as well.¹⁹⁶ In the future, it is also necessary to ensure that banks comply with provisions of FATF Recommendation 15 especially when further integrating new technologies in a bid to adequately counter ML/TF risks.¹⁹⁷

Securities

The securities sector also faces a medium-level risk. Despite compliance with strict Know your Customer (KYC)/CDD guidelines issued by the SECP,¹⁹⁸ officials stated that threats exist due to non-verification of funds being traded in stock markets and a general lack of awareness of AML/CFT regimes overall in the sector. New guidelines issued in 2018 via Statutory Regulatory Order (SRO) 557(I)/2018 provide more robust mechanisms and risk assessment tools to enhance due diligence processes and strengthen reporting structures within this sector.¹⁹⁹ However, the MER notes that there is a scope for wider prudential powers being afforded to reporting entities supervised by the SECP to draw on for additional sanctions beyond fines for AML/CFT breaches.²⁰⁰

187 500 JUD/FIF Properties Confiscated under NAP, The News, 2019.

<https://www.thenews.com.pk/print/469873-over-500-jud-fif-properties-confiscated-under-nap>

188 Chapter 1, Pakistan-FATF. Mutual Evaluation Report (MER) – 2019. Financial Action Task Force.

189 FATF Asks Pakistan to Document all gold purchases, The News, 2019

<https://www.thenews.com.pk/print/457980-fatf-asks-pakistan-to-document-track-all-gold-purchases>

190 Ibid.

191 Chapter 1, Pakistan-FATF. Mutual Evaluation Report (MER) – 2019. Financial Action Task Force.

192 International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation – FATF Recommendations (June 2019)

<http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>

193 State Bank of Pakistan, Prudential AML/CFT Guidelines – Risk Based Approach (SBP) http://www.sbp.org.pk/L_frame/PDF/Prudential/AML-CFT-Guidelines-RiskBasedApproach.pdf

194 State Bank of Pakistan, AML/CFT Guidelines (SBP). <http://www.sbp.org.pk/bprd/2018/C9-A.pdf>

195 State Bank of Pakistan, AML/CFT Guidelines (SBP), 2018 <http://www.sbp.org.pk/bprd/2018/index.htm>

196 Chapter 4, Pakistan-FATF. Mutual Evaluation Report (MER) – 2019. Financial Action Task Force.

197 International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation – FATF Recommendations (June 2019)

<http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>

198 SECP Money Laundering Regulations (2018) <https://www.secp.gov.pk/document/anti-money-laundering-and-countering-financing-of-terrorism-regulations-2018-amended/?wpdmdl=33411>.

199 S.R.O. 557(I)/2018 <https://www.secp.gov.pk/document/anti-money-laundering-and-countering-financing-of-terrorism-regulations-2018-amended/?wpdmdl=33411>.

200 Chapter 4, Pakistan-FATF. Mutual Evaluation Report (MER) – 2019. Financial Action Task Force.

Insurance

The insurance sector also faces low to medium level risks. Interviews with SECP officials showed that initiatives such as SRO 20(1)/2012²⁰¹ further integrated AML/CFT measures into insurance operations and procedures, while the insurance sector was also found compliant with international requirements. Yet officials cited the need for more robust inspection frameworks for the effective implementation of the AMLA regime, and consequently in line with the Financial Action Task Force (FATF) recommendations,²⁰² new guidelines were issued in 2018 under SRO 557(I)/2018,²⁰³ which contain more stringent oversight and reporting mechanisms.

Sectoral Risk Assessment (summarized)

	SECTOR	OVERSIGHT BODY	OVER RISK SCORE (ML/TT RISKS)
1	Exchange companies (particularly B category)	Securities and Exchange Commission Pakistan (SECP)	Medium-High
	Informal/Alternate Remittance Operators (Hawala/Hundi)	SECP*	High
2	Real Estate Market	Directorate General Immovable Properties (DG IMP) - FBR**	Medium-High
3	Precious Metal/Stone	FMU***	Medium-High
4	Banking	SBP	Medium
5	Securities	SECP	Medium
6	Insurance	SECP	Medium-High

* The Hawala/Hundi system usually operates outside the scope of SECP regulations; while it falls under the designation of SECP, it is almost entirely unregulated.

** Due to lack of a single cohesive body governing real estate, a specialized cell was created within FBR to provide oversight and investigate STRs.

*** There is no body for systematic oversight for Precious Metal/Stone Industry, but it is governed by AML/CFT regulations and STRs are investigated reactively by the FMU.

201 Anti-Money Laundering Act 2010, SECP issues clarifications (2013), Business Recorder, <https://fp.brecorder.com/2013/08/201308131219703/>.

202 International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation – FATF Recommendations (June 2019) <http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>.

203 S.R.O. 557(I)/2018

<https://www.secp.gov.pk/document/anti-money-laundering-and-counter-terror-financing-regulations-2018-amended/?wpdmdl=33411>
<https://www.secp.gov.pk/document/anti-money-laundering-and-counter-terror-financing-regulations-2018-amended/?wpdmdl=33411>.

3.6. PROSCRIBED ORGANIZATIONS IN PAKISTAN

Proscribed organizations in Pakistan follow from the provisions of the UNSCRs 1267 and 1373, and are further governed by FATF Recommendations, particularly 6 and 7, that deal with severe sanctioning of organizations that engage in terrorist financing and money laundering for the purpose of terrorist financing.²⁰⁴

Under Sections 11B and 11EE of the ATA 1997, the Interior Ministry is authorized to add proscribed organizations and individuals believed or suspected of being associated with terrorist activities, to a watch-list, and closely monitor their activities.

Under Section 2(q) of the ATA, a proscribed organization “means any organization which is listed in the first Schedule under section 11B.” Under section 11B²⁰⁵ of the ATA, the Federal Government may proscribe any organization where it has reasonable grounds to believe that the organization is involved²⁰⁶ in an act of terrorism, is owned directly or indirectly by an individual proscribed under the 4th Schedule of the same Act or is acting on behalf of any proscribed individual or proscribed organization.

Section 11E talks about the list of proscribed persons, delineated under Schedule 1 of the ATA. However, no consolidated list of individuals currently exists under the Fourth Schedule. It becomes extremely important for the law enforcement agencies to take note of the different organizations as activities involving the procurement and transfer of funds must be monitored. Only then can their accounts be sought out and frozen to curtail their terrorist operations. The ATA provides for such action to be taken against these groups under various subsections of Section 11 as described in Chapters 4 and 5.

As per the National Counterterrorism Authority (NACTA), currently only 71 organizations have been proscribed under Schedule I of the ATA. Pakistan has proscribed 66 organizations and approximately 7,600 individuals under the ATA in compliance with obligations under UNSCR 1373. However, conversely, it is noted that several of the organizations proscribed by the Government of Pakistan are not currently included in the list of terrorist groups or entities designated by the UNSC.

Moreover, according to the MER, Pakistan faces a significant TF threat from a wide range of terrorist organizations, and the country has not installed a risk-based framework in assessing the TF risks from these organizations.²⁰⁷

The following table contains the names of all the organizations, whether operating from within Pakistan or from other countries that have been proscribed by the Ministry of Interior (MOI).²⁰⁸

	ORGANIZATION NAME	DATE PROSCRIBED
1	*Lashkar-e-Jhangvi (LeJ) (Afghanistan)	14 Aug 2001, 3 Feb 2003 under UNSCR 1267
2	Sipah-i-Muhammad Pakistan (SMP)	14 Aug 2001
3	Jaish-e-Muhammad (JeM)*	14 Jan 2002, 17 Oct 2001 under UNSCR 1267
4	*Lashkar-e-Tayyiba (LeT)	14 Jan 2002, 2 May 2005 under UNSCR 1267

204 International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation – FATF Recommendations (June 2019) <http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>.

205 Anti Terrorism Act, 1997 – 11 B Proscription of organizations.—(1) The Federal Government may, by order published in the official Gazette, list an organization as a proscribed organization in the FIRst Schedule on an ex Parte basis, if there are reasonable grounds to believe that it is—

a) Concerned in terrorism; or
b) owned or controlled, directly or indirectly, by any individual or organization proscribed under this Act; or

c) acting on behalf of, or at the direction of, any individual or organization proscribed under this Act.

206 Ali, K. (2016). Nacta moves to streamline list of Fourth Schedulers. [online] DAWN.COM. Available at: <https://www.dawn.com/news/1287247> [Accessed 25 Sep. 2018].

207 Chapter 1, 4, Pakistan-FATF. Mutual Evaluation Report (MER) – 2019. Financial Action Task Force.

208 <https://nacta.gov.pk/proscribed-organizations/>.

5	Sipah-i-Sahaba Pakistan (SSP)	14 Jan 2002
6	Tehrik-e-Jaffria Pakistan (TJP)	28 Jan 2002
7	Tehrik-e-Nifaz-e-Shariat-e-Mohammad (TNSM)	14 Jan 2002
8	Tehreek-e-Islami	14 Jan 2002
9	Al-Qaeda* (Afghanistan)	17 Mar 2003, 6 Oct 2001 under UNSCR 1267
10	Millat-e-Islamia Pakistan (Ex SSP)	15 Nov 2003
11	Khuddam-ul-Islam (Ex JeM)	15 Nov 2003
12	Islami Tehreek Pakistan (Ex TJP)	15 Nov 2003
13	Jamat-ul-Ansar	20 Nov 2003
14	Jamat-ul-Furqan	20 Nov 2003
15	Hizb-ul-Tahreer	20 Nov 2003
16	Khair-un-Naas International Trust (Splinter Gp. of Jamat-ul-Da'awa (JuD))	27 Oct 2004
17	Balochistan Liberation Army (BLA)	07 Apr 2006
18	Islamic Students Movement of Pakistan	21 Aug 2006
19	Lashkar-e-Islami	30 June 2008
20	Ansar-ul-Islam (Iraq)	30 June 2008, 24 Feb 2003 under UNSCR 1267
21	Haji Namdaar Group	30 June 2008
22	Tehrik-e-Taliban Pakistan (TTP) (Afghanistan)	25 Aug 2008, 29 July 2011 under UNSCR 1267
23	Balochistan Republican Army (BRA)	08 Sep 2010
24	Balochistan Liberation Front (BLF)	08 Sep 2010
25	Lashkar-e-Balochistan (LeB)	08 Sep 2010
26	Balochistan Liberation United Front (BLUF)	08 Sep 2010
27	Balochistan Musalla Defah Tanzeem (BMDT)	08 Sep 2010

28	Shia Tulaba Action Committee, Gilgit	10 Oct 2011
29	Markaz Sabeel Organization, Gilgit	10 Oct 2011
30	Tanzeem Naujawana-e-Ahle Sunnat (TNA), Gilgit	10 Oct 2011
31	Peoples Aman Committee (Layari)	10 Oct 2011
32	Ahle Sunnat Wal Jamat (ASWJ) Ex-SSP	15 Feb, 2012
33	Al Harmain Foundation	6 March 2012, 26 Jan 2004 under UNSCR 1267
34	Rabita Trust	6 March 2012, 17 Oct 2001 under UNSCR 1267
35	Anjuman-e- Imamia Gilgit Baltistan	24 April 2012
36	Muslim Students Organization (MSO) Gilgit	24 April 2012
37	Tanzeem Ahle Sunnat Wal Jamat, Gilgit	5 June 2012
38	Balochistan Bunyad Parast Army	04 Aug 2012
39	Tehreek Nafaz-e-Aman	04 Aug 2012
40	Tahafuz Hadudullah	04 Aug 2012
41	Balochisan Waja Liberation Army	04 Aug 2012
42	Baloch Republican Party Azad	04 Aug 2012
43	Balochistan United Army	04 Aug 2012
44	Islam Mujahidin	04 Aug 2012
45	Jaish-e-Islam	04 Aug 2012
46	Balochistan National Liberation Army	04 Aug 2012
47	Khana-E-Hikmat Gilgit Baltistan, Gilgit	13 March 2013
48	Tehrik-e-Taliban Swat (TTS)	15 March 2013
49	Tehrik-e-Taliban Mohmand (TTM)	15 March 2013
50	Tariq Geedar Group (TGG)	15 March 2013
51	*Abdullah Azam Brigade (Lebanon, Syria, Arabian Peninsula)	15 March 2013 23 Sep 2014 vide UNSCR 1267

52	*East Turkmenistan Islamic Movement (ETIM) (Turkey, Afghanistan)	15 March 2013 11 Sep 2002 vide UNSCR 1267
53	*Islamic Movement of Uzbekistan (IMU)(Uzbekistan)	15 March 2013 6 October 2001 vide UNSCR 1267
54	*Islamic Jihad Union (IJU) (Uzbekistan, Afghanistan, Germany)	15 March 2013 1 June 2005 under UNSCR 1267
55	313 Brigade	15 March 2013
56	Tehrik-e- Taliban Bajaur (TTB)	15 March 2013
57	Amar bil Maroof Wa Nahi Anil Munkir (Haji Namdaar Group)	15 March 2013
58	Baloch Student Organization Azad (BSO-A)	15 March 2013
59	United Baloch Army (UBA)	15 March 2013
60	Jeay Sindh Muttahida Mahaz (JSMM).	15 March 2013
61	*Daish/ISIL/IS/ISIS (Afghanistan)	15 July 2015 by MOI, also vide UNSCR 1267
62	*Jamiat Ul Ahrar (JuA)	11 Nov 2016 06 July 2017 vide UNSCR 1267
63	Lashkar-e-Jhangvi Al-Almi (LeJA)	11 Nov 2016
64	Ansar-ul-Hussain	30 Dec 2016
65	Tehreek-e-Azadi-Jammu & Kashmir (TAK)	08 June 2017
66	Jundullah	31 Jan 2018
67	Al Rahmah Welfare Trust Organization	13 Dec 2018
68	Balawaristan National Front (Abdul Hameed Khan Group)	26 Feb 2019
69	Jamaat-ul-Da'awa (JuD) Affiliated Organizations: i. Al-Anfal Trust, Lahore ii. Idara Khidmat-e-Khalaq, Lahore iii. Al-DawatulIrshad, Lahore iv. Al-Hamad Trust, Lahore/Faisalabad v. Mosques & Welfare Trust, Lahore vi. Al-Medina Foundation, Lahore vii. Mazz-Bin-Jabel Education Trust, Lahore	05 March 2019 10 May 2019

70	Falah-e-Insaniat Foundation (FIF) Affiliated organizations: i. Al-Fazal Foundation/Trust, Lahore ii. Al-Easar Foundation, Lahore	05 March 2019 10 May 2019
71	Pak Turk International CAG Education Foundation	18 April 2019

*Entities still on the UNSC Consolidated List established pursuant UNSC Resolutions 1267/1989/2253²⁰⁹

More information on the sanction measures imposed on proscribed individuals and organizations can be found in Chapter 4 of the Guide.

209 United Nations Security Council Consolidated List of Individuals and Entities accessible at: [https://scsanctions.un.org/en/?keywords=Al Qaeda](https://scsanctions.un.org/en/?keywords=Al%20Qaeda)

CHAPTER 4

OVERVIEW OF THE SANCTION MEASURES AND THE PROCEDURE OF COMPLIANCE UNDER THE UNSCR 1267 AND 1373 REGIME

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INTRODUCTION

This chapter provides an overview of the United Nations Security Council (UNSC) Sanctions Regime and Pakistan's obligations under it. It discusses the measures undertaken by Pakistan to comply with UNSCRs 1267 and 1373. These measures include the promulgation of implementing legislation; the listing and de-listing of criminal organizations and individuals; and the procedure that is followed for implementation of the sanctions against those designated entities—i.e. freezing and seizure of the assets, travel ban and arms embargo and penalties for sanctions violations.

LEARNING OUTCOMES

By the end of this chapter, you should be able to:

- Understand the importance of implementation of UNSC Sanctions Regime for Pakistan
- Understand the responsibilities/obligations under the sanction's regime
- Understand the domestic legislative framework implementing the sanctions regime
- Understand the procedural framework for inter-agency coordination and effective implementation of the sanction's regime

ESSENTIAL READING

- Guidelines issued by the Ministry of Foreign Affairs for the Implementation of the UN Security Council Resolutions Concerning Targeted Financial Sanctions, Travel Ban, and Arms Embargo
- NACTA Guidelines on Action to be taken by Competent Authorities for Implementation of United Nations Security Council Resolution 1373
- Anti-Terrorism Act (1997)
- Anti-Money Laundering Act (2010)

4.1. DOMESTIC COMPLIANCE/RESPONSE TO THE SANCTIONS IMPLEMENTATION UNDER THE UNSCR 1267 REGIME

Implementation of the Resolutions of the UNSCRs, adopted under Chapter VII of the United Nations Charter is an international legal obligation for all Member States of the United Nations. The UNSC established the 1267 sanctions regime under its Resolution 1267 (1999).

Pakistan is a dualist nation and, therefore, requires the implementation of domestic legislation in order to enforce UNSCRs. As a result, the United Nations (Security Council) Act, 1948 was promulgated. Under this legislation, the Ministry of Foreign Affairs issues SROs for the implementation of these resolutions.²¹⁰

For supporting the implementation framework further, the Federal Government issued the United Nations Security Council (Freezing and Seizing) Order, 2019. The Order has been issued under Section 2 of the United Nations (Security Council) Act, 1948. The Order delineates the procedure for freezing of assets under the UNSCR regime.²¹¹

A National Committee for overseeing the implementation of sanctions against designated individuals and entities was also established. Guidelines were issued by MOFA to assist stakeholders in various ministries, departments, and agencies at the Federal and Provincial level in understanding the UNSC 1267 Sanctions regime, the domestic legislation implementing it, and the obligations of stakeholders under it.

Listing of Proscribed Organizations

The information concerning the 1267 Committee List is received by the National Focal Point established in the Ministry of Foreign Affairs headed by the Additional Foreign Secretary in charge of the United Nations Affairs. Consequently, under the directions of the MOFA, the advice for necessary action is issued immediately to the MOI and the Ministry of Finance; they then issue instructions to the subordinate authorities working under them. The competent authority to enlist an organization/person as a proscribed organization and individual is the MOI; upon receipt of the information of the criminal organizations from the MOFA, they enlist the entity under 1st Schedule of the ATA.

Upon revision/updates in the UN consolidated list, the MOFA under Section 2 of the United Nations (Security Council) Act (1948) issues an SRO on the same day to give legal effect to the update in Pakistan. The SRO is then shared with all concerned focal persons at the Federal and Provincial level.²¹²

MOFA also maintains the updated consolidated list of designated individuals and entities on its official website at the following link, (<http://www.MOFA.gov.pk/contentsro.php>).

Listing of Proscribed Individuals

An individual may be proscribed under the Fourth Schedule of the ATA on an ex-parte basis if there are reasonable grounds to believe that such person is 'involved with terrorism or is an activist or office bearer of an organization kept under observation under Section 11D or proscribed under Section 11B'.²¹³ The 'reasonable grounds' may be formed either based on information received from a credible domestic or foreign intelligence source and thus include information received by the MOFA about the 1267 Committee List. As indicated above, the competent authority to list organizations and individuals is the MOI; however, in SRO no. (1)/2014, dated 29th October 2014, the MOI²¹⁴ delegated the power and functions as specified under section 11EE r/w Schedule 4 of the ATA (placement of individuals on the proscribed list) to the respective Provincial Home Secretaries and the Chief Commissioner Islamabad Capital Territory.²¹⁵

210 Guidelines on the Implementation of the United Nations Security Council Resolutions Concerning Targeted Financial Sanctions, Travel and Arms Embargo, Ministry of Foreign Affairs.

211 Ibid.

212 Guidelines on the Implementation of the United Nations Security Council Resolutions Concerning Targeted Financial Sanctions, Travel and Arms Embargo, Ministry of Foreign Affairs.

213 Anti-Terrorism Act 1997, Section 11 EE.

214 Supra note 34.

215 The lists of proscribed persons are updated by the respective Home Departments and can be accessed on NACTA's website at <https://nacta.gov.pk>.

Process of the designation of entities/individuals under the 1267 Regime

STEP 1	<ul style="list-style-type: none"> ▶ Listing by Sanctions Committee ▶ Information shared with MoFA
STEP 2	<ul style="list-style-type: none"> ▶ Issurance of SRO by MoFA
STEP 3	<ul style="list-style-type: none"> ▶ Circulation of SRO's to all implementing federal and provincial stakeholders
STEP 4	<ul style="list-style-type: none"> ▶ Implementation of SRO's by concerned provincial and federal stakeholders

4.2. SANCTIONS MEASURES THAT MAY BE IMPOSED AGAINST PROSCRIBED ORGANIZATIONS AND PROSCRIBED INDIVIDUALS UNDER THE 1267 REGIME²¹⁶

Under the 1267 sanctions regime, all States are required to implement the following three sanctions measures against designated individuals and entities:

Asset Freeze

This stipulation requires the freezing (without delay) of funds and other financial assets or resources of designated individuals, groups, entities, etc.. These include funds derived from property owned, or controlled directly or indirectly, by either those mentioned above or by persons acting on their behalf or guidance. Also, it must be ensured that neither these funds nor any other funds are made available (directly or indirectly) for the designated person/entity's benefit. Additionally, no person shall make donations to individuals and entities designated by the Committee or those acting on behalf of or at the direction of the designated persons or entities.

Article 2(i) of the UNSC (Freezing and Seizing) Order (2019),

Property of any description, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and includes deeds and instruments, evidencing title to, or interest in, such property, including cash and monetary instruments, wherever located.

Self-Assessment Question

Pakistan Flood Relief (PRF) is not listed on the UN consolidated list. Upon research, it shows that the majority owner of PRF's assets belongs to a proscribed entity called 'X'.

Does this fulfil the ownership criteria under the UNSC Resolution 1267? Will PRF also be subject to the same restrictions as designated entity X?

Travel Ban

Under this sanction's regime, Member States are required to prevent the entry into or transit through their territories of the designated individuals. It is crucial to note that this provision does not place an obligation on the State to deny entry or require the departure from the territories of its nationals. Additionally, this restriction shall not apply to bar the fulfilment of a judicial process, nor in cases determined explicitly by the National Committee.²¹⁷

²¹⁶ Guidelines on the Implementation of the United Nations Security Council Resolutions Concerning Targeted Financial Sanctions, Travel and Arms Embargo, Ministry of Foreign Affairs

²¹⁷ Guidelines on the Implementation of the United Nations Security Council Resolutions Concerning Targeted Financial Sanctions, Travel and Arms Embargo, Ministry of Foreign Affairs 6.

Arms Embargo

According to this stipulation, States are required to stop the direct or indirect supply, sale or transfer of arms to designated individuals, groups, undertakings and entities from or outside their territories, or those using an entity's flag vessels or aircraft. The definition of 'arms' in this context includes tangible weapons and ammunition, military vehicles, equipment and spare parts, as well as technical advice, assistance or training related to military activities.

Implementation of Assets Freeze

(The role and jurisdiction of entities in the implementation of the measures enumerated here are discussed in further detail in Chapter 6)

- i. Funds, financial assets or economic resources or related services held in the form of bank accounts, stocks or insurance policies etc.

Regulator Entities involved: State Bank of Pakistan (SBP), Securities and Exchange Commission of Pakistan (SECP), Central Directorate of National Savings (CDNS) and Pakistan Post.



- ii. Financial assets or economic resources of the nature of the immovable and movable property

Immoveable assets

Entities involved: CTD, Ministry of Defence (MOD), Home Department, NACTA, Islamabad Capital Territory (ICT), and Land Registration Authorities.

The CT division of MOFA would electronically forward SROs to focal points in all MOD (for Cantonment Boards and Defence Housing Authorities (DHAs)), MOI, Home Departments and ICT. They will identify immovable assets registered in the name of designated individuals and entities from the relevant land registration authorities under their jurisdiction and freeze the titles and seize the assets per Chapters II and IV of the United Nations Security Council (Freezing and Seizure) Order (2019). The MOI will be involved for verification of identity in case of a potential match.

Moveable Assets

Entities involved: Home Departments, MOI and Excise Department.

The Home Departments will forward SROs to the Excise Department. If there is a target match, the Excise Departments will immediately free the titles of any vehicles in the relevant database. The rest of the procedure is like the one outlined above.

Ongoing Monitoring

Entities involved: Home Department, District Intelligence Committees (DICs) and Counter-Terrorism Department.

Home Departments forward SROs to the Deputy Commissioners with the direction to use DICs to identify other assets owned directly or indirectly by designated individuals and entities and report to the Home Departments. In the case of designated individuals, the Home Departments will ascertain how they are meeting daily expenses and whether they have applied for exemptions from assets freezes, as stipulated under Section III of MOFA guidelines and Article 16 of the United Nations Security Council (Freezing and Seizure) Order (2019). In the case where there is no exemption, action will be initiated against them under Sections 11F, 11H, 11I and 11J of the ATA, as applicable.

Self-Assessment Questions

- Name the federal entities involved when implementing freezing of assets.
- Name the provincial entities involved when implementing freezing of assets.
- Give two examples of movable assets and two examples of immovable assets.

For more information on how various agencies play a role in the sanctions process, see Chapter 6.

Prohibition on fundraising activities by individuals and entities

Entities Involved: Home Department (with help from SBP/SECP), local administrations, MOI, NACTA, CFT Task Force, FMU, Pakistan Telecommunication Authority (PTA) and FIA.

Home departments (with the assistance from law enforcement agencies, security agencies and SBP/SECP) continue to monitor the activities of designated individuals/entities to ensure that they do not engage in any fundraising activities or that funds. They also authorize financial assets or economic resources, directly or indirectly, for such individuals' benefit. Collections of animal hides and Chanda/donation boxes are strictly monitored.

Designated entities/individuals will not be allowed to raise funds through the collection of sacrificial hides. Charitable organizations, which have the requisite "No Objection Certificate" (NOC) from the local district administration, would be able to collect hides. Focal points from provincial authorities are supposed to share a consolidated list of designated individuals and entities with district administration to ensure that NOCs are not granted to designated entities/individuals. Violations of these rules will be dealt with under Sections 11F, 11H, 11I and 11J of the ATA, as applicable.

MOI and Home Departments post advertisements in the media to create awareness in public to not donate to designated entities or individuals. Details of assets that are frozen are shared with focal points in MOFA, MOI, NACTA CFT Task Force, FMU, and FIA to enhance inter-agency coordination.

Prohibition of raising funds online

Designated entities and individuals are not allowed to raise funds using the internet or social media as a forum. Focal points from MOFA are supposed to share the consolidated list of SROs with the PTA.

Monitoring of internet: Cyber Crime Wing of FIA and PTA.

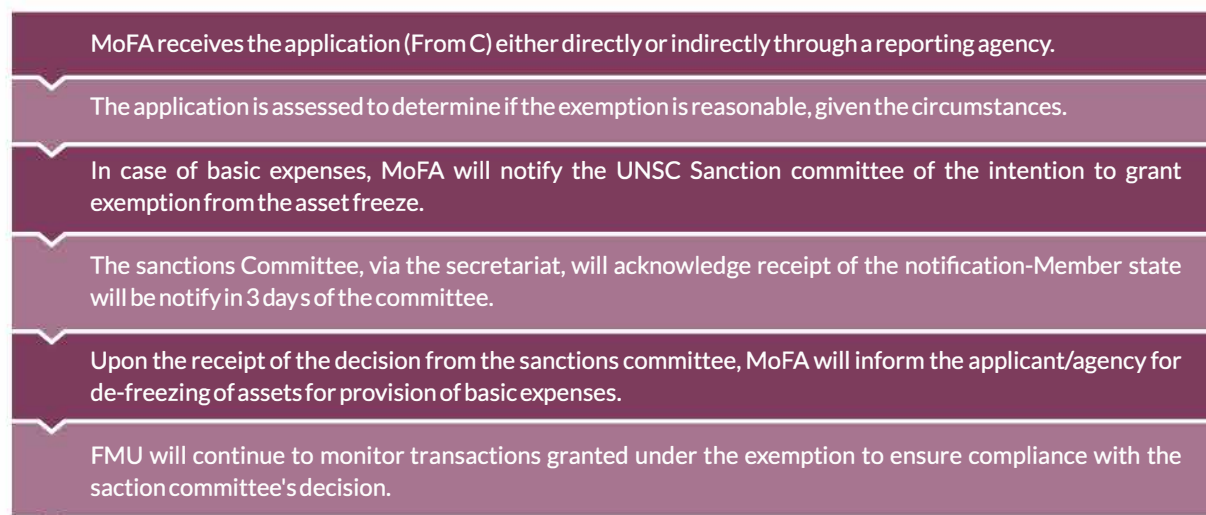
4.3. EXEMPTIONS FROM SANCTIONS MEASURES

The assets freeze provisions do not apply to the following:

1. Necessary basic expenses:
 - a. Payments for food
 - b. Rent or mortgage
 - c. Medicine and medical care

- d. Health insurance
- e. Taxes
- f. Professional fees for maintenance of frozen fund etc.
- g. Extraordinary expenses approved by the 1267 Committee or the 1988 Committee

The designated entity or individual must apply for the exemption under Article 16 of the United Nations Security Council (Freezing and Seizure) Order (2019). The details that are required in the application [Form C – Security Council (Freezing and Seizure) Order (2019)] are stipulated in MOFA Guidelines for 1267. The application will be processed as per the procedure stipulated in Article 16 of the United Nations Security Council (Freezing and Seizure) Order (2019).



4.4. DE-LISTING PROCEDURE²¹⁸

The procedure for de-listing of a designated entity/individual is stipulated on pp. 35–36 of the MOFA Guidelines. Upon de-listing, MOFA, upon notification from the relevant Sanctions Committee immediately issues an SRO and instructs all national stakeholders that the previously designated entity or individual is no longer subject to sanction measures.

4.5. PENALTIES FOR SANCTIONS VIOLATIONS²¹⁹

Section 2 of the United Nations (Security Council) Act (1948) stipulates that provision may be made for the punishment of person(s) who violate the SROs. The United Nations Security Council (Enforcement) Order (2012) prescribes the penalty for violation of SROs.

If a person, including a company, fails or refuses to comply with any SRO issued under UNSC Act (1948), the Federal Government may, if satisfied after giving the opportunity of being heard that the non-compliance or violation was willful, impose a fine of up to 10 million rupees.

Authority: It is the Secretary, MOFA, or any officer authorized by him on his behalf, but not below the rank of Additional Secretary.

MOFA has the power to seek assistance from any Division, Department, Agency of the Federal or Provincial Government, regulatory bodies, LEAs including Police and FIA, for the imposition of the penalty.

Penalties for criminal violations of the sanctions

Individuals (and legal persons/companies) who violate the assets freeze provisions of the UNSC 1267 sanctions shall be prosecuted under Sections 11H, 11I and 11J, as applicable. Persons involved in violations of the arms embargo

²¹⁸ Guidelines on the Implementation of the United Nations Security Council Resolutions Concerning Targeted Financial Sanctions, Travel and Arms Embargo, Ministry of Foreign Affairs

²¹⁹ Guidelines on the Implementation of the United Nations Security Council Resolutions Concerning Targeted Financial Sanctions, Travel and Arms Embargo, Ministry of Foreign Affairs

provisions of the UNSC 1267 sanctions regime shall be prosecuted under the relevant Provincial laws (Arms Ordinances).

4.6. SANCTION MEASURES UNDER UNITED NATIONS SECURITY COUNCIL RESOLUTION 1373²²⁰

As elaborated upon in Chapter 2 (Global Legal Framework), UNSCR 1373 requires countries to put in place mechanisms enabling designation of terrorist organizations and persons associated with terrorism, and have their assets frozen, along with the consequent application of immediate sanctions.

In order to ensure compliance with UNSCR 1373, there are many legal provisions in the ATA providing for the proscription of organizations, freezing and seizure of assets, criminalizing different forms of terrorist financing, and other required measures.

Anti-Terrorism Act of 1997

Sections 6 (7), 11H, 11I, 11J, 11K, 11N, criminalize the offence of terrorist financing and all these offences have been included in the list of predicate offences in the Anti-Money Laundering Act 2010 (elaborated upon in Chapter 6)

Anti-Terrorism Act 1997

Sections 11B, 11E, 11EE, 11EEEE, 11O, 11OO and 11P concern procedures for implementation of UNSC 1373 by empowering Pakistan's implementing agencies to freeze and confiscate terrorist assets and introduce provisional measures required to be implemented under UNSCR 1373. (The powers of the provincial CTDs under 11EE, 11EEE, 11O and 11P have been elaborated upon in Chapter 7.).

The procedures to comply with UNSCR 1373, from the stage of proscription to freezing and seizure of assets, are as follows:²²¹

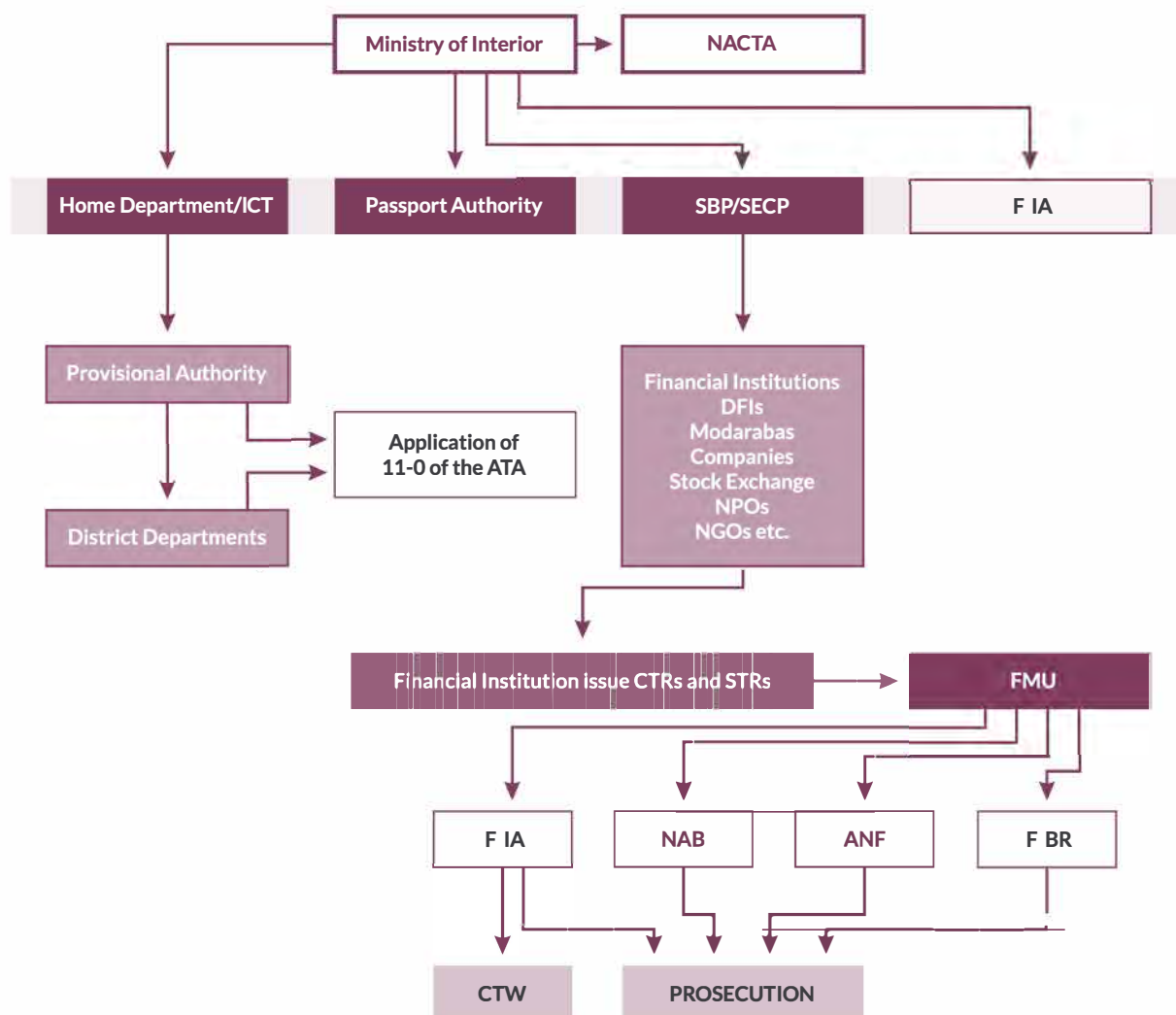
Step 1: Listing of the Organization/Entity

The competent authority, Ministry of Interior (MOI), may include an organization in the First Schedule of ATA 1997 considering Section 11B of the ATA. The updated list of criminal organizations can be accessed on NACTA's website at <https://nacta.gov.pk>. For proscription of persons, MOI has delegated the power and functions as specified in Section 11

²²⁰ Guidelines on Actions to be taken by Competent Authorities for Implementation of United Nations Security Council Resolution No. 1373, National Counter Terrorism Authority

²²¹ The role, jurisdiction and coordination of each entity has been discussed in further detail in Chapter 6 of the Guide.

Authorities for Compliance with the Notification



E of the ATA to the respective Provincial Home Departments, which can also be accessed on the same link on NACTA's website.

Step 2: Freezing of Bank and Financial Accounts

In the case of criminal organizations, MOI issues the notification to the SBP and SECP to freeze the bank accounts or other financial accounts of the entity. In the case of individuals proscribed by the Home Departments or Chief Commissioner (ICT), the notification gets sent to the SBP and SECP for freezing of the individuals' accounts.

SBP, in its Guidelines on Compliance of Government of Pakistan's Notifications issued under UNSC Resolutions, stipulates that SBP circulates the notifications of proscribed entities/individuals to its regulated entities for taking necessary action. These SROs/Notifications, in addition to other requirements, require banks/DFIs/MFBs to "freeze without delay the bank accounts, funds and other financial assets or economic resources, including funds derived from property owned or controlled, directly or indirectly by a listed/proscribed individual/entity." SBP also advises its regulated entities to report details of such frozen assets taken in compliance with the relevant SRO/notification to SBP within the stipulated time.

Step 3: Freezing of Immovable Properties

UNSCR 1373 requires countries to freeze without delay the funds or assets of proscribed entities and individuals. Section 11O of the ATA 1997 states that money or other property owned or controlled wholly or partly, directly or indirectly, shall be frozen or seized. No person shall use, transfer, convert, dispose of or remove such money or other property without the permission of the Court and the law enforcement authorities. Within 48 hours of any freezing or

seizure of assets, the concerned person shall submit a report containing details of the property and the person affected by this to the Federal Government.

Step 4: Freezing of Other Facilities and Activities:

Proscribed organizations or persons are at times engaged in social, religious or charitable activities. Furthermore, these proscribed entities or individuals may be holding various assets, including immovable and movable assets for conducting such activities.

Un-Freezing of Assets

The ATA 1997 established a legal procedure for unfreezing of assets under Section 11U, which states that the Federal Government may, by notification in the Official Gazette, remove any organization or person from the First or Fourth Schedule at any time on the basis that no reasonable grounds for proscription exist. Upon cancellation of proscription, any money or property that has been frozen or seized shall be released promptly. The competent authority (MOI and Home Departments) shall remove the organization or person from the First Schedule or Fourth Schedule, respectively.

4.7. MEASURES FOR COMBATING MONEY LAUNDERING UNDER ANTI MONEY LAUNDERING ACT, 2010 (AMLA)

The AMLA was enacted to comply with global AML standards. Section 6(2) of the AMLA states that “the Federal Government shall, by notification in the Official Gazette, establish a Financial Monitoring Unit which shall be housed in SBP or at any other place in Pakistan.” As a result of this legislation, the FMU was set to enhance the efficacy of the anti-money laundering regime.

Section 7 of the AMLA 2010 specifies that all Reporting Entities²²² shall file with the FMU, no later than seven (7) working days²²³, to the extent and in the manner prescribed by the FMU, Suspicious Transaction Reports and Currency Transaction Reports.²²⁴ While examining the activities of its customers, regulated entities are required to pay special attention to all involved, unusually large transactions, and all unusual patterns of transactions that have no apparent economic or visible lawful purpose. The background and purpose of such transactions shall, as far as possible, be examined; the findings established in writing, and be available to assist the relevant authorities in inspection and investigation.²²⁵ The transactions that are out of character or inconsistent with the history, pattern, or regular operation of the account, including through massive deposits, withdrawals and transfers, shall be viewed with suspicion, be investigated appropriately, and be referred to a Compliance Officer for possible reporting to FMU under the AMLA.²²⁶ (Please see Appendix M for a list of examples of STRs and CTRs.)

Once the FMU receives the STR or CTR, it is responsible for analyzing the report. It may call for additional records or information from any agency or person in Pakistan related to the transaction. Subsequently, the FMU, after a thorough analysis of the report and other records, may disseminate, on a confidential basis, the necessary information or any other material to the concerned investigation agency for further enquiry under the AMLA 2010. The three investigation agencies that have been designated under the AMLA 2010 are FIA, ANF and the NAB. Based on the nature of the offence and the jurisdiction of the agency, FMU forwards the case for investigation. (The role and jurisdiction of each agency has been elaborated upon in Chapter 6).

²²² Reporting entities can include financial institutions and non-financial institutions. A financial institution can include any institution carrying on any one or more of the following activities, namely: - (i) acceptance of deposits and other repayable funds from the public; (ii) lending in whatever form; (iii) financial leasing; (iv) money or value transfer; (v) issuing and managing means of payments including but not limited to credit and debit cards, cheques, traveler's cheques, and money orders.

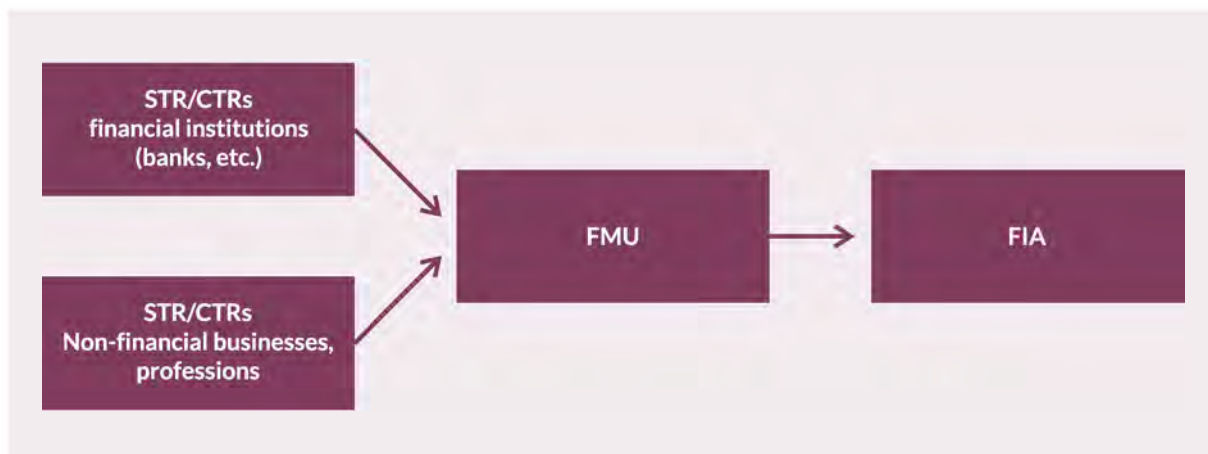
A non-financial institution includes real estate agents, jewelers, dealers in precious metals and precious stones, lawyers, notaries and other legal professionals, accountants, trust and company service providers and such other non-financial businesses and professions as may be notified by the Federal Government.

²²³ Section 7 of the AMLA 2010.

²²⁴ A CTR means a report on currency transactions exceeding an amount of 2 million PKR (This amount has been specified by the National Executive Committee.).

²²⁵ Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) Regulations for Banks & Development Finance Institutes (DFIs).

²²⁶ Ibid, Regulation 4.



The FIA has been defined as the investigating or prosecuting agency under the AMLA. It has a Counter-Terrorism Wing (CTW) that detects and investigates terrorist financing/money laundering cases. The Terrorist Financing Investigation Unit (TFIU) at FIA facilitates investigation and prosecution of cases in courts of law.

Investigation powers under the AMLA provide for attachment of property involved in money laundering, investigation of such cases, power of survey, search and seizure, powers of arrest, retention of property, records, and letters of request to the contracting State.

Anti-Money Laundering Act of 2010

Sections 8, 9, 13, 14, 15, 16, 17, 18, 24, 25, 27, 28, and 29 are all relevant in this regard. The provisions enumerating the powers of the LEAs under the AMLA regime for prosecuting a TF offence will be reviewed in Chapter 5.

CHAPTER 5

CRIMINALIZING TERRORISM FINANCING AND MONEY LAUNDERING

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INTRODUCTION

The purpose of this chapter is to provide the reader with a comprehensive understanding of how the offences of terrorism financing and money laundering are criminalized under the Anti-Terrorism Act 1997 and the Anti-Money Laundering Act 2010. The chapter is divided into two parts. Part A provides an overview of the elements of terrorism financing offences and measures to freeze and confiscate property accordingly under ATA. Part B of the chapter will provide an overview of money laundering and identify the elements necessary to prove for offences under the AMLA 2010, to assist with adjudicating trials. Taking the profit out of crime is a necessary deterrent power, and this section will also provide an overview of relevant asset recovery provisions, including freeze orders, attachment, and forfeiture.

LEARNING OUTCOMES

By the end of this chapter and the relevant readings, you should be able to:

- Define terrorism under the Anti-Terrorism Act, 1997;
- Cite relevant provisions of the ATA and AMLA that criminalize terrorism financing and money laundering and set forth the elements necessary to so prove;
- Detail the procedure of asset recovery (attaching, preventing disposal, freezing, seizure and confiscation) under the ATA and AMLA;
- Identify the elements that constitute money laundering as distinct from terrorism;
- Frame charges appropriately and categorizes different types of evidence.

ESSENTIAL READING

- Anti-Terrorism Act, 1997;
- Anti-Money Laundering Act, 2010;
- FATF Recommendations;
- UNSCR 1373.

PART A: ANTI-TERRORISM ACT 1997 (ATA)

The objective of the ATA is to make provision for the prevention of terrorist activities, sets forth the elements of the crime, as well as enough punishment and ancillary matters such as freezing terrorist funds. The ATA makes clear that unless explicitly stated, the provisions of the ATA will override any other law.²²⁷

5.1. DEFINITION OF TERRORISM

Terrorism has a broad definition and includes any action that:²²⁸

- Involves the doing of anything that causes death;
- Involves grievous violence against a person or grievous bodily injury or harm to a person;
- Involves grievous damage to property [including government premises, official installations, schools, hospitals, offices or any other public or private property including damaging property by ransacking, looting or arson or by any other means;
- Involves the doing of anything that is likely to cause death or endangers a person's life;
- Involves kidnapping for ransom, hostage-taking or hijacking;
- Involves the use of explosive by any device including bomb blast [or having an explosive substance
- Without any lawful justification or having been unlawfully concerned with such explosive;
- Incites hatred and contempt on a religious, sectarian or ethnic basis to stir up violence or cause an internal disturbance;
- Involves taking the law in one's hand, an award of any punishment by an organization, individual or group whatsoever, not recognized by the law, to coerce, intimidate or terrorize public, individuals, groups, communities, government officials and institutions, including law enforcement agencies beyond the purview of the law of the land;
- Involves firing on religious congregations, mosques, imam bargahs, churches, temples and all other places of worship, or random firing to spread panic or involves any forcible takeover of mosques or other places of worship;
- Creates a severe risk to the safety of the public or a section of the public, or is designed to frighten the general public and thereby prevent them from coming out and carrying on their lawful trade and daily business, and disrupts civic life;
- Involves the burning of vehicles or any other severe form of arson;
- Involves extortion of money ("Bhatta") or property;
- Is designed to seriously interfere with or seriously disrupt a communication system or public utility service;
- Involves severe coercion or intimidation of a public servant in order to force him to discharge or to refrain from discharging his lawful duties;
- Involves serious violence against a member of the police force, armed forces, civil armed forces, or a public servant;
- Involves acts as part of armed resistance by groups or individuals against the law
- Enforcement agencies; or
- Involves dissemination, preaching ideas, teachings and beliefs as per one's interpretation on FM stations or through any other means of communication without the explicit approval of the Government or its concerned departments.

AND:

Is designed to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect [or a foreign government or population or an international organization] or create a sense of fear or insecurity in society; or the use or the threat is made to advance a religious, sectarian or ethnic cause

OR:

Intimidating and terrorizing the public, social sectors, media persons, business community or attacking the civilians, including damaging property by ransacking, looting, arson or by any other means, government officials, installations, security forces or law enforcement agencies

²²⁷ Section 32 Anti-Terrorism Act 1997

²²⁸ Section 6 Anti-Terrorism Act 1997

The ATA, therefore, criminalizes various acts as terrorism. It defines terrorism in two ways. First, it provides a general definition of terrorism in which actus reus elements and mens rea elements combine to form an offence. Secondly, it criminalizes specific offences, which facilitate or promote terrorism, including but not limited to involvement in terrorist organizations, terrorism financing, and money laundering.

Anti-Terrorism Act, 1997

Sections 6(7), 11F, 11H, 11K, 11J, 11I criminalize the offence of terrorism financing

Sections 11B, 11C, 11CC, 11D, 11E, 11EE, 11O, 11OO, 11-P, 11-Q, outline the procedures for implementation of UNSCR 1373(2001).

Provisions Criminalizing the Financing of Terrorism under ATA

SR. NO	SECTION OF ATA, 1997	OFFENCE	PROVISION
1	6(6)	Terrorism	Under this Act, a "terrorist" means: an individual who has committed an offence of terrorism under this Act and is or has been concerned in the commission, preparation, facilitation, funding or instigation of acts of terrorism;
2	11F(1)	Membership, support and meetings relating to a Proscribed Organization	Soliciting, collecting or raising funds for a proscribed organization
3	11-H	Funds raising	<ol style="list-style-type: none"> 1. A person commits the offence of terrorism if he: <ol style="list-style-type: none"> (a) invites another person or organization to provide money or other property, and (b) intends that it should be used or has reasonable cause to suspect that it may be used, for terrorism. 2. A person commits an offence if <ol style="list-style-type: none"> (a) he receives money or other property, and (b) intends that it should be used or has reasonable cause to suspect that it may be used, for terrorism. 3. A person commits an offence if he provides money or other property; knows or has reasonable cause to suspect that it will or may be used for terrorism.

4	11I	Use and possession	<p>A person commits an offence if</p> <ol style="list-style-type: none"> 1. he uses money or other property for terrorism; or 2. (a) possesses money or other property; and (b) intends that it should be used or has reasonable cause to suspect that it may be used, for terrorism.
5	11J	Funding Arrangements	<ol style="list-style-type: none"> 1. A person commits an offence if he <ol style="list-style-type: none"> (a) enters or becomes concerned in an arrangement as a result of which money or other property is made available or is to make available to another; (b) Moreover, has reasonable cause to suspect that it will or may be used for terrorism. 2. Any person in Pakistan or a Pakistani national outside Pakistan shall commit an offence under this Act, if he knowingly or willfully makes money or other property or services available, directly or indirectly, wholly or jointly, for the benefit of a proscribed organization or proscribed person.
6	11K	Money-laundering	<p>A person commits an offence if he enters into or becomes concerned in any arrangement which facilitates the retention or control, by or on behalf of another person, of terrorist property by concealment, by removal from the jurisdiction, by transfer to nominees, or in any other way.</p>
7	11N	Punishment under Sections 11H to 11K	<p>Any person who commits an offence under sections 11H to 11K, shall be punishable on conviction with imprisonment for a term not less than five years and not exceeding ten years and with fine.</p>
8	11L	Disclosure of Information	<p>A person commits an offence if he suspects that another person has committed an offence of terrorism or financing of terrorism under the ATA and fails to disclose it to the police officer as soon as it is reasonably possible.</p>
9	11M	Cooperation with the Police	<p>A person does not commit an offence under sections 11H to 11K if he is acting with the express consent of a police officer, not below the rank of a Deputy Superintendent</p>

Section 11L was discussed in the case of Jameel Ahmad V. Home Secretary, Government of Punjab,²²⁹ in this case, the Court held:

It can safely be concluded that before passing a detention order, the authorities must have a recourse to section 154, Cr.P.C., when the allegations levelled against the detenus in the detention orders constitute a criminal offence under Anti-Terrorism Act, 1997, Pakistan Penal Code or any other law, as in this case most of the allegations levelled against the detenus are criminal offences. Furthermore, under section 11-L of the Anti-Terrorism Act, 1997 a person who receives information about the involvement of a person in an offence covered by Anti-Terrorism Act, 1997, and he believes or suspects that someone has committed an offence under the above Act, he is under a legal compulsion to disclose such belief or suspicion to the police officer.

It is important to note that if a person has done any of the acts described in 11H-11K with the express consent of a police officer, not below the rank of a Deputy Superintendent, he is not liable for any crime as per section 11M.

5.2. FOREIGN TERRORIST FIGHTERS (FTF)

Where nationals of Country X travel to another Country Y in furtherance of terrorism, they are internationally referred to as Foreign Terrorist Fighters (FTF). Although the ATA does not explicitly outlaw recruitment and travel in the furtherance of terrorism, the broad language of the Act provides several mechanisms by which Pakistan can implement UNSCR 2178 (2014) on addressing FTFs.

For example, FTFs who upload material or appear in videos in support of terrorist groups (disseminated either at home or when they are abroad), can be charged with more serious offences including incitement to murder along with supporting terrorism and membership of a proscribed terrorist entity. The proven swearing of an oath of allegiance and other declarations of assistance to a terrorist group can support charges of membership or support of a proscribed organization. At the same time, returning FTFs who have been involved in fighting or executions can additionally be considered for war crimes, such as the killing of civilians.

Where there is insufficient evidence of terrorist intent, there may be other offences within domestic criminal law that can be considered against returning or aspiring FTFs. For example, there may be evidence of immigration offences or fraud concerning travel documents. Equally, there may be evidence of crimes such as murder or conspiracy to murder. However, relying on common offences runs the risk that the Courts will be unable to address the full severity of the case.

Self-Assessment Questions

- How does the ATA criminalize the offence of terrorism financing?
- What measures can the police take under the ATA against a proscribed organization or an individual?
- If a person or an organization commits an offence stipulated under Section 11H-K, what penalty can be imposed upon the offender?

5.3. MEASURES UNDERTAKEN AGAINST TERRORIST PROPERTY

"Terrorist Property"²³⁰ is defined as:

- (i) (a) Money or other property which is used or is likely to be used for terrorism (including any resources of an organization concerned in terrorism or a terrorist);
- (b) Proceeds of the commission of acts of terrorism;
- (c) Proceeds of acts carried out for terrorism; and
- (ii) In sub-section (i) above;
- (a) A reference to proceeds of an act includes reference to any property which wholly or (including payments of other rewards in connection with the commission); [and]

²²⁹ Jameel Ahmad v. Home Secretary, Government of Punjab, Lahore, 2013 P Cr. L J 1322

²³⁰ Section (aa) Anti-Terrorism Act 1997

- (b) The reference to an organization's resources includes a reference to any money or other property which is applied or made available or is to be applied or made available, for use by the organization [and includes assets of any kind, whether tangible or intangible, movable or immovable, and legal documents or instruments in any form, whether written, electronic or digital, and shares, securities, bonds, drafts and letters of credit partly, and directly or indirectly represents the proceeds of the act

Preventing Disposal

A police officer not below the rank of superintendent²³¹ can prevent disposal of property on written notice to the person in possession when:²³²

- He has enough evidence to believe that any property
- Which is the subject matter of the inquiry or investigation
- He is likely to be removed, transferred, or otherwise disposed of before an order of the appropriate authority for its seizure is obtained,

Any contravention of a written order is punishable with rigorous imprisonment for a term that may extend to two years, or with fine, or with both.²³³

Freezing Terrorist Property

A proscribed organization or person can have money or other property under their control or ownership, or money or property generated from this property, frozen or seized by the Federal Government.²³⁴

Once the money or property is frozen or seized, no person can use, transfer, covert, dispose or remove it.²³⁵ Any person breaching a freeze can be charged a fine not exceeding ten million rupees, and every Director, officer, or employee of such person found guilty can be punished in the same terms.²³⁶ It is possible that if the property has been inadvertently frozen or seized, the affected person can apply to the Federal Government to make inquiries. If the Federal Government is satisfied with the application, it will release the frozen property immediately.²³⁷ The Federal Government can allow money seized (or frozen) to be used for necessary medical, educational, and subsistence allowances, upon application by a proscribed organization or person.²³⁸

Attaching Terrorist Property

If an investigating officer wants to attach (i.e. prohibit transfer, conversion, disposition or movement) 'terrorist property' they must apply to a court (the ATA does not specify this is the Anti-Terrorism Court).²³⁹

The attachment will be for a period specified in the Order by the Court or pending completion of the investigation. The notice must be given to a person affected by the attachment or from whom the property was attached. Cash attached must be held in a profit or loss account and any profit or loss so earned shall be added if released.²⁴⁰ There is no procedure or standard of proof stipulated under the ATA for an attachment. It is suggested that a police officer requesting a freeze should:

- Submit a written application to the Court outlining:
 - As much detail as possible about the property, person or entity involved
 - Reasons for suspecting the property or cash is terrorist property;
 - The possibility of dissipation of the property soon after the commission of an offence.

231 Or a joint investigation team where there is preventative detention pursuant to section 11E following the calling in of armed forces and civil armed forces in aid of civil power pursuant to section 4 Anti-Terrorism Act 1997

232 Section 11E(1) Anti-Terrorism Act 1997

233 Section 11E(2) Anti-Terrorism Act 1997

234 Section 11O(1)(a) Anti-Terrorism Act 1997

235 Section 11O(1)(c) Anti-Terrorism Act 1997

236 Section 11O(2) Anti-Terrorism Act 1997

237 Section 11O(4) Anti-Terrorism Act 1997

238 Section 11O(1) Anti-Terrorism Act 1997

239 Section 11P Anti-Terrorism Act 1997

240 Section 11P Anti-Terrorism Act 1997

It would be good practice for the Court when deciding to issue an attachment order against terrorist property to:

- Assess the reasonableness of the application on merit;
- To the effect that the proposed property may be used in the commission of an offence under the Act

If the terrorist property is intermingled with legitimate sources, the officer applying for an attachment should suggest that such property, up to the value of the mingled terrorist property or where the value of the terrorist property cannot be determined. The full value of the mingled property shall be liable to attachment.

Forfeiture of Terrorist Property

If an accused is convicted of the terrorist financing offences of fundraising,²⁴¹ use and possession,²⁴² funding arrangements²⁴³ or money laundering,²⁴⁴ the ATC may order forfeiture of any property or cash.²⁴⁵ Where a person is convicted of a funding offence under section 11H(1) or (2) or use and possession under section 11I, the Court may order the forfeiture of any money or other property:²⁴⁶

- Which, at the time of the offence, he had in his possession or under his control; and
- Which at that time, he intended should be used, or had reasonable cause to suspect might be used, for terrorism.

Where a person has been convicted of fundraising under 11H(3), the Court may order the forfeiture of any money or other property:²⁴⁷

- Which, at the time, of the offence, he had in his possession or under this control; and
- Which, at the time, he knew or had reasonable cause to suspect would or might be used for terrorism.

Where a person is convicted of funding arrangements under section 11J, the Court may order the forfeiture of the money or other property:²⁴⁸

- To which the arrangement in question-related; and
- Which, at the time of the offence, he knew or had reasonable cause to suspect would or might be used for terrorism.

Where a person is convicted of money laundering under section 11K, the Court may order the forfeiture of the money or other property to which the arrangement in question-related.²⁴⁹ Where a person is convicted of any fundraising, use and possession, funding arrangement or money laundering offence under sections 11H to 11K, the Court may:

- Order forfeiture of any money or other property that wholly or partly, and directly or indirectly, is received by any person as a payment or other reward in connection with the commission of the offence.²⁵⁰

A third party claiming the ownership or interest in any property may:²⁵¹

- Within fifteen days of freezing or of taking into possession or control of such property or assets;
- Or within such extended period as the Court may, for reasons to be recorded, allow;
- File his claim before the Court;
- The Court shall decide the claim after giving notice to the prosecution and hearing the parties.

241 Section 11H Anti-Terrorism Act 1997

242 Section 11I Anti-Terrorism Act 1997

243 Section 11J Anti-Terrorism Act 1997

244 Section 11K Anti-Terrorism Act 1997

245 Section 11Q Anti-Terrorism Act 1997

246 Section 11Q(2) Anti-Terrorism Act 1997

247 Section 11Q(3) Anti-Terrorism Act 1997

248 Section 11Q(4) Anti-Terrorism Act 1997

249 Section 11Q(5) Anti-Terrorism Act 1997

250 Section 11Q(6) Anti-Terrorism Act 1997

251 Section 11Q(7) Anti-Terrorism Act 1997

The evidential standard for forfeiture is set out in section 11R of the Anti-Terrorism Act 1997:

- (1) The Court may pass an order for forfeiture under section 11Q upon conviction and only if satisfied on reasonable grounds that the money or other property is a terrorist property and before so doing must allow being heard to any person –
 - (a) Who is not a party to the proceedings; and
 - (b) Who claims to be the owner of or otherwise interested in any of the money or other property, which can be forfeited under this section.
- (2) An order may be made under section 11Q, whether proceedings are brought against all the persons for an offence with which the money or other property is connected.

Any party to the forfeiture proceedings may appeal to the High Court within 30 days of the making of the Order.²⁵²

Any property forfeited will be deposited into a fund as described in section 11T of the Anti-Terrorism Act 1997:

- (1) Any money or other property to which a forfeiture order under sections 11R and 11S applies, along with [any addition, return,] profit and loss accrued, shall be deposited into a special fund to be notified by the Federal Government-
 - (a) After the expiry of the limitation period within which an appeal against the forfeiture order may be brought under section 115 (2); or
 - (b) Where an appeal brought under section 11S has been determined and disposed of.
- (2) Any fund constituted by the Federal Government under sub-section (1) may also be used to compensate victims of acts of terrorism or in the case of deceased victims, their dependents.
- (3) The Federal Government may, by rules made under this Act, prescribe the manner of administration of the fund and management or disposal of the money or property forfeited under this Act.

*Please note - if any proscription is cancelled any money or property must be released in a timely fashion.²⁵³

252 Section 11S Anti-Terrorism Act 1997
 253 Section 11U(3) Anti-Terrorism Act 1997

PART B: Anti-Money Laundering Act 2010

Prosecutions for money laundering can involve any of these stages in the money laundering process.

Money laundering is invariably serious as it:

- i. Incentivizes crime by rendering it profitable
- ii. Provides domestic and transnational organized crime with a cash flow to perpetrate further crimes
- iii. Threatens the financial system and its institutions, both domestic and international

Asset recovery and money laundering offences are inter-linked. Where money launderers have benefitted from their criminality, asset recovery should be used to repatriate stolen money and assets confiscated.

5.4. ANTI-MONEY LAUNDERING ACT OF 2010

The Anti-Money Laundering Act 2010 (AMLA) criminalizes money laundering in the following ways:

1. Acquiring, converting, possessing, using or transferring property knowing or having reason to believe that it is the proceeds of crime:²⁵⁴ Possession means having custody of criminal property.

ELEMENT (ACT)	ELEMENT (INTENT)	PARTICULARS	PARTICULARS
Acquires	Knowing	That such property	Is the proceed of crime
Converts	Or having reason to believe		
Possesses			
Uses or			
Transfers			

2. Conceals or disguises the true nature, origin, location, disposition, movement or ownership of property knowing or having reason to believe that it is the proceeds of crime:²⁵⁵ This requires evidence of concealing or disguising the nature, source, location, disposition, movement or ownership or any rights concerning the relevant property. It is essential to be aware that mere suspicion is not enough to support a conviction. The prosecution must prove that the accused knew or ought to have known the property is the proceeds of crime.

ELEMENT (ACT)	PARTICULARS	ELEMENT (INTENT)	PARTICULARS	PARTICULARS
Conceals	The true nature	Knowing	That such property	Is the proceed of crime
	Origin			
	Location			
	Disposition			
	Movement			
	Or ownership			
Or Disguises		Or having reason to believe		

²⁵⁴ Section 3(a) Anti-Money Laundering Act 2010

²⁵⁵ Section 3(b) Anti-Money Laundering Act 2010

3. Holds or possesses on behalf of any other person, knowing or having reason to believe that such property is the proceeds of crime:²⁵⁶ This would require an overt act where the accused, knowing or where he ought to have known that the property is the proceeds of a particular predicate crime, takes positive action to prevent others knowing that the proceeds are illegitimate. This overt act should be identifiable in order to prove the element of converting or transferring. This could include, for example, incriminating the staff at financial or credit institutions, accountants, etc., who, during their work, facilitate money laundering by or on behalf of other persons.

ELEMENT (ACT)	PARTICULARS	PARTICULARS	ELEMENT (INTENT)	PARTICULARS	PARTICULARS
Holds	On behalf of another person	Any property	Knowing	That such property	Is the proceed of crime
Or possesses			Or having reason to believe		

4. This element refers to participation, association, conspiracy, commission (and attempts at commission), along with aiding, abetting, facilitating, or counselling.²⁵⁷ If an accused enters into an arrangement to launder the proceeds of crime through retaining control or making funds available to acquire a property – knowing that another has obtained proceeds from unlawful activity, he would be committing an offence of aiding and abetting; in short, those who launder on behalf of others. This provision can incriminate those who work in financial or credit institutions, accountants, or lawyers, who, during their work, facilitate money laundering by or on behalf of other persons.

ELEMENT (ACT)	PARTICULARS	PARTICULARS
Participates in	The commission of acts	In sections 3(a), 3(b) and 3(c) AMLA 2010
Associates		
Conspires to commit		
Aids		
Abets		
Facilitates		
Or Counsels		

5.5. PROCEEDS OF CRIME

The term “proceeds of crime” refers to any property obtained or derived directly or indirectly from the commission of a predicate offence, or a *foreign serious offence*.²⁵⁸

‘Property’ includes tangible, intangible, movable and immovable property as well as cash and any legal deeds or instruments showing title to, or interest in the property.²⁵⁹

²⁵⁶ Section 3(c) Anti-Money Laundering Act 2010

²⁵⁷ Section 3(d) Anti-Money Laundering Act 2010

²⁵⁸ Section 2(q) Anti-Money Laundering Act 2010

²⁵⁹ Section 2(r) Anti-Money Laundering Act 2010

This definition of 'property' may not include cryptocurrencies. Under the domestic legal framework, the possession of cryptocurrency is not illegal by itself; it must be linked to a predicate offence for it to be unlawful. In April 2018, the State Bank of Pakistan issued a circular implementing a blanket ban in dealing with all cryptocurrencies.²⁶⁰

Property in this context also includes property obtained indirectly through a predicate offence. For example, if a predicate offence of trading narcotics is established, the direct property in this example would be the money paid for the narcotics. If the profits of the crime are used to buy other assets such as a house or a car; these assets would be defined as 'property' as stated.

Retaining or controlling does not necessarily mean that the accused owns the property in question. It would be enough if the accused leased the property or owned part of a company through which monies from a predicate offence were transferred. The essential element for control is that the accused was able to manage or handle the property in a way that meant he or she could determine what happened to that property.

The AMLA contains a Schedule of all predicate offences that the prosecution must prove money or property was derived from.²⁶¹

A 'foreign serious offence' means an offence against the law of a foreign State, which had it occurred in Pakistan would have been a predicate offence.²⁶² The foreign serious offence must be confirmed in a certificate issued by the Government of that State. (The MLA process has been elaborated upon this process of international cooperation in further detail in Chapter 10 of this Guide).

5.6. KNOWLEDGE

Though it is not necessary to prove the predicate offence,²⁶³ and as will be seen below, it is good practice to charge the predicate offence alongside any charge for laundering the proceeds of this criminality, as will be shown below.

When adjudicating money laundering offence(s), the prosecution must prove that the accused knew the property in question was the proceeds of a crime.

Explanation II of Section 3 of AMLA states that proving that property is the proceeds of crime is not dependent on a person being convicted of a predicate offence. Although a predicate offence would not have to be proven, there would have to be evidence that the proceeds of crime are linked to a predicate offence. This link could be by way of circumstantial evidence inferring the link to a predicate offence in the Schedule of the AMLA - see case study below.

CASE STUDY

The accused had been arrested at the International Airport about to board a flight for Delhi. He had checked-in suitcases containing over a million USD, wrapped in newspapers, failing to declare the same in a custom notice he completed. The accused, when questioned by a customs officers who found the cash, said that he was given the money by another man, who he knew was involved in the theft of cars. He said he had taken cash to India for this man, in the same way, several times before and knew what he was doing was wrong. Airline records show that this was, in fact, the thirtieth flight the accused had made to India in the past 12 months. On each occasion, he checked in a substantial weight of suitcases. The man named by the accused as the source of the money could not be located but was wanted by the police for theft of cars contrary to section 381A of the Pakistan Penal Code, 1860. In this situation an offence has been committed contrary to section 3(a) of the Anti-Money Laundering Act 2010, namely, possessing the money seized knowing or having reason to believe it is the proceeds of crime. This is an appropriate charge based on the facts, as the accused knows about the theft of cars it is a reasonable inference that the money he had and removing from the jurisdiction was linked to this criminality. Further, the accused is smuggling the cash out of Pakistan contrary to section 2(s) Customs Act, 1969 and made a false declaration in the customs notice contrary to section 32(1)(a) of the Customs Act, 1969 – both predicate offences.

²⁶⁰ State Bank of Pakistan Circular No. 3 of 2018, SBP, <http://www.sbp.org.pk/bprd/2018/C3.htm>

²⁶¹ Anwar Khan vs. State [2018 YLR Peshawar High Court]; Azmat Ullah vs. State [2016 YLR 361]; Muhammad Usman vs. State [2016 PCr.LJ 54 Peshawar High Court]

²⁶² Section 2(i) Anti-Money Laundering Act 2010

²⁶³ Section 3 Anti-Money Laundering Act 2010 Explanation II

5.7 EVIDENCE

Typically, evidence of the criminal origin of proceeds may be proved in money laundering proceedings by:

1. Direct evidence through eyewitness testimony, or that from an accomplice;
2. Forensic evidence (e.g. contamination of cash with drugs) from which inferences can be drawn that money came from drug trafficking;
3. Evidence of tricky audit trails, from which an accountancy expert may be able to conclude that the complexity of the transactions indicate that the property was the proceeds of crime;
4. Cash flows that appear too large or the profit margins too high may be capable of giving rise to expert evidence that the business will usually produce a particular level of profit, demonstrating that the profits are excessive; this testimony, along with other available evidence can be sufficient to prove the underlying criminality;
5. Circumstantial evidence—where the prosecution proves guilt from the evidence of the circumstances in which the property was handled—gives rise to the inference that proceeds can only be derived from a predicate crime.

CASE STUDY

A Director of a Company had obtained money by fraud in USD from outside Pakistan. \$10,000 had been seized wrapped in a plastic bag hidden under the floorboards in a bedroom used only by the Director. The Director had made no response when questioned about the source of the money. Whilst there is no direct evidence to show that the money seized was from the transfer obtained by fraud, it can be inferred from the facts that the money was linked to the predicate crime of fraud, without an alternative explanation from the Director, is the same currency as the fraudulent transfers and being hidden in a room under the control of the Director.

5.8 FRAMING CHARGES

The underlying predicate offence ought typically to be prosecuted, as it represents the conduct, that gives rise to the criminal proceedings regarding money laundering. Money laundering and the underlying criminality are separate offences. Money laundering activities should not be seen merely as “part and parcel” of the underlying criminal activity.

A money laundering charge ought to be considered where the proceeds are more than de minimis in any circumstances where the accused who is charged with the underlying offence has done more than simply consume his proceeds of crime.

Where, however, there is any significant attempt to transfer or conceal ill-gotten gains, money laundering should generally be considered as an additional charge, in part because the purpose of the concealment will be to defeat or avoid prosecution and forfeiture.

A careful judgment will need to be made if it is in the public interest to proceed with the money laundering charge in the event of a plea to the underlying criminality by an accused who is also indicted for laundering the criminal proceeds. Among other factors, the Judge should consider whether the laundering activity involves such a significant attempt to conceal ill-gotten gains such that the Court might consider it appropriate to impose a consecutive sentence.

In a ‘mixed’ case, where the laundering is by X on behalf of Y (the perpetrator of the predicate offence), it may be appropriate to proceed against Y for the underlying crime and X concerning the laundering offence in the same trial.

CASE STUDY

If the wife of an illegal narcotics trafficker has laundered the proceeds of his criminality and the investigation has followed the money trail, and there is enough nexus between the underlying predicate offence of narcotics trafficking and the money laundering. The case may benefit from being run together in one trial.

Money laundering can be committed in several ways, and the various methods used for criminal proceeds of one predicate offence can be included in a single money laundering charge. However, this should not be taken to be a license to allege different methods of commission without discretion. The prosecution should identify the methods of commission which can be proved and should specify those methods and only those methods when charges are being framed.

CASE STUDY

The prosecution case against the accused was involved in the course of conduct, by laundering the proceeds of their corrupt receipts of bribes by a police officer over several years by spending (converting) it into thousands of different transactions, large and small, albeit intermingled with similar transactions representing some legitimate activity. Some of these proceeds were also used to purchase land and property. Because it is mostly impossible to untangle these activities and charge separately, a single count generally charging with converting criminal property is appropriate contrary to section 3(a) of the Anti-Money Laundering Act 2010

Where a conspiracy to commit any of the principal money laundering offences are charged contrary to section 3(d) of the AMLA, there must be an intention that the property to be laundered would be the proceeds of crime where the property had not been identified at the time of the agreement; and, where the property had been so identified, the knowledge that the property was the proceeds of crime is required.

5.9 INVESTIGATORY POWERS

For a more detailed discussion on powers of investigation, see Chapter 7.

The AMLA allows for an investigating officer to serve notice for disclosure of the sources of income, earnings or assets after an attachment order is issued²⁶⁴ and a "power of survey."²⁶⁵

The "power of survey" of a place where a money laundering offence has been suspected or where relevant records are located is wide-ranging and allows an investigating officer to:

1. Based on the material in his possession;
2. Having a reason to believe an offence of money laundering has been committed; and
3. With the permission of the Court
4. Enter any place to:
 - Inspect records
 - Verify any information or transaction related to the proceeds of crime; and
 - Furnish information useful or relevant to any proceedings under AMLA

An alternative to the power of the survey is "search and seizure" ordered by the Court where the investigating officer:²⁶⁶

- Based on the material in his possession;
- Having a reason to believe any person has committed an offence of money laundering; and
- Owns any record which may be useful or relevant to proceedings under AMLA.

The court order should authorize the investigating officer or any subordinate officer to:

- Enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such record or properties are kept;
- Break open the lock of any door, box locker, safe, almirah or other receptacles where the keys are not available;
- Seize any such record or property found as a result of such search;
- Place marks of identification on such record or make, or cause to be made, extracts or copies;
- Make a note of any inventory of such record or property; or

²⁶⁴ Section 9 Anti-Money Laundering Act 2010

²⁶⁵ Section 13 Anti-Money Laundering Act 2010

²⁶⁶ Section 14 Anti-Money Laundering Act 2010

- Examine any person, who is found to be in possession or control of any such record or property, in respect of all matters relevant for any investigation under the AMLA.

If the search is urgent, section 14(2) allows a senior officer to authorize the investigating officer to begin the search.

Section 15 of the AMLA also provides for a search of a person where the investigating officer:

- Has reason to believe that the relevant person has secreted on their person or has under their possession, ownership or control;
- Any record or property;
- Useful for or relevant to proceedings under AMLA; and
- Seize such record or property

Any property seized following a search of the property, or the investigating officer can retain the person for 90 days.²⁶⁷ A court can grant an extension if required – for example for production at a trial fixed for a later date or as prima facie property involved in money laundering needed to further the investigation.²⁶⁸

Asset Recovery

Forfeiture of assets following conviction should be a critical goal of the prosecution. Without the assets accrued through crime, the suspect is likely to be stripped of his status and ability to commit further serious crimes. The first stage is attachment (i.e. prohibit the transfer, conversion, disposition or movement) to prevent dissipation of criminally acquired assets or instrumentalities used in the commission of the offence.²⁶⁹

Attachment

There are two procedures for attachment orders to the Court:

1. An investigating order application under section 8 AMLA
2. An application following an investigation under section 9 AMLA

Section 8 AMLA

Section 8 of the AMLA sets out that an investigating officer may apply for a 90-day attachment order to the Court when he reasonably believes the property is involved in money laundering.

This belief must be based on a report in his possession from an investigating or prosecuting agency.

The officer applying for the attachment order must then update the Court every month on the progress of the investigation.²⁷⁰

Section 9 AMLA

Section 9 of AMLA requires an investigating officer, no later than seven days after issuance of the attachment order, to serve a notice on any person concerned with the property to 'indicate the sources of his income, earnings or assets, out of which or utilizing which he has acquired the property.'

A 'person concerned' should be broadly interpreted to include any of the following with interest in illegally obtained property:

- Persons owning property
- Persons possessing property
- Persons in control of the property
- Persons holding property on behalf of another; and
- Joint owners of a property

²⁶⁷ Section 17 Anti-Money Laundering Act 2010

²⁶⁸ Section 17(3) and (4) Anti-Money Laundering Act 2010

²⁶⁹ See definition at section 2(a) Anti-Money Laundering Act 2010

²⁷⁰ Section 8(5) Anti-Money Laundering Act 2010

The concerned person served with section 9 AMLA notice should be offered an opportunity to be heard by the investigating officer, who should consider all information provided.²⁷¹

The investigating officer should then decide whether the property is involved in money laundering.²⁷²

This finding can then be used to '*show cause why all or any of such properties should not be declared to be the properties involved in money laundering and forfeited to the Federal Government.*'²⁷³

If the investigating officer determines the property is involved in money laundering, he shall apply to the Court for an attachment order or retention of the property seized under sections 14 and 15 of AMLA (see the section above on Investigatory Powers above).

Section 8(4) of AMLA does confirm nothing shall prevent any person claiming an interest in the property to enjoy rights attached to 'immovable property'. For example, if there is an attachment order against a house, the owners can still reside in it, subject to the State having an attachment for 90 days whilst a money-laundering investigation is extant.

Forfeiture

Section 9(3A) sets out that after hearing a concerned person, the attachment order shall:

- a. Continue during the court proceedings; and
- b. Will become final if it is proved that the property is involved in the money laundering

This means that, following conviction, the property will vest absolutely in the Federal Government void of any encumbrances.

Sale before Forfeiture

Where attached property is 'perishable in nature, subject to speedy or natural decay, or the expense of keeping it in custody is likely to exceed its value', the investigating officer may apply to the Court for sale.²⁷⁵

This provision could be used for cars or vessels that are seized, and prohibitive storage costs or depreciation means an investigating officer should apply for sale.

Acquittal

Where an accused is acquitted the attachment of property ends, and the property must be returned to the person from whom it was seized.²⁷⁶ Equally, where a Court determines the property is not involved in money laundering, it will also be returned to the persons from whom it was seized.²⁷⁷

Issuing an Order

There is no procedure established for a Court to determine if an attachment order is issued, other than allowing concerned persons to make representations before issuing an order.²⁷⁸

It is suggested that the following matters are considered:

- Full description of the property for which an order of attachment is sought;
- Grounds and primary evidence in support of the property for being attachable due to its involvement in money laundering or any other offence; and
- The apprehension that the property may be transferred or taken beyond possession (i.e. dissipation) before the disposal of the complaint if the Court does not pass an order according to the application. The Court may be minded to accept a risk of dissipation in cases where there has been a significant benefit to the accused; the

271 Section 9(2) Anti-Money Laundering Act 2010

272 Ibid

273 Ibid.

274 Section 10 Anti-Money Laundering Act 2010

275 Section 9(4) Anti-Money Laundering Act 2010

276 Section 9(5) Anti-Money Laundering Act 2010

277 Section 9(7) Anti-Money Laundering Act 2010

278 Section 3A Anti-Money Laundering Act 2010

accused has been charged with a dishonesty offence, or the assets are easily liquidated—such as funds in bank accounts. In cases where there has been a delay in obtaining the freeze order (for whatever reason) and no assets have been dissipated at the time of application for a freeze is made, it will be more difficult for the prosecution to establish the risk of dissipation.

The consideration of 'involvement in money laundering or any other offence' is a wide requirement and could include:

- Property laundered: For example, the cash smuggled over the border more than the amounts required to be declared under the law;
- Instrumentality: For example, a car used to smuggle cash across the border; or proceeds from the instrumentality: For example, the proceeds from the sale of a car used to smuggle cash illegally over the border;
- The converted property at the integration stage of a money laundering offence: For example, a house purchased with illegal proceeds;
- A bribe paid to a bank employee to illegally transfer money out of the jurisdiction;
- Any other proceeds from the predicate offence, for example, if a dishonesty offence, the property stolen or acquired.

Equally, the AMLA does not establish any specific legal standard to determine if the evidence in support of the property is involved in a money laundering. The Qanun-e-Shahadat Order of 1984 section 117 provides that the burden of proof of the existence of facts will be on the person who asserts the fact.²⁷⁹ This means the police officer applying for the attachment must establish that the property in question is involved in money laundering.

If the question is whether any person in possession of the property is the owner, section 126 of the Qanun-e-Shahadat Order of 1984 places the burden on the person affirming he is not the owner.

As an investigating officer applying for an attachment must have reasonable grounds to believe the property is involved in money laundering, it must be assumed that a Court must also be satisfied to this standard.

Corporate Veil

As a general rule, companies enjoy a legal personality of their own. However, if it can be shown that the company is itself a 'sham'—designed only to facilitate the accused individual's money laundering—then the Court may lift the corporate veil and forfeit the property involved in the money laundering. This is supported by extensive case law, as well as provisions in the Companies Ordinance 1984 (now Companies Act 2017).²⁸⁰ According to Section 453 of the Companies Act 2017, all officers of a company are instructed to prevent the commission of money laundering, including predicate offences laid out in the Anti-Money Laundering Act 2010. Failure to do so can result in an imprisonment term of up to three years and a fine over one hundred million rupees.²⁸¹

It is not uncommon for a money launderer to operate a business. Often such a business will have a partially legitimate and partially criminal element to it. In such cases, the burden falls on the accused to demonstrate which proportion of the business was legitimate and which was illegitimate.

Innocent Purchase

If the Court passes any person or entity purchases any property subject to forfeiture before an order for forfeiture of the property, it is good practice for a Judge to order the purchase monies be deposited with the State if:

- The person or entity purchased in good faith;
- The purchase was for a proper value;
- The person or entity was not aware the property was involved in money laundering

²⁷⁹ Section 117, Qanoone Shahadat Order, 1984.

<https://punjabpolice.gov.pk/system/files/qanun-e-shahadat-order-1984.pdf>

²⁸⁰ Effects of Incorporation in Pakistan: A Study of Corporate Veil Pricing <https://sahsol.lums.edu.pk/law-journal/effects-incorporation-pakistan-study-corporate-veil-piercing>

²⁸¹ Companies Act 2017, National Assembly Pakistan.

http://www.na.gov.pk/uploads/documents/1487136261_767.pdf

Loans

The AMLA states that a person will not be discharged from any liability in respect of encumbrances on the seized property. This could be interpreted as meaning that, if the property in question is subject to a loan or security, and the Bank or Financial Institution is an innocent third party, the loan or security can still be enforced.

Mingled Property

If the property involved in money laundering has been mingled with property acquired from legitimate sources, the Court should forfeit up to the value of the mingled proceeds. Where the value of the property involved with money laundering cannot be determined, the Court should pass a forfeiture order on the full value of the mingled money or property in favour of the State. The burden falls on the convicted to demonstrate legitimate from illegitimate funds.

Anti-Money Laundering (Amendment) Act, 2020

In September 2019, the Anti-Money Laundering (Amendment) Bill 2019 was laid in the National Assembly. The purpose of the amendment was to strengthen the current Anti Money Laundering regime in the country with more stringent provisions. Its title was formally changed to Anti-Money Laundering (Amendment) Act, 2020 as deliberations continued into the following year.

According to Section 4, violators of the law would now be subject to greater financial penalties i.e. fines would be increased from 1 million rupees to 5 million rupees, and sentences would be increased from two years to ten years imprisonment. The amended AMLA also equips the investigating officer with the authority to hold a person in remand for up to 180 days, up from 90 days previously (Section 8, subsection 1).

For information on how law enforcement agencies interact with other agencies in the combating of ML/TF, see Chapter 6.

PART C: ELEMENTS OF THE OFFENCE

5.10. ANTI-TERRORISM ACT, 1997

Section 11-H(1) – A person commits an offence if he:

- a) invites another to provide money or other property; and
- b) intends that it should be used, or has reasonable cause to suspect that it may be used, for terrorism or by a terrorist or organization concerned in terrorism.

The ATA incorporates a set of unique offences relating to terrorism financing and money laundering. Section 11-H(1) relates to the act of inviting another to provide money or other property, Sec 11 (H) (2) criminalizes the offence of receiving money or other property and Sec 11 (H) (3) criminalizes the offence of providing money or other property. However, all the acts mentioned above will only be criminalized if the mens rea element of the crime is met, i.e. the acts of invitation, receipt and provision are carried out with the intention that the money or other property is to be used for the purpose terrorism OR that the offender has a 'reasonable cause to suspect that it may be used' for terrorism.

The TF activities mentioned above apply in two distinct circumstances:

- a) When the act of willfully inviting, providing or collecting funds or assets is complete, and
- b) Even if the act was attempted, but the funds or other assets were not ultimately provided (for example the TF activity can be disrupted)²⁸²

Moreover, the TF acts should not be limited to certain forms of methods of inviting, providing or receiving funds but apply to all means of doing so. This as mentioned in Sec 2 of the ATA and FATF Recommendation No. 5 applies to funds or other assets that can include economic resources, including oil and other natural resources, dividends, funds which may potentially be used to obtain funds, goods or services. This implies that the TF offence may apply to trade or other commercial or financial relations with terrorist organizations or individuals.

Knowledge or intent may be inferred from objective factual circumstances and is the minimum requirement that needs to be met for the accused to be charged with the mens rea element of terrorism financing. While acting with intention is easy to understand, the term 'reasonable cause to suspect that it may be used' for terrorism is a specialized form of mens rea. Since similar wording has been used in the UK's Terrorism Act, this issue has arisen recently in the UK as well, and the UK Supreme Court in *R. v. Lane and Letts* (2018) explained this term. The term 'reasonable' adds objectivity and, therefore, the investigation and prosecution would only have to prove that a reasonable person in the position of the accused would suspect that the funds may be used for terrorism.

Some countries also use the concept of recklessness to criminalize terrorism financing where there may be an absence of a link to a specific terrorist act. This would require the prosecutor to show that the offender was aware of the substantial risk that the funds would be used for terrorist purposes.

It is also important to note that FATF recommendation No. 5 (R.5) and its interpretative note (INR.5) allows us to understand the meaning of 'for terrorism.' It explains what specific knowledge is required for the offence (the mens rea) and what unlawful intention/purpose must be proven as part of the offence. The INR.5 clarifies that:

- a) The terrorist financier must be acting with the knowledge that the funds or other assets are to be provided or collected for a terrorist organization or individual terrorist;
- b) It is only the terrorist financier's unlawful intention/purpose which is relevant. That unlawful intention/purpose must be to provide or collect funds or other assets for a terrorist organization or individual terrorist.

This means that, under R.5/INR.5, the following aspects are not relevant to the scope of the TF offence:

1. the purpose for which the terrorist financier intended those funds or other assets to be used by the terrorist organization/individual terrorist;

²⁸² FATF "Criminalizing Terrorist Financing (Recommendation 5)," Oct. 2016, pp. 2–3, <https://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-Criminalising-Terrorist-Financing.pdf>

2. any knowledge that the terrorist financier may have had about how the terrorist organization/individual terrorist was using or intending to use the funds or other assets;
3. the use to which the terrorist organization/individual terrorist put (or intended to put, or tried to put) the funds or other assets; and
4. whether or not the funds or other assets were used to plan, prepare for or carry out a specific terrorist act.²⁸³

However, a fact that is relevant is whether the organization or individual to whom the funds or the other assets are provided is in fact, a terrorist organization or an individual terrorist and one way to determine that is via domestic proscription or if the individual or organization have been proscribed by the UNSCR 1267/1988. The terms terrorist organization or terrorist are also defined as 'an organization or individual that commits, attempts or is otherwise complicit in a terrorist act'.²⁸⁴

In some cases, the question of whether the organization to which funds were provided is, in fact, a terrorist organization, is central to whether a TF offence has been committed. Cases may also arise in which a terrorist financier has an unlawful intention to finance a terrorist organization (or a terrorist act), but is unsuccessful in doing so (e.g. because an undercover police officer intercepts the funds or other assets). Such cases could be considered a TF offence (or an attempted TF offence) if the intended recipient of the funds or other assets is an individual terrorist or a terrorist organization, regardless of the actual recipient of the funds or other assets.²⁸⁵

In summary, for this aspect of the offence, the prosecutor should only have to prove that the terrorist financier knew (or believed) that the funds or other assets were being collected for or provided to a terrorist organization or individual terrorist, or unlawfully intended to do so. The mental element is decisive in establishing criminal liability.

	ELEMENTS OF CRIME	PURPOSE/AIM/MAQSAD	EVIDENCE NEEDED TO PROVE EACH ELEMENT
Actus reus	He invites someone else		Witness testimony Confession SMS messages inviting another recovered from the phone WhatsApp messages Pamphlet Donation (Chanda) receipt Identity of who was invited is essential.
	To provide money or other property		Witnesses, Confessions, Messages would have to show that money, or some other property was requested in the invitation to the other (or was the result of the invitation). Bank Records Record from SBP if any foreign exchange is involved. Further details can be acquired from the exchange company Record from FBR of NTN No. Income Tax Returns and Wealth Statements Letter to concerning revenue or excise department for identification of any property associated with the individual or organization

283 FATF "Criminalizing Terrorist Financing (Recommendation 5)," Oct. 2016, pp. 2-3, <https://www.fatf-gafr.org/media/fatf/documents/reports/Guidance-Criminalising-Terrorist-Financing.pdf>

284 Terrorist Financing Convention 1999, Article 2

285 supra note 1.

	AND		
Mens rea	Intends that it should be used, or (Level 1 Mens rea – Intent)	For terrorism or by a terrorist or an organization concerned in terrorism	Specific intent needs to be proven. Specific intent that the money or other property will be used for terrorism or by a terrorist or terrorist organization. Establishing links with a terrorist organization—through intelligence, witnesses' testimony, literature or written material at his house, place of work, frequently visited places, online browsing history, messages on the phone, email, known associates, etc..
	Has reasonable cause to suspect that it may be used, (Level 2 Mens rea – reasonable cause to suspect)		<p>Objective assessment: Would a reasonable person in the individual's position have a reason to suspect that the money or other property received would or may be used for terrorism or by a terrorist, etc..</p> <p>Since this is an objective test, it is not necessary to prove that the accused suspected that the money or other property might be used for terrorism but rather that a reasonable person with the same knowledge would so suspect. R v. Sally Lane and John Letts [2018 – UK Supreme Court]</p> <p>Prosecutors can prove that the offender was aware of a substantial risk that the funds would be used for terrorist purposes. (recklessness); this requires that the suspect “consciously accepts the substantial chance” that funds will serve to offer financial support</p>

Section 11-I: A person commits an offence if-

- (1) he uses money or other property for terrorism; or
- (2) (a) possesses money or other property; and
(b) intends that it should be used or has reasonable cause to suspect that it may be used, for terrorism.

The ATA 1997 criminalizes the “use and possession” of money/ property or funds that can be used for terrorism. The UK Terrorism Act 2000 in its Section 16 (Use and Possession) verbatim criminalizes the same offences as are included in section 11-I of Pakistan's ATA 1997.

Section 11-I of the ATA 1997 (and Section 16 of the UK Terrorism Act 2000) target both the act of using money or other property (actus reus) for terrorism (mens rea). Similar to Section 11-H, the criminalization of the mens rea element is two-fold: firstly, there needs to be a clear intention or knowledge of the funds being used for terrorism; secondly, there needs to be “reasonable cause to suspect” (11-I(2)(b)), which means (as mentioned above in Section 11-H) that the state need only establish that any rational person or actor (“reasonable”) can draw assumptions of funds being used for the cause of terrorism. Using or possessing could borrow the same interpretation as.

Considering the definition of 'purposes of terrorism,' the commentary to Section 15-17 of the UK terrorism Act 2000 offer guidance on the term. It says that under Section 1(5) of the PTA (Prevention of Terrorism Acts), the words for "the purposes of terrorism can be taken to include for the benefit of a proscribed organization. Thus, as mentioned above in the notes for Section 11-H, the identity of the individual/ organization who is benefiting from the arrangement is of crucial significance. The offender shall be held accountable if the purpose of the arrangement is to facilitate a terrorist organization/ individual.²⁸⁶

	ELEMENTS OF CRIME	PURPOSE/AIM/ MAQSAD	EVIDENCE NEEDED TO PROVE EACH ELEMENT
Actus reus	Uses money or other property		Witness testimony Confession SMS messages recovered from the phone WhatsApp messages bank statements/ financial statements transfer receipts. contracts purchase receipts
	Possesses money or other property		Witnesses, Confessions, Messages would have to show that money or some other property was used. Bank Records Record from SBP if any foreign exchange is involved. Further details can be acquired from the exchange company Record from FBR of NTN No. Income Tax Returns and Wealth Statements Letter to concerning revenue or excise department for identification of any property associated with the individual or organization. Cheque books, transfer of title documents. social media accounts
	AND		
Mens rea	Intends that it should be used, or (Level 1 Mens rea – Intent)	For terrorism	Specific intent needs to be proven. Specific intent that the money or other property will be used for terrorism or by a terrorist or terrorist organization. Establishing links with a terrorist organization—through intelligence, witnesses testimony, literature or written material at his house, place of work, frequently visited places, online browsing history, messages on the phone, email, known associates, etc

286 Office, Home. "Explanatory Notes to Terrorism Act 2000." Explanatory Notes, Section 15-17, Queen's Printer of Acts of Parliament, www.legislation.gov.uk/ukpga/2000/11/notes/division/4/3/2.

	<p>Has reasonable cause to suspect that it may be used,</p> <p>(Level 2 Mens rea – reasonable cause to suspect)</p>		<p>Objective assessment: Would a reasonable person in the individual's position have a reason to suspect that the money or other property received would or may be used for terrorism or by a terrorist, etc..</p> <p>Since this is an objective test, it is not necessary to prove that the accused suspected that the money or other property might be used for terrorism but rather that a reasonable person with the same knowledge would so suspect. R v. Sally Lane and John Letts [2018 – UK Supreme Court]</p> <p>Prosecutors can prove that the offender was aware of a substantial risk that the funds would be used for terrorist purposes. (recklessness) This requires that the suspect "consciously accepts the substantial chance" that funds will serve to offer financial support</p>
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Section 11J. (1)- A person commits an offence if he-

- (a) enters or becomes concerned in an arrangement as a result of which money or other property is made available or is to make available to another; and
- (b) has reasonable cause to suspect that it will or may be used for terrorism.

Section 11 (J) (1) criminalizes the act of entering into any arrangement including but not limited to initiating or entering into in an arrangement designed to provide funds if the offender suspects that it will be used for terrorism. Hence, the offender's participation and having a reasonable cause to suspect²⁸⁷ that the funding arrangement shall be used for terrorism is an offence. An arrangement may include all legal and non-legal arrangements to make funds available for terrorism such as the availability of funds via trusts and NGOs, beneficial ownership; donations (chandas), dealing in real estate or precious stones or metals; providing a registered office or a property; acting as or arranging for another person to act as a nominee shareholder for another person, or working as an agent to make funds available.²⁸⁸

	ELEMENTS OF CRIME	PURPOSE/AIM/ MAQSAD	EVIDENCE NEEDED TO PROVE EACH ELEMENT
Actus reus	Enters or becomes concerned in an arrangement		<p>witnesses, intelligence, confession, trust deeds, transfer of title to an NGO, donation cheques, beneficial ownership certification of legal entities details through NADRA verisys title of property or contract testifying to transfer of interest/ profit accruing from a property</p> <p>Call Data Record, text messages.</p>

²⁸⁷ Reasonable cause in this section would rely again on the objective test as it was applied in the case *R v. Sally Lane and John Letts* [2018 – UK Supreme Court 36].

²⁸⁸ International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation . FATF, 2012, www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations_2012.pdf.

			Witnesses, Confessions, Bank Records reflecting benefit accrued. Record from FBR of NTN No. Income Tax Returns and Wealth Statements
	AND		
Mens rea	Has reasonable cause to suspect that it may be used, (Level 2 Mens rea – reasonable cause to suspect)	For terrorism	Objective assessment: Would a reasonable person in the individual's position have a reason to suspect that the money or other property arranged for would or may be used for terrorism Since this is an objective test, it is not necessary to prove that the accused suspected that the money or other property might be used for terrorism but rather that a reasonable person with the same knowledge would so suspect. R v. Sally Lane and John Letts [2018 – UK Supreme Court] Prosecutors can prove that the offender was aware of a substantial risk that the arrangement would be used for terrorist purposes. (recklessness) This requires that the suspect “consciously accepts the substantial chance” that arrangement will serve to offer support that may be used for terrorism

Section 11J. (2)- A person commits an offence if -

- (2) Any person in Pakistan or a Pakistani national outside Pakistan shall commit an offence under this Act, if he knowingly or willfully makes money or other property or services available, directly or indirectly, wholly or jointly, for the benefit of a proscribed organization or proscribed person.]

Section 11 J (2) expands the jurisdiction of the offence of providing or collecting funds or other services, to Pakistani citizens out of the country, if they are supporting a proscribed organization or individual listed under the ATA. The difference between the previous TF sections and this section is that while Section 11-H to I, criminalize the offence of funding to terrorist organizations/ terrorists, this section focuses its ambit to proscribed entities and individuals. Hence, an amendment to this section could be introduced to widen the scope to include 'benefits accrued to terrorist organizations/ individuals'; this will consequently include Foreign Terrorist Fighters within its parameter.

For the requisite mental element, the conduct ought to be deliberately committed with unlawful intent. However, the TF offence under this section is not limited to providing the funds directly for the proscribed organization/ individual for a terrorist attack but making it available for any purpose that may lead to terrorism. The TF offence should apply when the person providing or collecting funds or other assets (the terrorist financier) is doing so themselves (i.e., directly), or when doing so indirectly (e.g., through an intermediary/middleman or a secondary trader). Indirectly providing or collecting funds or other assets would apply to those who take part in a chain of transactions knowing that these will benefit a terrorist or a terrorist organization (e.g. as an intermediary trader). Moreover, the TF offence should not be limited to situations where the full amount of the funds or other assets collected or provided were used or intended for a terrorist act or were collected for or provided to a terrorist organization or an individual terrorist. Instead, it should also

apply in cases where part or some of the funds or other assets concerned were used or intended for a terrorist act or provided to a terrorist organization or individual, while the rest were not. This includes situations in which value and other benefits in kind are transferred through a transaction which also includes a legitimate economic component.²⁸⁹

For example, as set out in the 2008 FATF Terrorist Financing Report, most of the financing used by terrorist organizations is not used to meet the direct costs of mounting attacks. However, it is needed for broad organizational support, including services such as recruitment and radicalization, training, subsistence, travel, and maintaining a veil of legitimate activities. The 2015 FATF report on Emerging Terrorist Financing Risks further highlights the use of funds by large terrorist organizations for propaganda and recruitment, training, salaries and member compensation, and social services. Funds provided for and spent on these non-attack activities nevertheless contribute to terrorist attacks, by sustaining the terrorist organization's capability to mount such attacks.²⁹⁰

	ELEMENTS OF CRIME	PURPOSE/AIM/ MAQSAD	EVIDENCE NEEDED TO PROVE EACH ELEMENT
Actus reus	A citizen or national outside Pakistan		CNIC, Information from NADRA verisys, Travel tickets/ history information received from Immigration and Passports Department (MOI) or passport Intelligence received from the investigation department outside Pakistan
	To make money or property or services available (directly or indirectly) (wholly or jointly)		Witnesses of middleman/ trader, Confessions. Messages would have to reflect the tacit approval of the offender in providing money or some other property or the middleman's communication with the leading financier of the funds. Bank Records or financial statements that are reflecting the transfer of money. Record from SBP if any foreign exchange is involved. Further details can be acquired from the exchange company Record from FBR of NTN No. Income Tax Returns and Wealth Statements Letter to concerning revenue or excise department for identification of any property associated with the individual or organization if a property is involved. In this case, the title documents of the property would have to be traced. (running of hospitals or other social services as undercover terrorist operations) donations cheques/ gift deeds (wholly) contracts that are testifying the provision of other economic resources such as oil, dividends or other natural resources (provision of a service/ wholly or jointly controlled)

289 "Criminalising Terrorist Financing (Recommendation 5)," Oct. 2016, pp. 11–12., FATF (2016), Guidance on the criminalization of terrorist financing (Recommendation 5), FATF, Paris www.fatf-gafi.org/publications/fatfrecommendations/documents/criminalising-terrorist-financing.html.

290 "Criminalising Terrorist Financing (Recommendation 5)," Oct. 2016, para 19., FATF (2016), Guidance on the criminalisation of terrorist financing (Recommendation 5), FATF, Paris www.fatf-gafi.org/publications/fatfrecommendations/documents/criminalising-terrorist-financing.html.

			<p>Online media activity: Facebook pages being run for the propagation of ideology or recruitment, or business pages being used as a vehicle to secure and send funds to finance food, medical supplies or ammunition literature available (online or hard copies)</p> <p>financial documents indicating profit received from businesses (wholly or jointly controlled)</p> <p>Partnership deeds/ Contracts</p> <p>other electronic evidence</p>
	AND		
Mens rea	knowingly, wilfully	For the benefit of a proscribed organization/ individual	<p>Specific intent needs to be proven by objective factual circumstances. Specific intent that a proscribed organization or individual will use the money or other property or services. (the proscribed individual or organization needs to be listed on the 4th or first schedule of the ATA).</p> <p>Establishing links with the proscribed organization—through intelligence, witnesses testimony, literature or written material at his house, place of work, frequently visited places, online browsing history, messages on the phone, email, known associates, etc..</p>

Section 11K. A person commits an offence:

- (1) if he enters or becomes concerned in any arrangement which facilitates the retention or control, by or on behalf of another person, of terrorist property: -
 - (a) by concealment;
 - (b) by removal from the jurisdiction;
 - (c) by transfer to nominees; or
 - (d) in any other way.
- (2) It is a defence for a person charged with an offence under subsection (1) to prove that he did not know and had no reasonable cause to suspect that the arrangement related to terrorist property.

Section 11 K criminalizes the offence of money laundering of a terrorist property in the form of either concealment, removal from the jurisdiction, transferring to nominees or layering the proceeds in any other way. Considering Section 2 (aa), a terrorist property means any money/ property/ resources or funds that are utilized for terrorism/ benefit for a terrorist organization/ individual. These funds include proceeds of the commission of an act of terrorism or the proceeds of the predicate crime (carried out for terrorism) such as kidnapping for ransom, drug trafficking or human smuggling etc.. Resources of a terrorist organization under the ATA may include movable and immovable assets including but not limited to legal documents, written, electronic or digital and shares, securities, bonds, drafts and letters of credits. Under FATF Recommendation No.3 and its interpretive note, the predicate offences ought to include

all offences within the category of severe offences under the national law or may include all offences that are punishable by a minimum punishment of six year's imprisonment to a maximum penalty of more than one year's imprisonment. Section 3 of the Anti-Money Laundering Act, discussed below covers the offence of money laundering in further detail and even identifies a list of predicate offences in its schedule.

	ELEMENTS OF CRIME	PURPOSE/AIM/ MAQSAD	EVIDENCE NEEDED TO PROVE EACH ELEMENT
Actus Reus	enters an arrangement	facilitates retention or control of a terrorist property	witnesses, confessions contractual agreements, property/business address and registration details If MVTs involved, then details from SBP of records social media pages purchase receipts of high-value goods, predicate crime witnesses express trusts deeds, foundations, NGOs other electronic evidence
	concealment		witnesses, confession Benami or other bank account details (NTN and tax records) Transfer of title of property documents, Transfer of shares, Gift deeds. Bank transfer records/ statements, Sale purchase agreement Investment agreements, trade invoices shell companies' documents, employment records, asset worth etc.. Falsifying activities using fraudulent loans, false invoices, and misleading naming conventions. CCTV footage and other electronic evidence
	removal from jurisdiction		witnesses (brokers/ Hawala Hundi operators) shipment invoices and re-sale receipts of goods distribution agreement, bank transfer details and statements remittance statements international NGO registration certificates MLA request letter for further investigation. travel history,

	transfer to nominees		Witnesses who are acting as intermediaries. partnership deeds that disguise beneficial ownership especially of LLCs asset divisions contracts, trust deeds appointing nominees, power of attorneys, nominee shareholder agreement other electronic evidence
	AND		
Mens rea element (onus to prove is on the accused)	reasonable cause to suspect		<p>Objective assessment: Would a reasonable person in the individual's position have a reason to suspect that the money or property/ funds or resources arranged for would or may be used for terrorism</p> <p>Since this is an objective test, the burden on the accused does not prove that he suspected that the money or other property might be used for terrorism but rather that a reasonable person with the same knowledge would so suspect. <i>R v. Sally Lane and John Letts</i> [2018 – UK Supreme Court]</p> <p>In <i>Treasurer v. Mohammad Jabbar Ahmad</i>²⁹¹ and others, it is noted that the offences included in the UK Terrorism Act 2000 about “terrorist property” and using said property for terrorism, are all defined in terms which require mens rea, interpreted as “intention, knowledge or reasonable suspicion that money or other property will be used for terrorist purposes.”²⁹²</p>

The mens rea element is based on the fact whether the offender had any reasonable cause to suspect if the arrangement was being used for terrorism. However, this section places a reverse onus upon the accused as he must prove his case on the principle of balance of probabilities. In *Her Majesty's Treasurer v. Mohammad Jabbar Ahmad and others*, it is noted that the offences included in the Terrorism Act 2000 about “terrorist property” and using said property for terrorism, are all defined in terms which require mens rea, interpreted as “intention, knowledge or reasonable suspicion that money or other property will be used for terrorist purposes.”²⁹³

The necessity of mens rea is indirectly considered in the UK case *R. v. Salim Wakil*.²⁹⁴ In this case, the defendant, who suffered an acute mental illness and was seeking treatment for it, had been providing funds to his sister, who had fled to Syria to join Daesh, and later sought a way to return to the UK. In order to facilitate her return, the defendant regularly

291 *Her Majesty's Treasury v. Muhammed Jabar Ahmed and others; Her Majesty's Treasury v. Mohammed al-Ghabra* [2010] UKSC 2
https://www.refworld.org/cases,UK_SC,4b62d9282.html

292 *Ibid.*

293 *Ibid.*

294 “The Counter-Terrorism Division of the Crown Prosecution Service (CPS) - Successful Prosecutions since 2016.” The Crown Prosecution Service,
www.cps.gov.uk/counter-terrorism-division-crown-prosecution-service-cps-successful-prosecutions-2016.

transmitted money and was duly charged under Section 17 of the UK Terrorism Act 2000. In her judgment, HHJ Pulet QC noted the defendant's history of mental illness and low IQ as mitigating factors "substantially reduces his responsibility." That said, it was contended that it was reasonable to suspect that the funds could be used for terrorism purposes, and the defendant admitted that he had recognized the risks of sending money to Syria, rendered his guilt on the charges levied against him.

5.11. ANTI-MONEY LAUNDERING ACT, 2010

Section 3: A person commits an offence if

- (a) He acquires, converts, possesses, uses or transfers property knowing or having reason to believe that such property is proceeds of crime;
- (b) He conceals, disguises the true origin, location, movement, ownership of the property knowing or having reason to believe that such property is proceeds of crime;
- (c) He holds or possesses on behalf of any other person such as property knowing or having reason to believe that such property is proceeds of crime;
- (d) He participates in, associates, conspires to commit, attempts to commit, aids abets, facilitates or counsels the commission of the acts specified in clauses (a), (b) and (c)

Money Laundering is the process of acquiring money from illicit origins and then applying specific layering methods to conceal their source in order to make the proceeds appear legitimate. Money Laundering and terrorism financing are two distinct offences. They are prosecuted separately, but the two offences are linked under FATF Special Recommendation II that requires jurisdictions to include the financing of terrorism as a predicate offence to money laundering.

According to FATF Recommendation 3 on Money Laundering, "countries should criminalize money laundering based on the Vienna Convention and the Palermo Convention. Countries should apply the crime of money laundering to all serious offences, to include the widest range of predicate offences." The UN's Legislative Guide to the Palermo Convention and Legislative Guide for the Implementation of the United Nations Convention Against Corruption also shed light upon the elements of a money laundering offence.

1. Conversion or transfer of proceeds of crime. This includes "instances in which financial assets are converted from one form or type to another, for example, by using illicitly generated cash to purchase precious metals or real estate or the sale of illicitly acquired real estate, as well as instances in which the same assets are moved from one place or jurisdiction to another or from one bank account to another." Regarding mental elements (Mens Rea), the conversion or transfer must be intentional; the accused must know at the time of conversion or transfer that the assets are criminal proceeds, and the act must be done for either one of the two purposes stated. They may be concealing or disguising criminal origin or helping any person (whether one's self or another) to evade criminal liability for the crime that generated the proceeds.²⁹⁵

2. Concealment or disguise of proceeds of crime. There are many aspects noted in the provision as to which there can be concealment or disguise – almost any aspect of, or information about, the property, so this section is broad. The concealment or disguise must be intentional, and the accused must know that the property constitutes proceeds of crime at the time of the act.

This provision deals with the intentional deception of others; including the intentional deception of law enforcement authorities. True nature is the essential quality of it having been derived from criminal activity. The origin may be the physical origin or its origin in criminality. For this second offence, there should not be a requirement of proof that the purpose of the concealment or disguise is to frustrate the tracing of the asset or to conceal its true origin. Although as a general matter this will be the purpose of the concealing or disguising, the applicable UN Conventions require that there be criminalization that is not dependent upon a showing of such purpose.²⁹⁶

3. Acquisition, possession or use of proceeds. This section imposes liability on recipients who acquire, possess or use property, and contrasts with the two provisions above that deal with liability for those who provide illicit proceeds.

²⁹⁵ http://www.imolin.org/pdf/imolin/Model_Provisions_Final.pdf

²⁹⁶ http://www.imolin.org/pdf/imolin/Model_Provisions_Final.pdf

There must be intent to acquire, possess or use, and the accused must have knowledge at the time of acquisition or receipt that the property was from the proceeds.²⁹⁷

4. Participation in, association with or conspiracy to commit, attempts to commit and to aid, to abet, facilitating and counselling. There are varying degrees of complicity or participation other than physical commission of the offence: assistance (aiding and abetting, facilitating) and encouragement (counselling). Also, attempts are to be criminalized. Finally, this section includes conspiracy, a common-law concept, or as an alternative, an association of persons working together to commit an offence.²⁹⁸

The above acts of acquiring, concealing and then holding or possessing, identify the various stages of money laundering if the accused knows or has reason to believe that the property or money is the proceeds of a crime. In light of participating in or abetting, if the accused enters into an arrangement to launder the proceeds of crime through retaining control or making funds available to acquire a property – knowing that another has obtained proceeds from unlawful activity, he would also be committing the offence of money laundering. This provision can catch people who work in financial or credit institutions, accountants, or lawyers, who, during their work, facilitate money laundering by or on behalf of other persons.

	ELEMENTS OF CRIME	PURPOSE/AIM/ MAQSAD	EVIDENCE NEEDED TO PROVE EACH ELEMENT
Actus Reus	acquires, converts possesses, uses or transfers property	facilitates retention or control of a terrorist property	witnesses, confessions contractual agreements, property/business address and registration details If MVTs involved, then details from SBP of records transfer deed, social media pages purchase receipts of high-value goods, predicate crime witnesses express trusts deeds, foundations, NGOs other electronic evidence
	conceals, disguises the true origin, location, movement		witnesses, confession Benami or other bank account details (NTN and tax records) Transfer of title of property documents, Transfer of shares, offshore companies Gift deeds. Bank transfer records/ statements, Sale purchase agreement Investment agreements, trade invoices shell companies' documents, employment records, asset worth etc.. Falsifying activities using fraudulent loans, false invoices, and misleading naming conventions. CCTV footage and other electronic evidence

²⁹⁷ ibid

²⁹⁸ ibid

	holds or possesses on behalf of any other person		Witnesses who are acting as intermediaries. partnership deeds that disguise beneficial ownership especially of LLCs asset divisions contracts, trust deeds appointing nominees, power of attorneys, nominee shareholder agreement other electronic evidence
	participates in, associates, conspires to commit, attempts to commit, aids, abets, facilitates or counsels		Witnesses who are acting as intermediaries. asset divisions contracts, trust deeds appointing nominees, power of attorneys, nominee shareholder agreement agreement with agent, distribution agreement, NTN numbers, tax records other electronic evidence like CCTV footage and WhatsApp or text messages.
	AND		
Mens rea element (onus to prove is on the accused)	knowing or having reason to believe	retaining control over proceeds of crime	knowledge or intent will be determined from the factual circumstances. Mere suspicion will not be enough.

CHAPTER 6

ROLE, JURISDICTION AND COORDINATION AMONGST COMPETENT AUTHORITIES AND LEAS

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INTRODUCTION

To effectively counter the scourge of terrorism financing and money laundering, many government and law enforcement actors are involved in varying degrees and at different levels. In such situations, there are chances of overlap, confusion and ignorance about the roles and jurisdictions among different actors. This chapter seeks to clarify the roles of LEAs, particularly when countering the financing of terrorism, including how these agencies work within the purview of UNSC Resolutions 1267 and 1373 as well as Pakistan's ATA and AMLA regimes.

LEARNING OUTCOMES

After this chapter, the reader should be able to:

- Name all law enforcement agencies (LEAs) involved in AML/CFT.
- Identify the roles and functions of entities working under UNSC Resolutions 1267.
- Understand the role/jurisdiction of agencies under Pakistan's ATA regime.
- Understand the role/jurisdiction of agencies under Pakistan's AMLA regime.

ESSENTIAL READING

- Ministry of Foreign Affairs (MOFA) - Guidelines for the Implementation of UNSC Resolution 1267 (2019)
- NACTA Guidelines on the Implementation of UNSC Resolution 1373 (2019)
- UNODC Training Manual for Law Enforcement Agencies
- Anti-Terrorism Act (ATA) 1997
- Anti-Money Laundering Act (AMLA) 2010

6.1. ROLE OF AUTHORITIES IN COUNTERING FINANCING OF TERRORISM

The National Counter Terrorism Authority (NACTA), established as an administrative entity under the Ministry of Interior in 2008, was reorganized as a federal authority vide NACTA Act (2013) to act as a national institution working to combat extremism and terrorism in Pakistan. NACTA was to work in coordination with other investigative and intelligence agencies for formulating and implementing policies and action mechanisms. Moreover, after the Army Public School Attack on 16 December 2014, a National Action Plan²⁹⁹ was established by the Government of Pakistan in January 2015 to counterterrorism and facilitate the ongoing anti-terrorist operations in North-Western Pakistan. Two of the significant features of the 20-point agenda of the National Action Plan were to revive and make NACTA effective and curb financing of terrorism by cutting down financial sources of terrorists and terrorist organizations. Thus, ever since then, NACTA, in coordination with the Ministry of Interior, Ministry of Foreign Affairs (MOFA) and the Financial Monitoring Unit (FMU), has taken the lead role in regulating and monitoring countering financing of terrorism.

Furthermore, NACTA, on the directions of the MOI, has set up the National Task Force for Countering Terrorism Financing and TF Sub Committees. This task force has set up CFT Units (CFTUs) that work with various stakeholders, including but not limited to the FIA, FBR,³⁰⁰ ANF, FMU, SECP, Inter-Services Intelligence (ISI), Intelligence Bureau (IB), Intelligence Bureau, Customs Department, Finance, Provincial Home Departments and, most importantly, the Counter-Terrorism Department (CTD) Police. Under this task force, the investigation agencies are expected to carry out parallel financial investigations to unearth the financial trail behind the terrorist incidents.³⁰¹

Moreover, AML/CFT policy is coordinated by the National Executive Committee (NEC),³⁰² chaired by the Minister for Finance and comprising the Minister on Foreign Affairs, Minister for Law and Justice, Minister for Interior, Governor SBP, Chairman SECP, and Director General FMU (who also acts as secretary). The mandate of the NEC is to develop, review and oversee the implementation of a national strategy to fight money laundering and financing of terrorism.

AML operational activities are coordinated by the General Committee (GC),³⁰³ which comprises the secretaries of the Ministries of Finance, Interior, Foreign Affairs, and Law & Justice, the Chairman NAB, Chairman-FBR, Director General-FIA, Director General-ANF, Deputy Governor-SBP, Commissioner-SECP and Director-General FMU. The main objectives of the GC are to take measures for the development and review of the performance of investigating agencies, FMU and the financial institutions and Designated Non-Financial Businesses and Professions (DNFBPs) relating to anti-money laundering. The Director FMU acts as Secretary to the NEC and GC.

In order to further facilitate inter-agency coordination between the various Law Enforcement Agencies, NACTA has enabled the signing of an MOU³⁰⁴ between 14 LEAs, including but not limited to the CTDs, FIA, NAB, ANF, FBR, FMU, and Intelligence Agencies amongst others.

Self-Assessment Question

What role does NACTA play in countering the financing of terrorism in Pakistan?

6.2. FRAMEWORK DEFINING ROLES AND FUNCTIONS OF ENTITIES UNDER UNSCR 1267

Under UNSCR Resolutions 1267 (1999), 1989 (2011), 2253 (2015) and 2368 (2017), preventive measures that include freezing and seizure of assets, arms embargoes and travel embargoes have been enforced via the United Nations Security Council (Freezing and Seizure) Order (2019),³⁰⁵ issued under Section 2 of the United Nations Security Council Act (1948).

299 NACTA. <https://nacta.gov.pk/Nap-2014/>.

300 Under the Statutory Notification (SRO) dated July 12, 2016, the FBR was assigned by the Federal Government of Pakistan as an investigating agency under the Anti Money Laundering Act, 2010.

301 NACTA Holds Meetings with National Task Force on CFT – October 2018, NACTA <https://nacta.gov.pk/nacta-holds-meeting-of-its-national-task-force-on-ctf>.

302 Section 4 (g) of the AMLA. Section 5 of the AMLA 2010 also gives power to the National Executive Committee to combat money laundering (section 5) which shall among other things be responsible for: Developing, reviewing and overseeing the implementation of national strategy to fight money laundering and financing of terrorism (section 5(3) (a)). Making recommendations to the Federal Government for effective implementation of this Act and framing of national policy to combat money laundering and financing of terrorism (Section 5 (3) (d)).

303 This has been constituted under Section 5 of the AMLA 2010.

304 NACTA Letter No. 1 (01)/DD/CTF/NACTA/2016 dated 11.04.2019 on the 14th Meeting of NACTA on Counter Finance of Terrorism and signing summary of Memorandum of Understanding. Referenced at: <https://nacta.gov.pk/nacta-organizes-multilateral-mou-amongst-leas-intelligence-agencies-and-fmu/>.

305 United Nations Security Council (Freezing and Seizure) Order, 2019. S.R.O. 261 (I)/2019 dated 4 March 2019 accessed at: <http://www.MOFA.gov.pk/documents/sro/SRO-261.pdf>.

Under this Act, the Ministry of Foreign Affairs issues Statutory Regulatory Orders (SROs) to introduce measures not involving the use of armed force to streamline the procedure for implementation of Security Council sanctions against designated individuals and entities.³⁰⁶ Moreover, the MOFA has also issued Guidelines³⁰⁷ that supplement the UNSC Order (2019) and have the core objective of facilitating an understanding of the Sanctions regime and the role of each agency/stakeholder in countering the financing of terrorism.

A National Committee for overseeing the implementation of the sanction's regime, which aims to provide guidance to the Ministries, departments and agencies functioning at the Federal and Provincial level, has also been set up.

Authorities for Compliance with the Guidelines issued by MOFA are as follows:

The following authorities are competent to act for compliance with the notification:

- Ministry of Foreign Affairs (Counterterrorism (CT) Department)
- Ministry of Interior
- Home Departments
- National Counter Terrorism Authority (NACTA)
- State Bank of Pakistan
- Security Exchange Commission of Pakistan
- Pakistan Post
- Central Directorate of National Savings
- All Banks/Development Financial Institutions/Micro-Finance Banks/NPOs/other financial institutions, etc..
- Land Registration Authorities
- Excise Department
- All Provincial Departments
- District Intelligence Committees
- Customs (FBR)
- FIA and PTA
- FMU
- Directorate General of Immigration & Passports (IMPASS), National Database and Registration Authority (NADRA)
- District Administration
- Provincial and District Revenue Authorities
- Provincial CTDs

Asset Freeze

AUTHORITY	ACTION TO BE TAKEN
Ministry of Foreign Affairs (MOFA) (CT Department)	<ul style="list-style-type: none"> • Issue SROs to the respective focal persons at the federal and provincial level if there is an update in the consolidated list maintained by the UNSC Sanctions Committee. This includes the Regulators, MOD, MOI, Home Departments and the ICT, the PTA, FIA, IMPASS National Database and Registration Authority (NADRA) and the Intelligence Agencies. • Maintain an updated consolidated list of designated individuals and entities on its official website. • Receive monthly compliance reports from the Regulators, MOD, MOI, Home Departments and the ICT and the Customs.

306 Government Move Against UN-Listed Terror Outfits, Dawn, 2019
<http://www.dawn.com/news/1467656/govt-move-against-un-listed-terror-outfits>.

307 Ministry of Foreign Affairs Guidelines on Implementing UNSC Resolution 1267 (2019) - [http://www.MOFA.gov.pk/documents/1267-Guidelines.pdf/2019/08/09/2019-Guidelines on implementation of the UN Security Council Resolutions concerning targeted financial sanctions, travel bans and arms embargo](http://www.MOFA.gov.pk/documents/1267-Guidelines.pdf/2019/08/09/2019-Guidelines%20on%20implementation%20of%20the%20UN%20Security%20Council%20Resolutions%20concerning%20targeted%20financial%20sanctions,%20travel%20bans%20and%20arms%20embargo).

	<p>Assets Freeze</p> <ul style="list-style-type: none"> • Receive and maintain an updated list of all the assets frozen/seized. <p>Travel Ban</p> <ul style="list-style-type: none"> • In case there is a target match of a foreign or Pakistani national who is attempting to enter/transit in Pakistan, the MOFA will receive information from the focal point at MOI. • Share updated lists and the SRO with the Pakistani Embassies and the Consulates.
Ministry of Interior (MOI)	<p>Arms Embargo</p> <ul style="list-style-type: none"> • Keep an updated list of the proscribed individuals/entities. • Share monthly compliance reports with focal points in MOFA. <p>Assets Freeze</p> <ul style="list-style-type: none"> • Receive and maintain an updated list of all the assets frozen by the concerned entities. • Identify immovable assets registered in the names of the designated individuals/entities from the relevant land registration authorities under their jurisdiction. • Freeze the titles and seize assets under the UNSC Order (2019). <p>Verification Process</p> <ul style="list-style-type: none"> • Receive Information about a potential match from the Regulators, the relevant land registration authority and the Home Department. • Verify whether this potential match is a target match within five working days with the help of relevant law enforcement agencies and the security agencies. • Send the verified report to the requesting authorities. <p>Fund Raising</p> <ul style="list-style-type: none"> • Take out advertisements in the media to advise the public about the prohibition against making any funds or financial resources available to a proscribed organization/entity. <p>Travel Ban</p> <ul style="list-style-type: none"> • In case there is a target match of a foreign or Pakistani national who is attempting to enter/transit in Pakistan, the MOI will receive this information from the focal point at the FIA and then relay this information to the DG (CT) and MOFA.

	<p>Arms Embargo</p> <ul style="list-style-type: none"> • Instruct the LEAs to seize all the licensed arms/weapons from the designated individuals/entities.
<p>Home Departments/ICT</p>	<p>Immovable Assets</p> <ul style="list-style-type: none"> • Identify immovable assets registered in the names of the designated individuals/entities from the relevant land registration authorities under their jurisdiction. <p>Rent from Immoveable Assets</p> <ul style="list-style-type: none"> • The Home Departments would direct the Land Registration Authorities and the Excise Departments to search if the designated entities or individuals are deriving any rent from their properties. In case it is, it will have the rent deposited in an account under Article 9 of the UNSC Order 2019. <p>Ongoing Monitoring</p> <ul style="list-style-type: none"> • The Home Department will forward the SRO to the Deputy Commissioner with the direction to use the mechanism of the DICs to identify additional assets owned directly or indirectly by the designated individuals/entities and report back to them. In case there is a violation, action will be taken against the violators under Section 11-F, H-J of the ATA 1997. <p>Moveable Assets</p> <ul style="list-style-type: none"> • The Home Department will forward the SROs to the Excise Department with the instruction to verify the names of the individuals/entities from its vehicle registration records. <p>Freezing of Assets. (Moveable and Immoveable)</p> <ul style="list-style-type: none"> • The Home Departments would freeze assets under Article 15 of the UNSC Order (2019). <p>Seizure of Assets</p> <ul style="list-style-type: none"> • The Home Department will seize assets under Article 14 of the UNSC Order (2019). • Receive and forward details of the potential match to the MOI for verification of identity. <p>Prohibition on Fundraising</p> <ul style="list-style-type: none"> • The Home Department will show advertisements in the media to advise the public about the prohibition on making any funds/financial resources available to a proscribed organization/entity.

	<p>Sharing Details of Assets Frozen/Seized</p> <ul style="list-style-type: none"> • The Home Department will share details of the assets frozen and seized with the focal points in the MOFA, MOI, NACTA, FMU and FIA. • Share monthly compliance reports to focal points in MOFA.
NACTA	<ul style="list-style-type: none"> • Enabling inter-agency coordination across all entities across Pakistan to facilitate counterterrorism financing. • The CFTUs, established under NACTA, are working with other stakeholders (mentioned below) to curb terrorism. • Keep updated data of the frozen/seized assets received from the Regulators, MOI and the Home Departments.
<p>All Regulators</p> <ol style="list-style-type: none"> 1. SECP 2. SBP 3. CDNS 4. Pakistan Post 	<p>Freezing of Accounts/Financial Assets or Economic Resources</p> <ul style="list-style-type: none"> • Immediately notify the proscription order to all regulated entities under its supervision. • Issue directions to freeze, without delay, the accounts, funds and other financial assets or economic resources of the proscribed person or organization. • Any corporate entity, including non-banking financial companies, stock exchanges, clearinghouses, or depository companies shall freeze and not transfer any share, debenture, bond, unit, or any other instrument of investment of a proscribed organization and person. • The banks/DFIs/MFBs will provide no loan facility or financial support. • Maintain an updated list of proscribed individuals and organizations and verify if those entities are holding any funds, financial assets or economic resources. • Receive information about a potential match from the regulated entities and relay it to the MOI for verification of identity. • SECP/CDNS and Pakistan Post ought to share details of the assets frozen with focal points in MOFA, MOI, NACTA (CFT Task Force), FMU and FIA. • SBP will share details of the assets frozen with FMU (in the form of an STR). • Share Monthly Compliance Reports to MOFA.

<p>Regulated Entities</p> <ol style="list-style-type: none"> 1. All Banks/Development Finance Institutes (DFIs)/Micro Finance Banks (MFBs)/Non-Profit Organizations (NPOs)/other financial institutions, etc.. regulated by the SBP 2. All corporate entities, including non-banking financial companies, stock exchanges, clearinghouses, or depository companies regulated by the SECP 3. All other entities regulated by the CDNS and Pakistan Post. 	<p>Freezing of Accounts/Financial Assets or Economic Resources</p> <ul style="list-style-type: none"> • Freeze, without delay, the bank accounts, funds and other financial assets or economic resources of the proscribed person or organization if target match. This includes all money or articles of value deposited with banks or financial institutions or placed in their safe lockers belonging to the proscribed person or organization. • No loan facility or financial support should be provided to proscribed person or organizations. • Convey information about a potential match to the regulators. • Temporarily freeze assets of the proscribed entity or organization if there is a potential match. • Immediately freeze assets if the potential match is a target match.
<p>MOD</p>	<p>Immoveable Assets</p> <ul style="list-style-type: none"> • Identify immovable assets registered in the names of the designated individuals/entities from the relevant land registration authorities under their jurisdiction. • Upon a potential match, receive details from the relevant land registration authority. • Share Details of frozen assets with MOFA, MOI, NACTA, FMU and FIA.
<p>Provincial Authorities</p>	<ul style="list-style-type: none"> • Share the consolidated list of designated individuals and entities with the district administrations required to ensure that the NOCs are not granted to the proscribed entities/individuals.
<p>Land Registration Authorities</p>	<p>Rent from Immoveable Assets</p> <ul style="list-style-type: none"> • Verify from their database if the designated individuals/entities are deriving rent from their properties. <p>Assets/Titles Freeze of immovable Assets</p> <ul style="list-style-type: none"> • Facilitate the MOD, MOI and the Home Departments in identifying immovable assets in the name of the designated entities/individuals. • Immediately freeze the title of the assets of the proscribed entities/individuals if there is a target match. • Convey the requisite information to the requesting authority (MOD, MOI or Home Department) if there is a potential match and temporarily freeze the assets of the entity/individual.

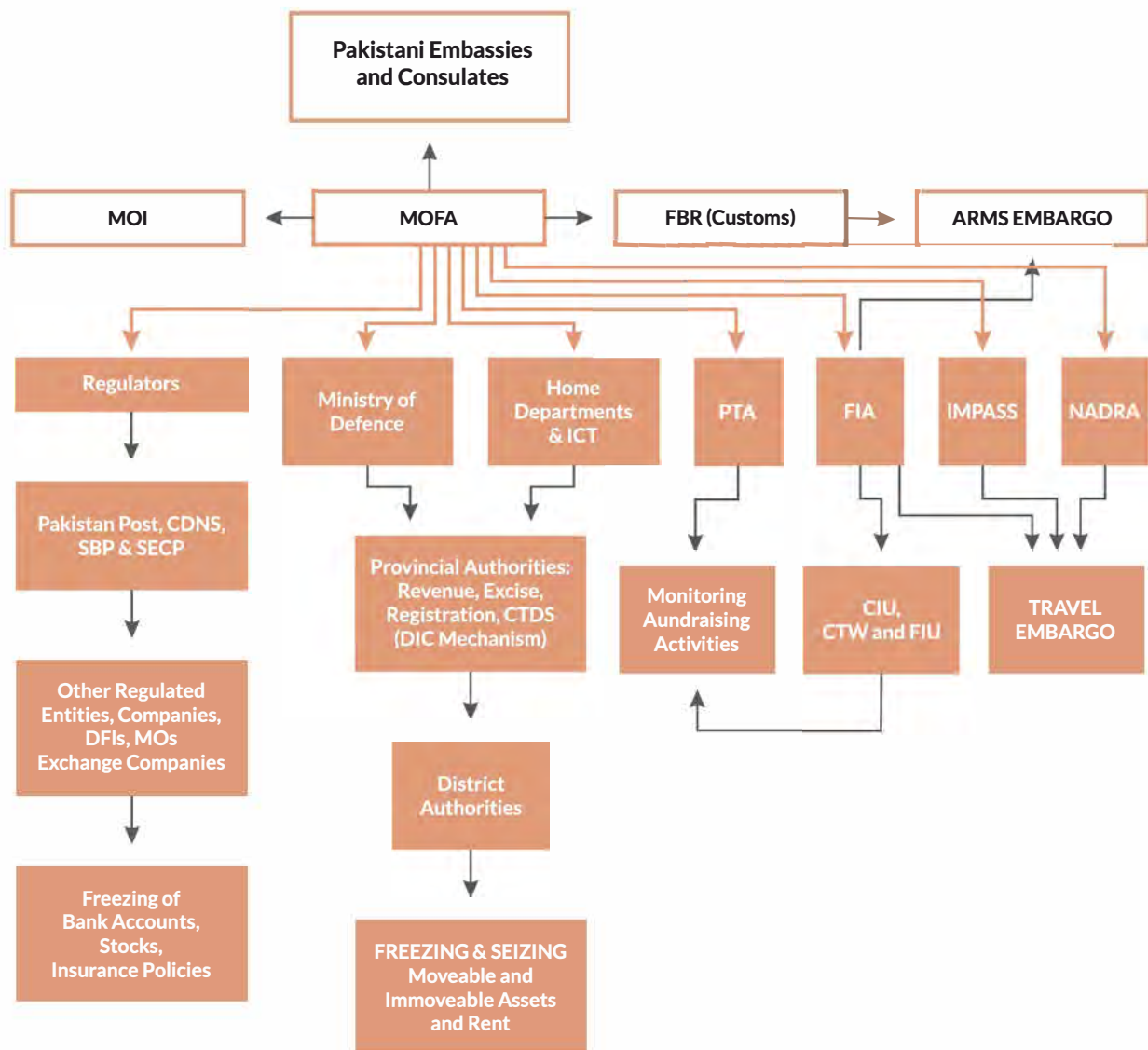
	<ul style="list-style-type: none"> • Maintain an updated list on an ongoing basis and run a check if the individuals/entities are holding any immovable assets.
Excise Departments	<p>Rent from Immoveable Assets</p> <ul style="list-style-type: none"> • Verify from their database if the designated individuals/entities are deriving rent from their properties. <p>Assets Freeze of Moveable Assets</p> <ul style="list-style-type: none"> • Verify the names of the designated individuals/entities from their respective motor vehicle registration records. • In case there is a target match, immediately freeze the title of the vehicle in the relevant database to prevent its sale or transfer. • Convey details of frozen titles to the Home Departments. • Monitor if the entities/individuals designated are holding any moveable assets.
FIA	<p>Assets Freeze</p> <ul style="list-style-type: none"> • Receive Lists and maintain an updated list in electronic form of the assets frozen from the Home Departments and ICT, SECP, CDNS, Pakistan Post, FMU, MOI and the MOD. <p>Fundraising Activities</p> <ul style="list-style-type: none"> • Cyber Crime Wing will monitor the internet to prevent any online fundraising activity by the designated individual/entity. • The Cyber Crime Wing will act against the blocked links/websites being used by the designated individuals/entities under the Prevention of Electronic Crimes Act (2016). <p>Travel Ban</p> <ul style="list-style-type: none"> • Receive the SRO from the MOFA and place the designated individuals on the blocked list maintained for the travel ban. • If the designated individual (target match) is a foreign national and is attempting to enter Pakistan, the focal person will receive his/her details from the IMPASS. This focal point at the FIA will then forward the matter to the Focal Point at MOI. • If the designated individual (target match) is a Pakistani national and is attempting to enter Pakistan, the focal point will receive his/her details from the IMPASS. This focal point at the FIA will then forward the matter to the Focal Point at MOI. • Initiate legal inquiry/legal action under the AMLA 2010 after receiving the necessary information from the FMU.

<p>PTA</p>	<p>Fund-Raising Activities</p> <ul style="list-style-type: none"> • Receive the SRO from the MOFA. • Monitor the internet to prevent any online fundraising activity by the designated individual/entity. • If any designated/entity is reportedly using the internet via a social media platform for fundraising activities, the PTA would immediately block the webpage/URL on the order of the focal point at the MOFA. • In case the webpage is hosted on a secured server hosted outside Pakistan, PTA would approach the company hosting the server for having the link blocked. If there is no cooperation from the company, then the MOFA would take the matter up with the concerned host government via diplomatic channels. • Maintain a database of blocked lists/website being used by the entities/individuals. These details will be shared with the FIA cyber crime wing for further investigation.
<p>LEA/Intelligence Agencies/CTDs</p>	<p>Fundraising</p> <ul style="list-style-type: none"> • Continue monitoring the activities of the proscribed persons/entities. In case there is a violation on the part of a designated entity/individual (i.e. it is involved in any sort of fund-raising activity), legal action would be taken against it by the LEAs under Section 11F, 11H-J under the ATA. <p>Arms Embargo</p> <ul style="list-style-type: none"> • Monitor the designated individuals and entities to ensure they do not procure arms and other related materials from any source. <p>Ongoing Monitoring</p> <ul style="list-style-type: none"> • The Deputy Commissioner will use the mechanism of the DICs (including CTDs) to identify other assets owned directly or indirectly by the designated individuals/entities or their immediate family members' parents, wife, and children through the police or any government. Other agencies and report back to them. In case there is a violation under Section 11-F, H-J of the ATA 1997, action will be taken against them. • The CTDs implement all the requirements under section 11EE of ATA 1997, which relates to Police and Local Enforcement Agencies. • The CTDs may check and probe the assets of IV-Scheduler. • Any other obligation specified under ATA 1997

Customs	Travel Ban <ul style="list-style-type: none"> • The Focal Point from the Customs Department shall run the names of the import or export entities and related persons against the names in the sanctions list. • If there is a target match, it will initiate inquiries to confirm the nature of the goods to be imported or exported. • The Customs Intelligence Directorate will also have access to the sanctions lists for checking the names of the designated individuals/entities. • Conduct Inquiry if the imported or exported good is from an individual/entity on the proscribed list. • Share fortnightly Compliance Report with the MOFA.
Immigration & Passports (IMPASS)	Travel Ban <ul style="list-style-type: none"> • Receive the SRO from the MOFA and place the designated individuals on the blocked list for a travel ban. • If there is a positive match for an individual who is a foreign national, the person will be refused entry into Pakistan, and the matter will be reported to the focal point at the FIA Headquarters.
District Intelligence Committees	<ul style="list-style-type: none"> • To hold regular meetings of District Intelligence Committee comprising representatives from Police, Intelligence agencies, CTDs and Special Branch to identify the persons or organizations to be placed on the 4th schedule under the provisions of section 11EE of the ATA 1997. • To make recommendations to the Home Departments for placement of such persons on the Fourth Schedule.
FMU	<ul style="list-style-type: none"> • In compliance with the 1267 regime, the FMU receives and analyzes the Suspicious Transaction Reports and Currency Transaction Report and then communicates the necessary information to the relevant Investigating Agencies. The roles and responsibilities of the FMU and other investigating agencies have been discussed in further detail below.

Self-Assessment Questions

- What are the four kinds of sanctions outlined in the 1267 Sanctions regime read in line with the MOFA Order?
- What two agencies are responsible for primarily monitoring online fundraising activities?
- Identify any three ways via which assets are frozen under the sanction's regime.



6.3. ROLE/JURISDICTION OF EACH AGENCY IN COMPLIANCE WITH UNSCR 1373 UNDER THE ANTI-TERRORISM ACT 1997 (ATA REGIME)

Framework Defining Roles and Functions of Entities under UNSCR 1373

NACTA has issued comprehensive directions to entities involved in the CFT legal framework via 'guidelines' for effective implementation of the UNSCR 1373.³⁰⁸ During implementation, these agencies are required to identify additional capacity building requirements and report gaps in legislation and implementation mechanisms to the FMU, MOI and Provincial Home Departments. Furthermore, these gaps may be used by the agencies to identify opportunities for intra-agency coordination and mutual assistance.

³⁰⁸ NACTA Guidelines on the Implementation of UNSC Resolution 1373 (2019) – NACTA website: <https://nacta.gov.pk/wp-content/uploads/2019/09/08/09/2019-guidelines-on-actions-to-be-taken-by-competent-authorities-for-implementation-of-united-nations-security-council-resolution-no.-1373-without-covering-letter-1.pdf>.

The Ministry of Interior issues Notifications of proscribed individuals (Section 11-EE) and organizations (Section 11-B) under the Anti-Terrorism Act (1997) for further implementation of the sanctions measures introduced under the United Security Council Resolution 1373.³⁰⁹ However, vide SRO no. (1)/2014 dated 29th October 2014, MOI has delegated the power and functions as specified in section 11EE of the ATA to respective Provincial Home Secretaries and the Chief Commissioner Islamabad Capital Territory.³¹⁰

Authorities for Compliance with the Guidelines Issued by NACTA:³¹¹

The following authorities are competent to act for compliance with the notification:

- Ministry of Interior
- Home Departments
- National Counter Terrorism Authority (NACTA)
- State Bank of Pakistan
- Security Exchange Commission of Pakistan
- All Banks/DFIs/MFBs/NPOs/other financial institutions, etc..
- All Provincial Departments
- District Intelligence Committees
- District Administration
- Provincial and District Revenue Authorities
- Provincial CTDs

The table below highlights the role that each entity ought to take in order to comply with the directions issued by NACTA and the MOI against the criminal organizations and persons.³¹²

AUTHORITY	ACTION TO BE TAKEN
MOI	<ul style="list-style-type: none"> • Immediately notify the proscription order of a proscribed organization to all concerned federal and provincial departments/organizations. • Enforce and monitor the actions taken under UNSCR 1373 by respective organizations. • Freezing and Seizure of Property (movable and immovable) under section 11-0 ATA 1997 • Keep updated data of all the frozen/seized assets.
Home Departments/Chief Commissioner of ICT	<ul style="list-style-type: none"> • Immediately notify the proscription order for a proscribed organization to SBP, SECP, Passport and Immigration Authority, FIA, provincial departments and Home Secretaries of the other provinces. • Issue notification of proscribed persons to all concerned federal and provincial organizations. • To monitor the actions taken under UNSCR 1373 by respective organizations.

³⁰⁹ Further details of how an organization or individual is enlisted in compliance to UNSCR 1267 have been discussed in Chapter 4.

³¹⁰ Supra note 3.

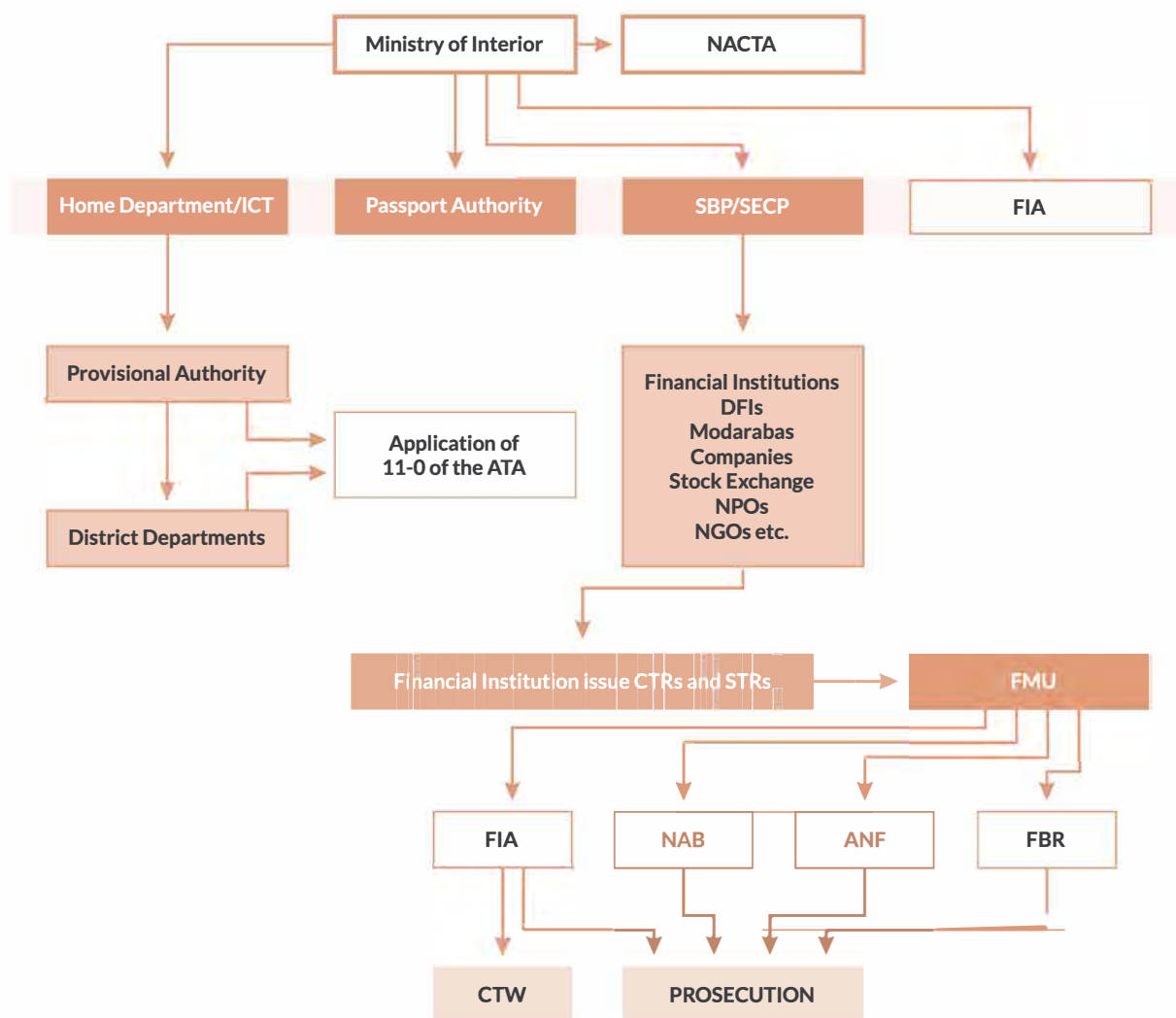
³¹¹ Supra note 3.

³¹² The proscribed organizations and persons have been delineated under the First and the Fourth Schedule of the ATA respectively.

	<ul style="list-style-type: none"> • Comply with directions/proscription notifications from the MOI to freeze and seize, without delay property of criminal organizations/individuals under section 11-0 of ATA 1997 and for compliance of UNSCR 1373. • Keep updated data of the frozen/seized assets and share the progress with the MOI and NACTA monthly.
NACTA	<ul style="list-style-type: none"> • Enable inter-agency coordination across all entities across Pakistan in order to facilitate countering offinancingof terrorism. • The CFTUs established under NACTA are working with other stakeholders (mentioned below) to curb terrorism. • Keep updated data of the frozen/seized assetsreceived from the MOI and the Home Departments.
SECP	<ul style="list-style-type: none"> • Immediately notify the proscription order to all financial entities under its supervision. • Issue directions to freeze, without delay, the accounts, funds and other financial assets or economic resources of the proscribed person or organization. • Any corporate entity, including non-banking financial companies, stock exchanges, clearinghouses, or depository companies shall freeze and shall not transfer any share, debenture, bond, unit, or any other instrument of investment of a proscribed organization and person.
SBP	<ul style="list-style-type: none"> • Immediately notify the proscription order to all banks/DFIs/MFBs. • Issue direction to all banks to freeze accounts of criminal organizations and individuals without delay. • No loan facility or financial support will be provided.
<p>All Banks, Development Finance Institutes (DFIs), Micro Finance Banks (MFB), Non-Profit Organizations (NPOs), other financial institutions, etc.. regulated by the SBP</p> <p><i>All corporate entities, including non-banking financial companies, stock exchanges, clearinghouses, or depository companies</i></p>	<ul style="list-style-type: none"> • Freeze without delay the bank accounts, funds and other financial assets or economic resources of the proscribed person or organization. This includes all money or articles of value deposited with banks or financial institutions or placed in their safe lockers belonging to the proscribed person or organization. • No loan facility or financial support will be provided to proscribed persons or organizations.

District Intelligence Committees	<ul style="list-style-type: none"> • Hold regular meetings of District Intelligence Committee, comprising representatives from Police, Intelligence agencies, CTDs and Special Branch, to identify the persons or organizations to be placed on the 4th schedule under the provisions of section 11E of the ATA 1997. • To make recommendations to the Home Departments for placement of such persons on the Fourth Schedule.
All Provincial Departments	<ul style="list-style-type: none"> • Comply with directions issued under proscription notifications from the MOI or Home Departments to freeze and seize, without delay, the property of proscribed organizations/ individuals under section 110 of the ATA 1997 and for compliance of UNSCR 1373. • To freeze, without delay, funds and other financial assets or economic resources of proscribed persons; and of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities.
District Administration	<ul style="list-style-type: none"> • Comply with directions issued under proscription notifications from the MOI, through respective Provincial Home Departments, to freeze and seize, without delay, the property of proscribed organizations/individuals under section 110 of the ATA 1997 and for compliance of UNSCR 1373. • To freeze, without delay, funds and other financial assets or economic resources of proscribed persons; and of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of, such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities.

<p>Provincial and District Revenue Authorities, including land registration departments and excise departments</p>	<ul style="list-style-type: none"> • Comply with directions issued under proscription notifications from the Ministry of Interior, through respective Provincial Home Departments to freeze and seize without delay property of proscribed organizations/ individuals under section 110 of the ATA 1997 and for compliance of UNSCR1373. • All the provincial revenue authorities shall freeze/seize, without delay, the immovable assets of proscribed persons and organizations on the direction of Ministry of Interior. • An immovable property may also be frozen by way of avoiding or restraining the transfer, or creation of an encumbrance over such property.
<p>Provincial CTDs (The powers of CTD officers for a TF investigation have been discussed in further detail in Chapter 7.)</p>	<ul style="list-style-type: none"> • The CTDs implement all the requirements under section 11EE of the ATA 1997, which relate to Police and Local Enforcement Agencies. • The CTDs may check and probe the assets of IV-Scheduler or their immediate family members' parents, wife, and children through the police or any other government agencies. • The CTDs may monitor and keep surveillance over activities of such persons through the police or any other Govt. agencies or any other person and check if there has been a violation under Section 11 F,H-J of the ATA 1997. • In case there has been a violation, the CTD can carry out the necessary measures under section 11O of the ATA, including any other obligations specified under ATA, 1997.
<p>FMU</p>	<ul style="list-style-type: none"> • In compliance with the 1373 regime and under the AMLA regime, the FMU receives and analyzes the STRs and CTRs on an ongoing basis. After analyzing the STR/CTR, it then communicates the necessary information to the relevant investigating agencies. The roles and responsibilities of the FMU and other investigating agencies have been discussed in further detail below.



6.4. ROLE/ JURISDICTION OF EACH AGENCY IN THE IMPLEMENTATION OF THE SANCTIONS REGIME UNDER THE ANTI-MONEY LAUNDERING ACT (2010) (AMLA REGIME)

Financial Monitoring Unit

The FMU receives and analyzes STRs and CTRs and disseminates information to relevant investigating authorities. Financial institutions³¹³ and DNFBPs³¹⁴ referred to in the AMLA as reporting entities,³¹⁵ are required to report financial information to the FMU in the form of a suspicious transaction report (STR) and a currency transaction report (CTR).³¹⁶ Additionally, the FMU consolidates databases by compiling information collected from banks and other financial institutions and can share information with police and law enforcement authorities accordingly to aid in investigations.³¹⁷ It is vital that all types of money service businesses, including regulated hawala and hundi service providers, report promptly to the FMU if they suspect or have reasonable grounds to suspect³¹⁸ that funds are the proceeds of criminal activity, or are related to terrorist financing or related to an unlicensed money remittance business. The information collected by the FMU through STRs can be used by law enforcement agencies (or by supervisors) to conduct further investigations, which can help identify illegal hawala and other similar service providers.

After analysis, the FMU forwards STRs, CTRs or case referrals to investigating agencies for confidential review.³¹⁹ The FMU also may request information from financial intelligence units (FIUs) in other countries or request to search their

313 Section 2(f) Anti-Money Laundering Act (2010).

314 Section 2(m) Anti-Money Laundering Act (2010).

315 Section 2(u) Anti-Money Laundering Act (2010).

316 Section 6(4)(a) and (b) and (c) Anti-Money Laundering Act (2010).

317 UNODC Training Manual for LEAs Counter Terrorism Financing.

318 Ibid.

319 Section 6(4)(c) Anti-Money Laundering Act (2010).

databases for information on the suspect(s) or transaction(s). In any investigation of a financial crime, such a database search should be requested where there is information that relates to another country.³²⁰

Federal Investigation Agency (FIA)

- It has been defined as the investigating or prosecuting agency under the AMLA 2010.
- It is also a part of the General Committee to assist the National Executive Committee constituted under section 5 of the AMLA 2010.
- The FIA has offices in each of Pakistan's four provinces as well as its headquarters in Islamabad.
- It has a Counter-Terrorism Wing (CTW) that detects and investigates terrorist financing/money laundering cases.
- The Terrorist Financing Investigation Unit (TFIU) at FIA facilitates investigation and prosecution of cases in courts of law.
- TFIU provides training to Financial Investigators and has developed SOPs for TF Investigations.
- FIA liaises with FMU, SBP Commercial Banks and Financial Institutions.
- The TFIU's functions also include analysis and monitoring of the implementation of rules and regulations about terrorist financing.
- It represents the Counter-Terrorism Wing (CTW)/FIA on various national and international forums for supporting efforts to combat money laundering & terrorist financing.
- After dissemination of an STR by FMU, the Investigation Agency evaluates the financial intelligence report of FMU and commences investigation under its jurisdiction. TF cases fall under its domain, and the FIA also investigates cases that have a cross-provincial impact.
- FIA, being an LEA, can exercise the powers of search, seizure, attachment, arrest, etc. As given to them under Sections, 8-10 of the AMLA 2010 read with the AML Rules 2008.
- FIA also has powers related to search, the arrest of persons and seizure of property under the CrPC and Section 5(1) of the FIA Act 1974.

TERRORISM SPECIFIC INVESTIGATIVE BODIES UNDER FIA	FUNCTION
Counter-Terrorism Wing (CTW)	<ul style="list-style-type: none"> • Identify and arrest most wanted terrorists. • Detect and investigate terrorist financing/money laundering cases. • Crime scene and forensic analysis of explosive material at major terrorist incident sites • Detect, seize and prosecute hate material. • Prepare terrorist incident analysis reports. • Prepare threat assessment reports. • Help create and maintain a national database of terrorist entities.
Financial Investigation Unit (FIU or TFIU)	<ul style="list-style-type: none"> • Conducts inquiries into TF/ML on request of other agencies such as Interpol, FMU, etc. (both foreign and domestic) • Facilitates the investigation and prosecution of TF/ML cases. • Provides training and develops SOPs for TF cases. • Coordinates with FMU, SBP, commercial banks and financial institutions for TF investigations. • Analyzes and monitors the implementation of rules and regulations about CFT.

320 Section 6(4)(g) Anti-Money Laundering Act (2010).

Cyber-Investigation Unit (CIU) and Computer Forensics Lab

- Runs inquiries and investigates cases of cyberterrorism.
- Conduct forensic analysis computer/cell phone/electronic devices forensic analysis.
- Developed software designed to aid in combatting terrorist activities such as:
 - Terrorist Information System (TIS)
 - Terrorist Incident Analysis (TIA)
 - Case Monitoring System (CMS)
 - Personnel Record Database (PERREC)
 - Human Trafficker Information System

The following are of concern to the FIA in ML/TF contexts:

- Reports of STRs and CTRs;
- Private Complaints (whistleblowers);
- LEA referrals from other CT Units;
- Foreign requests through FMU or INTERPOL and National Central Bureau of Interpol Pakistan (NCB),³²¹ and
- Requests from the MOI.

The FIA verifies and converts data from anonymous sources into inquiries. The investigation is carried out under the Rules of Inquiry and Investigation (2002) and the FIA Standing Order No 01/2018. The FIA has the power to summon witnesses and requisition bank records and relevant documentation.³²² The Enquiry Officer then submits a Confidential Final Report for consideration of the FIA Scrutiny Committee.

If a case is supported by proof, it will form the basis of a First Information Report (FIR). If not, it will be closed or referred to another unit if they are to explore offences other than terrorism.³²³

In addition to ATA 1997 and AMLA 2010, the FIA has powers to investigate offences under the Prevention of Electronic Crimes Act (2016), Pakistan Penal Code (1860), Code of Criminal Procedure (1898) and FIA Act (1974).³²⁴ A report under Section 173³²⁵ of the Code of Criminal Procedure will be presented to the tribunal concerned upon completion of the inquiry.³²⁶

The FIA uses a variety of intelligence sources, including the PTA for SIM cards and call data records and the FBR for income tax and other financial information. The FIA further has an extensive liaison with police units and intelligence from the military and inter-services. They can start investigations into NPOs, NGOs, Madrassas and Trusts;³²⁷ and seek evaluations of such organizations by third parties. If they go overseas through MOI and MOFA and follow up on overseas inquiries, they can also test the roots and destinations of funds.³²⁸

National Accountability Bureau (NAB)

- NAB's role primarily pertains to corruption cases.
- It operates as the investigating or prosecuting agency as provided under section 2(j) of the AMLA 2010.

321 FIA – NCB Pakistan <http://www.fia.gov.pk/en/ip.php>;

NACTA Guidelines <https://nacta.gov.pk/wp-content/uploads/2019/04/Pakistan-1267-guidelines.pdf>.

322 FIA Act 1974, Section 5 (1).

323 FIA Standing Order No.01/2018: Directions and Guidelines regarding Verification, Enquiry Proceedings, Investigation of Cases, Change/Transfer of Enquiry/Investigation and Matters Connected Therewith. Accessed at: <http://www.fia.gov.pk/en/law/SON012018.pdf>.

324 'Federal Investigation Agency' (Fia.gov.pk, 2019) <http://www.fia.gov.pk/en/about.php>.

325 Given that Section 5 FIA Act (1974) vests the powers of police in members of the FIA, the FIA is required to duly file a police report under Section 173 of the Cr.P.C.

326 FIA Standing Order No.01/2018: Directions and Guidelines regarding Verification, Enquiry Proceedings, Investigation of Cases, Change/Transfer of Enquiry/Investigation and Matters Connected Therewith. Accessed at: <http://www.fia.gov.pk/en/law/SON012018.pdf>.

327 FIA Act (1974), Section 5. See also, Schedule of Offences, FIA Act (1974); AMLA 2010 and; ATA 1997.

FIU contends with offences punishable under the Anti-Terrorism Act, 1997 (XXVII of 1997) to the extent of dealing with cases which:-

(a) have Inter-provincial scope, or

(b) are entrusted to the Agency by the Federal Government

<http://www.fia.gov.pk/en/about.php>. NACTA Guidelines <https://nacta.gov.pk/wp-content/uploads/2019/04/Pakistan-1267-guidelines.pdf>.

328 Ibid.

- It is also a part of the General Committee to assist the National Executive Committee constituted under section 5 of the AMLA 2010.
- After dissemination of an STR by the FMU, the Investigation Agency evaluates the financial intelligence report of FMU and commences its investigation of Money Laundering with its predicate crime jurisdiction. (Corruption)
- NAB, being an LEA, can exercise the powers of search, seizure, attachment, arrest, etc. As given to them under Sections, 8-10 of the AMLA 2010 read with AML Rules 2008.
- It is designated to investigate ML. NAB has enough powers to identify, trace, seize and freeze assets under sections 11, 12, 13, 18, 19, 20, 21, and 24 of the National Accountability Ordinance (now Act).

Anti-Narcotics Force (ANF)

- ANF's role primarily emerges in drugs-related cases.
- It operates as the investigating or prosecuting agency as provided under section 2(j) of the AMLA 2010.
- It is also a part of the General Committee to assist the NEC constituted under section 5 of the AMLA 2010.
- After dissemination of an STR by the FMU, the Investigation Agency evaluates the financial intelligence report of FMU. It commences with the investigation of the ML under its predicate crime jurisdiction (use of Narcotics and drugs).
- ANF, being a Law Enforcement Agency, can exercise the powers of search, seizure, attachment, arrest, etc. As given to them under Sections 8-15 under the AMLA 2010 read with AML Rules 2008.
- ANF has powers under the Control of Narcotic Substances Act (sections 12, 13, 19, 31, 37 and 39) and ANF Act (s 6) for search, the arrest of persons and seizures of property.

Federal Board of Revenue (FBR)

- FBR assists the General Committee constituted under section 5 of the AMLA 2010.
- It primarily deals with smuggling cases.
- After dissemination of the STR by the FMU, the Investigation Agency evaluates the financial intelligence report of FMU and commences an investigation of ML under its predicate crime jurisdiction (smuggling).
- FBR, being an LEA, can exercise the powers of search, seizure, attachment, arrest, etc. As given to them under Sections 8-15 of the AMLA 2010 read with AML Rules 2008.
- FBR-Customs has powers of seizure, confiscation and disposal of smuggled goods, including currency (Customs Act 168, 169 and 179).
- FBR-Inland Revenue (IR) has powers to identify, trace, freeze or seize and confiscate and investigative measures under the Income Tax Ordinance (2001) (ITO), Sales Tax Act (1990) (sections 37A, 40 and 48) and Federal Excise Act (2005) (sections 14, 19, 22 and 26).
- During investigations, the FBR ought to forward the case for verification of statements in case there has been concealment of tax, improper use of the National Tax Number and a suspicion that the tax allegedly evaded is ten million or more.

*The LEAs mentioned above can also, during ML/TF and predicate crime investigations, search premises and persons, take witness statements, and obtain evidence as stated mainly in Part 5 of the Code of Criminal Procedure (searches of premises and persons under Sections 165 and 166; taking of witness statements through interviews or interrogation under Sections 160-162; obtaining evidence and seizing under Sections 162 and 550 under their special legislation).

6.5. COORDINATION AMONGST THE LEAS UNDER THE AMLA AND ATA REGIME

A significant issue for all CTDs has been that, while they are the designated LEAs for the investigation of TF provincially, they are not authorized to receive TF disseminations from the FMU, either spontaneously or by request. CTDs must seek prior court approval for each request for information submitted to the FMU and vice versa. The FMU must have prior court approval to disseminate STRs to the CTDs spontaneously. This was a structural deficiency in Pakistan's CFT regime that hampered CTDs' ability to run effective TF investigations. However, through the establishment of JITs via SOPs issued by NACTA under Section 19(1) of the ATA, and facilitated by the MOU³²⁹ signed between the various stakeholder LEAs, the FIA and CTDs can now both access FMU financial intelligence products. (The constitution and the role of JITs have been further elaborated in Chapter 8 of the Guide.)

329 NACTA Letter No. 1 (01)/DD/CTF/NACTA/2016 dated 11.04.2019 on the 14th Meeting of NACTA on Counter Finance of Terrorism and signing summary of Memorandum of Understanding. Referenced at: <https://nacta.gov.pk/nacta-organizes-multilateral-mou-amongst-leas-intelligence-agencies-and-fmu/>, Standard Operating Procedures for Joint Investigation Team (JIT) for Terrorist Financing Investigations (Annex I).

The objective of this MOU is to enhance interagency coordination and facilitate the timely and effective detention, analysis, and probe of cases, transactions and activities that pertain to AML/CFT. The MOU is also meant to ensure that any such data shared amongst organizations would be used only in an authorized fashion with the strictest confidentiality. Any request for information must be provided with a statement of relevant facts, details of new trends, personal information (CNIC etc..) of suspected persons, and details of assets under investigation. In the MOU, it was agreed that LEAs should investigate all predicate crimes from a CFT perspective and develop their own SOPs to facilitate such investigations. As a reference, it was recommended that LEAs should consider the SOPs issued by NACTA.

Hence, the FIA's CTW and provincial CTDs can form a joint investigative team (JIT)³³⁰ to investigate TF cases together.

LEAs can obtain information related to ML or a suspicious transaction from the FMU in an investigation, including NAB (section 27 of NAO), ANF (sections 31, 67 and 69 of CNSA) and FBR- IR (section 176 of ITO). However, FBR-Customs FIA has faced challenges in obtaining information held by the FIA.

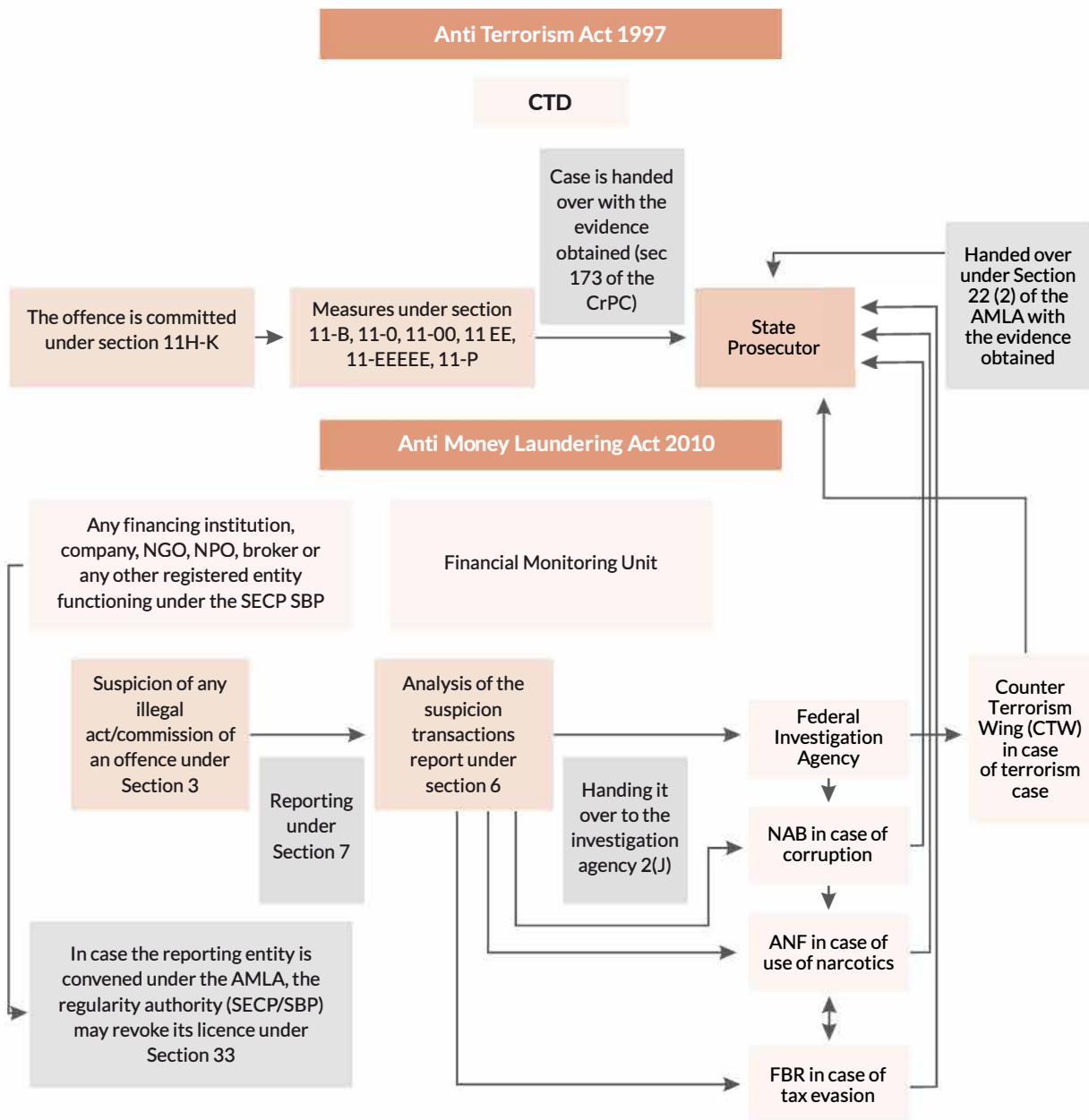
Self-Assessment Questions

How is coordination carried out between CTD and FIA? How do you think the CTD obtains information from the FMU?

What agency is responsible for investigating if it is a drug trafficking case and, during the investigation, it comes to the IO's knowledge that the money is being used for terrorism financing?

³³⁰ An SOP issued on 19 September 2018 by the NACTA provides a framework for these teams. Standard Operating Procedures for Joint Investigation Team (JIT) for Terrorist Financing Investigations (Annex I).

The diagram below explains the role of the Law Enforcement/Investigating Agencies under the ATA and the AMLA regime.



CHAPTER 7

POWER OF THE INVESTIGATORS (COUNTER TERRORISM DEPARTMENT)

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INTRODUCTION

Having understood the global legal framework that underpins the fight against terrorism financing, it is now critical to look at the applicable domestic law and analyze the scope of powers awarded to relevant authorities through legislation and procedure. This chapter analyzes the powers of investigators in terrorism financing cases as afforded by the Anti-Terrorism Act (1997). It also seeks to detail the procedures for investigation, after arrest, collection of evidence and the creation and maintenance of necessary files for further legal proceedings.

LEARNING OUTCOMES

After reading this chapter, the reader is expected to:

- Understand the investigative powers of the police's Counter Terrorism Department (CTD).
- Understand the powers of investigators as per ATA 1997 – including search, seizure, attachment, arrest, remand, etc.
- Understand the legal requirements for the proper collection, protection and analysis of evidence.
- Be able to maintain a police file and a judicial file.
- Understand how to furnish a copy of such files to the prosecution.

ESSENTIAL READING

- Code of Criminal Procedure (CrPC) – Pakistan (1898)
- Qanoon-e-Shahadat Order (1984)
- Anti-Terrorism Act (ATA) (1997)

7.1. OVERVIEW

There are primarily four mechanisms which trigger the investigative powers of the police (CTD) for cases related to terrorism financing.

Firstly, as highlighted in Chapter 5, under the UNSC Resolutions 1373 and 1267, once the SROs are issued either via the MOFA or the MOI, the respective Home Departments forward the notification of the proscribed individuals/entities to the concerned provincial authorities, including the CTD.

Under the UNSCR 1267 framework, the CTDs work with the Deputy Commissioner under the DIC mechanism and are expected to constantly monitor fundraising activities of the proscribed individuals/entities. If they are found to be in violation of Section 11F, H-J of the ATA, the CTDs may carry out the necessary measures under the law.

Under the UNSCR 1373 framework, read in conjunction with Section 11 of the ATA, the CTD is empowered to implement all the measures/requirements under Section 11 EE of the ATA falling under its jurisdiction. This includes carrying out the necessary measures under Section 11 O and 11 P, checking and probing the assets of the Fourth Scheduler or proscribed entity, their members and immediate family, parents, spouse and children with the assistance of the government and other agencies. Similar to the 1267 regime, they are also responsible for carrying out monitoring and surveillance over the activities of such persons and take the necessary action if needed.

Pursuant to the ATA:

The CTD may also proceed with the investigation (once an FIR is lodged) if they receive information from any source or they themselves find an individual or entity engaged in the acts mentioned under Sections 11 F, H-J or M. The CTD may then execute all the powers authorized to it under the ATA.

The second mechanism is the transfer of a case registered or an investigation already underway pursuant to any law. It is also relevant to note that there are cases where the accused has been released from police custody or is being held in judicial custody, in which case the police may request that (s)he be handed over to them for further investigation in their custody. This mechanism would permit further investigation into the accused's actions.

Formation of a JIT pursuant to Section 19 of the ATA under the command of the Federal Government for e.g., the MOU facilitated by NACTA.

Self-Assessment Question

How are the powers of the CTD officers triggered for an offence related to Terrorism Financing?

7.2. LODGING OF AN FIR

The Code of Criminal Procedure, 1898 (CrPC) lays down the procedure for the criminal justice system. It provides a mechanism for, inter alia, how to carry out an arrest, an investigation, and a trial. Prior to terrorist prosecution, the first step carried out by the police is the investigation which normally begins after the recording of a FIR in the police station.

An FIR is a document, on the basis of which, the police machinery is activated and set in motion for investigation. The purpose of an FIR is to set criminal law in motion and to obtain first-hand spontaneous information of an occurrence, in order to exclude the possibility of fabrication, consultation, or deliberation on part of the complainant. The spontaneity of an FIR guarantees truth,³³¹ and provides a sound basis for carrying out an investigation in the right direction.³³²

The procedure for recording an FIR is provided under Section 154 of CrPC,³³³ which states that the officer in charge of the police station will produce in writing any information of a cognizable offence and read it out to the complainant and have him/her sign it.

An example of an FIR as outlined in Form 24.5 (1) has been attached below in Appendix L.

³³¹ Mushtaq Hussain v. State, 2011 SCMR 45. 15.

³³² Umar Hayat Sajjad v. SHO Police Station Mochi Gate, Lahore, 2005 YLR 1313

³³³ Code of Criminal Procedure, 1898, Section 154

Powers under Section 11 EE (Restricting Movement) and 11 EEEEE (Preventing Transfer or Disposal of Terrorist Property)

If it appears to the investigating officer that there is insufficient evidence or that no reasonable grounds for suspicion against the accused exist, and if such a person has been proscribed on the Fourth Schedule List of the ATA, the officer may, if such person is in custody, as a preventive measure, release him on his executing a bond. The surety requires that the said individual does not engage in any act of terrorism or act in any manner that advances the objectives of the organization proscribed. However, if the individual fails to execute the bond, the District Police Officer may detain the said individual and produce him within 24 hours before a magistrate. The magistrate shall then order his detention in prison until he executes a bond.³³⁴

The police officer may also require the proscribed individual to seek prior permission from the police station of the concerned area before moving from his permanent place of residence for any period of time. He will also be expected to update the police officer about his daily activities.

The police under Section 11 EE are also empowered to check, probe and monitor the assets, personal belongings or other economic sources of the proscribed person and his family to ascertain whether they are being utilized for any terrorism fund raising activity.

If, during the course of the investigation, the police officer or the JIT believes that the property under inquiry is likely to be sold off/transferred before its seizure, the police officer may direct the owner or individual to not remove, transfer, or dispose of the property in any way except on receipt of an order of the Court.³³⁵

Power of Seizure under 11 O (Seizure)

Under the UNSCR 1267 and 1373 regime, read in light with the ATA regime, the police are authorized to conduct ongoing monitoring of the activities of proscribed organizations/individuals to see if they are engaged in fundraising activities. If they see the proscribed entities/individuals engaged in any fundraising activity, they may seize those items. The seized property may, in turn, be used as evidence against the proscribed organizations/individuals.

Self-Assessment Question

Identify at least 3 powers discussed above that the CTD has under Section 11 of the ATA.

Conducting Arrest, Remand and Detention of the Accused

Section 60 of the CrPC provides that a person arrested without warrant should be produced before a magistrate having requisite jurisdiction without unnecessary delay. Section 61 of the CrPC curtails the powers of a police officer to detain persons arrested for more than twenty-four hours in the absence of a special order from a magistrate under section 167³³⁶ of the CrPC.³³⁷

Safeguards in relation to an arrest are laid down in Article 10 of the Constitution of Pakistan. In that sense, a formal

³³⁴ Code of Criminal Procedure, 1898, Section 169 read along with Section 11 EE (2) of the ATA.

³³⁵ The Investigating officer may also apply to the court for an order of attachment (11-P) of the terrorist property

³³⁶ Code of Criminal Procedure, 1898, Section 167, Procedure when investigation cannot be completed in twenty-four hours: (1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty four hours specified by Section 61, and there are grounds for believing that the accusation or information is well founded, the officer in-charge of the police-station or the police-officer making the investigation if he is not below the rank of the sub-inspector, shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate. (2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole. If he has no jurisdiction to try the case or [send] it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction; Provided that no Magistrate of the Third Class, and no Magistrate of the Second Class not specially empowered in this behalf by the Provincial Government shall authorize detention in the custody of the police. (3) A Magistrate authorizing under this section detention in the custody of the police shall record his reasons for so doing. [(4) The Magistrate, giving such order shall forward copy of his order, with his reasons for making it, to the Sessions Judge]. [(5) Notwithstanding anything contained in Sections 60 and 61 or hereinafter to the contrary, where the accused forwarded under sub-section (2) is a female, the Magistrate shall not except—in the cases involving Qatl or dacoity supported by reasons to be recorded in writing, authorize the detention of the accused in police custody, and the police officer making an investigation shall interrogate the accused referred to in subsection (1) in the prison in the presence of an officer of jail and a female police officer. (6) The officer in-charge of the prison shall make appropriate arrangements the admission of the investigating police officer into the prison for the purpose of interrogating the accused. (7) If for the purpose of investigation, it is necessary that the accused referred to in subsection (1) be taken out of the prison, the officer in-charge of the police station or the police officer making investigation, not below the rank of sub-inspector, shall apply to the Magistrate in that behalf and the Magistrate may, for the reasons to be recorded in writing, permit taking of accused out of the prison in the company of a female police officer appointed by the Magistrate : Provided that the accused shall not be kept out of the prison while in the custody of the police between sunset and sunrise].

³³⁷ Ghulam Shabbir v. State, 2000 P.Cr.L.J. 1411.

arrest also affords significant protections. An investigating officer also has the power to postpone the arrest of the accused and investigate the commission of the offence.³³⁸ If a person is unlawfully arrested, remedies such as the habeas writ are available to safeguard the petitioner's right to freedom.

Under Article 10(2), an individual who is arrested and detained in custody shall be produced before a magistrate within a period of twenty-four hours of such arrest. The Constitution forbids the continued detention of an individual beyond twenty-four hours without the authority of a magistrate.

Neither the ATA nor the CrPC define what an arrest is, but a formal arrest authorizes the detention of an individual for a period of twenty-four hours during which the investigation is conducted. As per Section 46 of the CrPC, the person making the arrest is to touch and confine the body of the person arrested, unless there is a submission to custody by word or action.

Under the ATA, the police, armed forces and civil armed forces are empowered to arrest an individual without issuing a warrant of arrest.³³⁹ This power of arrest is similar to the provision contained in Section 54 CrPC, whereby a police officer may arrest a person without a warrant on nine grounds.

It is important to note that, under Section 54 CrPC, the wide powers of arrest have been limited by requiring the police to make an arrest on the basis of either "credible information" or "reasonable suspicion." Similarly, under Section 5(2)(ii) of the ATA, a reasonable suspicion³⁴⁰ that a person has committed, or is likely to commit, an act or offence of terrorism has to exist.

In the CrPC, "reasonable suspicion" does not mean a vague surmise or inference but rather a bona fide belief on part of the police that an offence has been committed or was about to be committed.³⁴¹ Such belief must be founded on some definitive averments/allegations that may create the basis for suspicion of the involvement in the offence of the person to be arrested.³⁴²

GUIDELINES TO FOLLOW	RELEVANT REGULATION/ RULE APPLICABLE	RELEVANT JURISPRUDENCE
<p>Police, the armed forces and civil armed forces deployed under the ATA have the authority to arrest without warrant any person who has committed, or for whom there is reasonable suspicion to believe that he has committed, an act of terrorism.</p> <p>Reasonable suspicion that an offence has been committed or is about to be committed must be a bona fide belief on part of the police. Such belief has to be founded on some definite averments tending to throw suspicion on the person arrested; it amounts to availability of some tangible evidence with prosecution.</p>	Section 5(2)(ii) of ATA	

³³⁸ Interview with prosecutor, (Islamabad, 25 May 2017).

³³⁹ Anti-Terrorism Act, 1997, Section 5, Use of armed forces and civil armed forces to prevent terrorism (2) An officer of the police, armed forces and civil armed forces may-- (ii) arrest, without warrant, any person who has committed an act of terrorism or a scheduled offence, or against whom reasonable suspicion exists that he has committed, or is about to commit, any such act or offence. (iii) enter and search, without warrant any premises to make any arrest or to take possession of any property, re-arm, weapon or article used, or likely to be used, in the commission of any terrorist act or scheduled offence.

³⁴⁰ Mohsin Ali Shah v. S.H.O. Police Station Gargh Maharaja, 1995 MLD771.

³⁴¹ Manthar Ali v. S.H.O., 2013 PCrLJ 553.

³⁴² Ibid.

<p>Arrest Memo should be recorded in the zimni and roznamcha.</p> <p>It is mandatory to record the time and date of arrest in the zimni.</p>		
<p>Section 21E operates in consonance with Section 167 of the CrPC, which operates in a situation where investigation cannot be completed within twenty-four hours.</p> <p>The police may be required to detain the accused in police custody for the purposes of interrogation. The time period may extend to 90 days.</p>	<p>Remand: S. 21E – ATA Section 167 of CrPC</p>	<p>Raja Waheen Mehfooz v. Special Judge, Anti-Terrorism Court-II, Rawalpindi, 2016 PCrLJ 1773 it was held that: “the learned Special Court under Anti-Terrorism Act, while dealing with the matters of remand of the accused persons, is equally responsible to observe the provisions of section 167(3), CrPC, ...”</p>

MEASURES TO AVOID	RELEVANT REGULATION/ RULE APPLICABLE	RELEVANT JURISPRUDENCE
<p>Arrest should not be made merely on a vague surmise or inference. This inference is contingent on the context and circumstances encircling the crime.</p>		
<p>The time required for travelling does not count in this twenty-four-hour time-period.</p>		

- Production before Magistrate (if accused is found)

GUIDELINES TO FOLLOW	RELEVANT REGULATION/ RULE APPLICABLE	RELEVANT JURISPRUDENCE
<p>A person arrested without a warrant should be produced before a Magistrate having jurisdiction without unnecessary delay.</p>	<p>Section 60 of CrPC</p>	<p>The State v. Muhammad Yusuf, PLD 1965 (W.P.) Lah. 324, [3] “Moreover, even if a person be rightly arrested, it does not rest with the discretion of the Police</p>

		<i>Officer to keep the prisoner in custody where and as long as he pleases. Under no circumstances can he be detained without the special order of a Magistrate more than 24 hours. At the expiration of 24 hours, unless the special order has been obtained, the prisoner must either be discharged or sent on to the Magistrate, and any longer detention is absolutely unlawful..."</i>
An investigating officer also has the power to postpone the arrest of the accused and investigate the commission of the offence.		

The Arrest Report Memo has been attached below in Appendix L.

The ATA has a widely used preventive detention regime. There are two layers of preventive detention:

- a. The first relates to the detention of a person already proscribed under S. 11EE of the ATA and to the placement on the Fourth Schedule of the ATA subject to the limitations set by Art. 10 of the Constitution of Islamic Republic of Pakistan 1973.
- b. The second relates to detention for the purposes of inquiry to which Art. 10 of the Constitution of Islamic Republic of Pakistan, 1973 also applies.

IMPLEMENTING LAW	OPERATIVE CLAUSE	PERIOD OF DETENTION	DETENTION AUTHORITY	MECHANISM FOR INITIATING DETENTION	AIM OF DETENTION
Anti-Terrorism Act (1997)	<i>S. 11EEE: arrest and detention of suspected persons</i>	Initial period of three months Total period of detention cannot exceed twelve months	Federal Government. Armed Forces, Civil Armed Forces	An order is issued by the Government directing detention and specifying custody and the period of detention	To prevent persons proscribed under S. 11EE ATA from committing offences relating to terrorism, national security and sectarian violence

Anti-Terrorism Act (1997)	S. 11EEEE: preventive detention for inquiry	Initial period of thirty days Cannot exceed ninety days	Federal Government, Armed Forces, Civil Armed Forces	An order is issued by the Government after recording reasons for detention	To prevent offences relating to national security, sectarianism, etc.
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The inquiry under Section 11EEEE may be conducted by a police officer not below the rank of an SP – or through a JIT (read in light with Section 19 of the ATA) to be notified by the Government that may include representatives from the police, and civil armed forces and other investigation agencies such as the FIA.³⁴³ Provided that where the provisions of sections 4 and 5 have been invoked, the investigation shall be conducted by the JIT comprising of members of armed or civil armed forces, intelligence agencies and other law enforcement agencies, including an investigating officer of police not below the rank of Inspector who shall sign the report under section 173 of the Code and forward it to the Court.

During this inquiry, the concerned police officer of the Court or any other LEA member of the JIT shall have all the powers of search, arrest, and seizure of property and other belongings of the proscribed individual/organizations as mentioned under the CrPC or any other special law.

Under Section 19(1B), if the person has been arrested by the armed forces, he shall be handed over to the IO of the police station designated by the provincial government.

Under Section 19(5) of the ATA, a person who has been released from police custody under Section 169 of the CrPC or has been remanded to judicial custody, may be subjected to further investigation. The Anti-Terrorism Court (ATC), after recording reasons in writing and upon good grounds shown by a public prosecutor, may order for a person to be placed in police custody or in the custody of the JIT, in order to conduct further investigation in a case. As per Section 19(6), the ATC is considered to be a magistrate for this purpose.

Self-Assessment Question

Under Section 11EEEE, the period of detention cannot exceed
(Please select the right answer)

- 6 months
- 3 months
- 12 months

Searches under the Anti-Terrorism Act (1997)

GUIDELINES TO FOLLOW	RELEVANT REGULATION/ RULE APPLICABLE	RELEVANT JURISPRUDENCE
<p>An officer-in-charge of a police station or the police officer making an investigation must ensure that the place being searched is in the correct jurisdiction.</p> <p>The officer must record, in writing, the grounds for his belief.</p>	Section 165 & Section 166 of CrPC; Sections 21B, 19A of ATA	<p><i>Muhammad Bilal v. Superintendent of Police, Dera Ghazi Khan, PLD 1999 Lah 297, [8]</i></p> <p><i>"This section [section 165] empowers the police officer specified to make a search without warrant subject to certain safeguards. The prerequisites for a search as per this section are that:</i></p> <p><i>(i) Search must be necessary for investigation.</i></p>

³⁴³ The FIA has powers to investigate under Section 5 of the FIA Act, 1974.

<p>The officer must specify, in writing, the place of his search.</p> <p>The officer must justify the undue delay in the search.</p>		<p>(ii) <i>The offence must be such as the police officer is authorized to investigate, i.e. a cognizable offence.</i></p> <p>(iii) <i>Reasonable grounds must exist for believing that the thing required will be found in a place.</i></p> <p>(iv) <i>There would be undue delay in getting the things in any other way.</i></p> <p>(v) <i>Grounds of belief as to the necessity of search must be previously recorded by the police officer.</i></p> <p><i>These conditions must be fulfilled and there should not be a misuse of the power nor should there be any harassment. The perusal of the section leaves no doubt that it does not apply when search is for arrest of the accused. The search envisaged by this section is to be made for a specified thing. A person is not a thing. ... where police [do] not record in writing in roznamcha (daily diary) grounds for making search of the house of the accused, it was held that it was without jurisdiction and bad in law"</i></p> <p><i>Ashiq Din v. The State, PLD 1968 Lah. 1425, [21]</i></p> <p><i>"The Head Constable did not record in writing the grounds for making a search of the house of Ashiq din and his brothers. As such the act of the Head Constable suffered from a complete absence of jurisdiction."</i></p>
<p>An officer-in-charge of a police station after receiving a requisition to search u/s 166 of CrPC, should comply without unnecessary delay and should take all necessary precautions to ensure a successful search</p>	<p>Police Rules (1934), s. 25.23</p>	

MEASURES TO AVOID	RELEVANT REGULATION/ RULE APPLICABLE	RELEVANT JURISPRUDENCE
If the object in question can be obtained otherwise, the officer is not required to make the search.	Section 165 of CrPC	<i>Murtaza Hussain v. The State</i> , 1996 PCr.LJ 510 "It is mandatory for officer-in-charge of a police station who desires to make a search in any place outside his territorial jurisdiction to make a request to the officer in charge of the police stations having territorial jurisdiction to make such search. However, it further provides that in case the First Police Officer is of the view that there may be a delay caused in following the said procedure which may result in evidence being concealed or destroyed then he may cause the said search to be made by himself but he has to issue forthwith a notice for search to the officer-in-charge of the police station having territorial jurisdiction ... It is essential that a Police Officer conducting a search under section 165 or 166 of the Code of Criminal Procedure should send forthwith, to the nearest Magistrate, copies of the record that he has prepared before undertaking the search and non-compliance in such cases would amount to disregard of a mandatory provision and no conviction can be based on such defective investigation."
The officer should ensure that the precautionary measures are abided by.	Police Rules (1934), s. 25.23	
Searches	s.19-A and s.103 of the ATA	No requirement of having witnesses during searches under ATA.

Although the provisions of the Cr. P.C. are to apply to searches and arrests made under the ATA, s.19-A of the ATA makes one particular exception: the inapplicability of s.103 of the CrPC. In a nutshell, this provision requires that two or more respectable witnesses of the locality be accompanied by the Police and anything that is taken from the search be signed off by those witnesses. However, under section 19-A, the police are under no obligation to take witnesses along for searches.

The format of a recovery memo during search Form 25.23(1)(c) has been attached below in Appendix L.

7.3. COLLECTION OF EVIDENCE

Without evidence, even a heinous crime may go unpunished. The role of the investigator is to collect relevant testimonies and other evidence so that the crime can be connected to the criminal. Thus, it is integral for the investigation agency (police) to not only understand the various types of evidence but also to collect and preserve each type effectively (in the case of documentary and trace evidence). The evidence collected is then forwarded to the relevant forensic agencies for analysis, and if considered substantial and admissible, it can be used by the prosecutor during trial.

An investigation should be evidence based; any other basis for investigation like inferences, unreliable information, hearsay evidence and deductions are likely to fail. It then becomes important to know what is 'evidence.' From a layman's point of view, every piece of information may be evidence, but from the viewpoint of a police officer, the only pieces of information or articles that will be treated as evidence are those which satisfy the legal requirements of credibility, admissibility, chain of custody and adverse examination. The types of evidence that can be utilized in a terrorism financing case have been elaborated in detail below.

Recording of Statements of Witnesses and their Evidentiary Value

Section 161 CrPC empowers the investigating officer to orally examine witnesses and record their statements. He/she is required to make a separate record of such statements and is expected to include them in the case diary maintained under Section 172. In addition, sessions judges are also empowered to ensure that material witnesses are not left out. This means that the judge will be able to summon witnesses who are material but not included in the calendar.³⁴⁴ Under the ATA, an ATC is deemed to have all the powers of a Court of Sessions for purposes of a trial under Section 19(14) and, therefore, can exercise the same powers with respect to police diaries. However, these are not mandatory provisions, as such statements are not substantive pieces of evidence,³⁴⁵ meaning that it is up to the investigating officer if he or she requires witness statements to be recorded.³⁴⁶ According to *Moazzam alias Moazzan v. The State*, "the statements under section 161, CrPC prima facie, has no evidentiary value at bail stage."³⁴⁷ While not admissible as evidence of a defendant's guilt, witness statements u/s 161 may be used in evidence to contradict a witness or to test his statement's veracity under Article 140 of the Qanun-e-Shahadat Order.³⁴⁸

Witness statements must be taken down promptly and verbatim. If these are missing, then it creates doubts about the veracity of these statements, thereby harming the prosecution's case. Police usually elaborate upon witness statements that later do not corroborate with circumstantial or documentary evidence, thereby weakening the prosecution case.³⁴⁹ In *Naveed Hussain v. State*,³⁵⁰ the Court said that:

"Regarding the confessional statement of the convict/appellant recorded under section 21-H of ATA there is no doubt a shaky piece of evidence and much reliance has not been placed on such confessional statements by this Court and in this regard many cases have been disposed of in the light of the same. After the amendment in section 21-H of ATA whereby a proviso has been added which is reproduced as under where a legislature has made it mandatory that section 21-H of ATA shall be admissible in evidence which has to be read with amended section 6 of the ATA". (Judgment)

Amendment of section 21-H, Act XXVII of 1997. ---In the said Act, in section 21-H, in the existing proviso, after the word "provided" the word "further" shall be inserted and before the proviso amended as aforesaid the following new proviso shall be inserted, namely:

³⁴⁴ Rules and orders of the Lahore High Court Volume III Chapter 24 Part B(9).

³⁴⁵ *Wazir Khan v. the State*, 2004 MLD 1982.

³⁴⁶ *Dilshad v. The State*, 1995 PCrLJ 248.

³⁴⁷ *Moazzam alias Moazzan v. The State*, 2012 MLD Kar. 1986.

³⁴⁸ *Supra* (n 16).

³⁴⁹ Interview with ATC Judge, (Karachi, 25 July 2017).

³⁵⁰ *Naveed Hussain v. State*, 2011 PCrLJ 389.

"Provided that the confessional statement made before the District Police Officer or equivalent officer of security forces operating in aid of civil power in the military/security operational areas notified by the Government under section 4 of this Act, involving attack on the members of Armed Forces, Civil Armed Forces, Law Enforcement Agencies, Government installations, hotels or public property shall be admissible in evidence."

Furthermore, a confessional statement can be considered a corroborative piece of evidence if it supports other pieces of evidence vital to the case. In the case of *Muhammad Latif v. The State*,³⁵¹ the Court held that statements of the prosecution witnesses made during extrajudicial confession were found consistent, and the accused had not been able to shake their credibility. It was said by the Court that, since there was no hindrance in the chain of custody of circumstantial evidence and since the extrajudicial confession was credible and corroborated the circumstantial evidence, the plea by the accused was dismissed, and the Supreme Court upheld the death penalty. The table below highlights the guidelines to follow when recording witness statements.

GUIDELINES TO FOLLOW	RELEVANT REGULATION/ RULE APPLICABLE	RELEVANT JURISPRUDENCE
Compulsory to record statements of the witnesses or accused or any other suspect. Reduce the statements of such people into writing except for those who give their statements by reason of their duty, e.g., medical officer, FSL & DNA expert, serologist, etc. Statements under this section ought to be recorded and written by the IO.	Section 161 – CrPC	The applicability of Section 161 was discussed in the case titled <i>Nasir Ahmad v. the State</i> : The court ruled: “...from the statement of the accused/respondent recorded under section 161, CrPC., wherein he had narrated the whole facts of this unfortunate incident and also admitted that he was part of this unlawful assembly with specific role, who had tortured and done to death a young lady of 16/17 years under the garb of 'Ghairat'/'Izzat', so, when the occurrence is unseen one, even statement of an accused recorded under section 161, CrPC. could be taken into consideration.”
Such statements may become relevant as to their admissibility when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing.	Section 162 – CrPC	
IO is required to make a separate record of such statements and is expected include them in the case diary maintained under Section 172.	Section 172 – CrPC	

351 *Muhammad Latif v. State*, 2008 PLD SC. 503.

The number of statements attached to a particular case diary, and the number of pages in each statement shall be noted in the case diary.	Police Rules (1934), s. 25.18	
Witness statements must be taken down promptly and verbatim.		

MEASURES TO AVOID	RELEVANT REGULATION/ RULE APPLICABLE
Such statements, if reduced into writing, are not expected to be signed by the respective person. Any such statement, record, or any part of the same cannot be used for any purpose at any inquiry or trial in respect to any offence under investigation at the time when such statement was made.	Section 162 – CrPC
If a person knows or has reasonable cause to suspect that a terrorist investigation is being conducted, and if he discloses any information or material piece of evidence that is likely to prejudice an investigation, or if he interferes with that which is likely to be relevant to an investigation, that is a scheduled offence under the law which could lead to imprisonment for six months to two years and/or fine.	Section 21 A(6) - ATA Section 21 A(7) - ATA
Statements recorded by an IO u/s 161 shall not form part of the case diary prescribed by section 172 but shall be recorded separately and attached to the case diary.	Police Rules (1934), s. 25.18
Police should not elaborate upon witness statements because it may hinder the Prosecution's case for corroboration with circumstantial or documentary evidence.	

The Memo Format of recording of witness statements along with the record of a confession have been attached below in Appendix L.

Self-Assessment Question

What is the evidentiary value of witness statements and a confession under the ATA?

Documentary Evidence

Documentary evidence includes all documents produced for the inspection of the Court.³⁵² It can consist of any matter expressed or described upon any substance by means of letters, figures or marks, intended to be used for the purpose of recording that matter.³⁵³ Documentary evidence can be primary or secondary and is usually considered as direct evidence if it proves a fact in issue. Examples of documentary evidence can include photographs or, in a terrorism financing case, can also include the publications, literature or any other material being used by the proscribed entity/individual to commit acts mentioned under Section 11F, H-J of the ATA 1997.

Financial Information as Evidence

Financial investigations may provide material of use in all types of investigations, including those with no obvious link to money or assets. This is possible because most people have some kind of property, money or assets, and use credit or debit cards. Many individuals use online means of payment and banking instead of cash. This development has created sources of information that can reveal details about a person's life, activities, interests, associates, plans and desires, all of which can be used to detect and combat crime.

Types of Financial Information

Financial information includes all types of information that is connected to money, assets, expenditure and finance, of any kind. This information is present in almost every aspect of a person's life (their home, work and plans, both present and future). Non-cash based methods of dealing with money and assets, such as credit and store loyalty cards, generate financial information. Investigators can analyze this information to obtain material to assist the investigation. It can help establish a person's whereabouts, their possible intentions, evidence of a crime, motive and whether they are living beyond their means.

A substantial amount of financial information is available to all police officers, although there are restrictions. Financial Investigators (FI's) may access that information more easily because of their training and the control that some data owners place on access to financial information. For these reasons, more complex enquiries are usually conducted by FIs.

Opportunities to gather financial information can arise when:

- Conducting a legal search in relation to an offence of money laundering where there are reasonable grounds to believe that financial information will lead to evidence that will benefit the investigation;
- Conducting a legal search into an offence where the situation evolves so that the officer becomes aware of reasonable grounds to suspect that another offence has been committed – and the financial information is evidence of that offence;
- Conducting a legal search into an offence and the officer makes notes of financial information for intelligence purposes (without specifically searching for it).

Where premises are being searched in relation to a crime, it is possible that financial information of relevance to the investigation may be found. In illegal narcotics investigations, officers will be looking for controlled drugs, drugs paraphernalia, cash and financial records. If the investigation is not narcotics related but concerns an acquisitive crime such as a fraud, financial information may be relevant to that offence or any future asset recovery proceedings.

Financial information also has a wider investigative use in providing details of a person's lifestyle and motives; for example, it is worth noting during a house search if the resident is obviously living beyond their means and/or the house has apparent and excessive signs of unexplained wealth.

Useful financial information from a search of the person, vehicle or premises will be:

- Bank account numbers listed on bankcards and credit cards;
- Information from bank account statements (both the suspect's and their families', noting that production orders may not reveal accounts owned by the suspect in other names);

352 Qanoon-e-Shahdat Order 1984, a. 2(1)(c)(ii).

353 Qanoon-e-Shahdat Order 1984, a. 2(b).

- Information from financial documents regarding pensions, investments, mortgages;
- Information from business documents suggesting a working relationship between the suspect and a business or company;
- Expenditure information from bills, including utility bills, receipts, car and house contents, insurance papers;
- Personal photographs reflecting expenditure, such as holiday snaps;
- Jewelry, watches, designer clothes;
- The car, bike or motorbike the person was driving;
- Downloads from/to mobile phones to show any online transactions;
- Evidence from computers or other digital devices to show purchases;

Information held by financial institutions can also show the lifestyle of a person and whether they are living beyond their means. This includes information from:

- Bank accounts;
- Bank statements;
- Direct debits;
- Standing orders;
- Credit and debit slips;
- Supplemental information such as managers' written notes;
- Identity documents used to open accounts (banks must be satisfied with the identity of a person opening an account);
- Account opening forms;
- Safe deposit boxes;
- Copies of ledgers of business;
- Credit and charge card accounts;
- Credit and charge card statements;
- Pensions;
- Insurance schemes;
- Mortgages; and
- Any other previously unidentified accounts.

The above can inform a FI of payments to and from other persons, the lifestyle of the individual (their wealth, the turnover in their account), their spending patterns (for example, where they went on holiday, their travel, meals, hobbies and other interests), and any financial problems. In addition, ATMs and online transactions can provide information on:

- Sums withdrawn;
- Geographical location at a certain time; and
- Routines.

Various government agencies and departments also hold financial information of potential use to an investigation to establish the legitimacy of earnings or otherwise. For example:

- Tax status; and
- Employment information.

Customs is another law enforcement agency that can be utilized in your money laundering investigation. Customs agencies monitor imports and exports of goods and services across international borders. In many countries, they also have jurisdiction over movements of cash and "bearer negotiable instruments"—financial instruments payable to the individual holding the instrument. Examples of bearer instruments are checks, money orders, or other negotiable instruments payable to "the bearer" rather than a named individual or company. Among the types of information available through customs agencies are:³⁵⁴

- Declarations filed by persons entering the country;
- Listings of customs brokers;
- Records of official importers and exporters;

- Records of persons transporting currency or other monetary instruments;
- Records of shippers' export documents; and
- Import/export records

Any person willfully fails or refuses to cooperate with an investigation they could be disciplined for misconduct.³⁵⁵

Relevance of financial evidence

The use of evidence of an extravagant lifestyle can be very persuasive. However, it must be relevant and will usually be supportive of a case where the prosecution asserts that the accused has accumulated assets through criminal activity rather than through a legitimate activity. The evidence of such wealth, therefore, will have to be of probative significance to the issue in the case.

7.4. EVIDENCE OBTAINED FROM MODERN DEVICES

Although evidence obtained through modern means is admissible under the law,³⁵⁶ investigative tools in Pakistan are not up to date with scientific developments.³⁵⁷ Generally, Article 164 of the (QSO) governs the admissibility of evidence collected from modern devices.

Article 164 of QSO states:

A person accused of an offence under the Pakistani Law may be convicted on the basis of electronic or forensic evidence or such other evidence that may have become available because of Modern devices or techniques referred to in Article 164 of the QSO.

In cases tried by the ATC under provisions of ATA, the "court may convict the accused on the basis of electronic or forensic evidence or such other evidence that may have become available because of Modern devices or techniques."³⁵⁸

The (QSO), Article 164 states that information may be extracted from modern devices if the court deems it appropriate. Along with audio-visual evidence, this provision extends to evidence from cellular devices, computers and various other modern techniques or devices that could be used for digital storage. Evidence samples of this sort are collectively referred to as digital evidence. Due to the importance of digital evidence in ATA cases, maintaining the chain of custody for evidence is crucial for an investigation and admissibility greatly depends on it. In this context, a consideration for the Court is whether or not there is evidence to support the fact that the digital evidence collected has been maintained and stored in safe custody.

Closed Circuit Television (CCTV)

With regard to (CCTV) footage, it has been held that, pursuant to the insertion of Article 164, the evidence collected through modern devices is admissible as valid.³⁵⁹ However, the mere production of CCTV footage as a piece of evidence in Court is not sufficient for the Court to rely upon that evidence unless it is proved to be authentic. In order to prove the authenticity of such footage, it is incumbent upon the prosecution to examine the person who recorded or downloaded the footage.³⁶⁰

Call Data Record ("CDR")

According to Article 164 of the QSO, production of evidence through modern devices or techniques can be used as circumstantial evidence if the court deems it to be appropriate. In the case of Abdul Razzaq vs. The State,³⁶¹ the Court held in this case that "petitioner/accused had every right to prove himself innocent by making use of the very same call

355 Section 25(2) Anti-Money Laundering Act 2010

356 The Anti-Terrorism Act 1997, Section 27-B.

357 Riaz v. SHO, PLD 1998 Lahore 35.

358 Sikandar Ali Lashari v. The State, 2016 YLR 62, [7]. Read with Section 27-B of the ATA.

359 Babar Ahmad vs. The State, 2017 YLR 153 [Gilgit Baltistan Chief Court].

360 Asfandiyar vs. Kamran, 2016 SCMR 2084.

361 Abdul Razzaq vs. The State, 2016 PCR.LJ.

data record". In the case of *Arsalan v. the State*,³⁶² the pivotal pieces of evidence obtained were SIMs and Call Data Records³⁶³ of the accused, which corroborated the accused's statements.

Evidentiary Value of Calls/Text Messages from the Accused's Phone

Jurisprudence of the superior judiciary highlights the issues relating to using CDR as evidence against the accused. Some cases also elaborate upon how the accused can utilize CDR to their benefit to discredit the case of the prosecution.

2018 YLR 1092 KHC (Salman Alias Lamba and Another vs. The State)

The evidence collected by the Investigating Officer included CDRs of the mobile phones of the accused and SIMs and National Identity Cards. However, the evidence of police officials was deemed not trustworthy because no recovery memos were presented to satisfy that the recovered cell phone SIMs were kept in safe custody. Records also showed that there was no verification from the mobile companies as to the identities of those to whom such SIMs were issued. Furthermore, since the evidence did not have any corroborative value, it weakened the case of the prosecutor.

Forensic Evidence

Forensic evidence is a crucial form of evidence and constitutes a link in the chain of evidence that is used to prove the guilt of an accused beyond a shadow of doubt.³⁶⁴ Forensic evidence is evidence arrived at by scientific or technical means, such as ballistic or medical evidence. Forensic science deals predominantly with the recovery and analysis of latent evidence such as fingerprints, DNA analysis, autopsies, pathologies, etc.

Under domestic law, the only definition available for forensics is found in the Punjab Forensic Science Agency Act (2007), where forensic material is defined as a 'document, material, equipment, impression or any other object connected with the commission of an offence, a civil cause or any other proceedings'.³⁶⁵

One field of forensic science, forensic accounting, refers to the analysis of financial information, including all transactions, past records and tracing source of transfers, etc., of the accused individual or entities, to reveal important information that can aid in legal proceedings especially in cases of financial crimes. Forensic accounting is particularly useful for tracing TF activities and tracing back money trails to the original sources of income, such as donations made to terrorist organizations, or money made from drugs trafficking.

Electronic Records as Evidence

With the use of information technology, the police department has started storing information pertaining to investigation in computers. The computer stores criminal records conveniently and efficiently. One consequence is making it easier for police to collect and process information, eliminating the duplication of paper and electronic records and the multiple entries of same data.

For example, the Punjab Information Technology Board (PITB) has done massive revamping of the outdated criminal record management system (CRMS) of the Punjab Police. "Previously it was a lengthy and tedious process to retrieve records of the individual criminals based on name, father's name, caste and address. It was almost impossible to identify criminals of each district because there was no comprehensive and integrated criminal record system."³⁶⁶

The PITB has developed the CRMS based on Citizen National Identity Card Number (CNIC). It is a digitized system that contains personal details such as CNIC, appearance, phones, etc. of criminals. The idea is to maintain a comprehensive database containing complete criminal profiles, including personal information, physical appearance, modus operandi, gang, criminal history, fingerprints and photographs that can be easily retrieved via the biometric data. Moreover, the manual fingerprint record is successfully digitized and available in the CRMS database with a complete profile of individual criminals. A system like CRMS can be utilized in various ways to investigate a case. "If a victim of a mobile phone snatching incident reports in a police station and he remembers some details of the snatcher, an officer can apply

³⁶² *Arsalan v. The State*, 2018 MLD 894 Karachi.

³⁶³ In case of CDR, the manner and procedure through which the CDR is obtained is pivotal to determining its evidentiary value.

³⁶⁴ *Muzaffar Muhammad alias Veera vs. The State*, PLD 2004 SC 749; *Jawad vs. The State*, 2003 SCMR 1530; *Ali Murad vs. Ayub*, 1995 SCMR 1105.

³⁶⁵ Punjab Forensic Science Agency Act 2007, Section 2(g).

³⁶⁶ <http://booklet.pitb.gov.pk/mobile/Flipbook.aspx>, p32.

all the known filters and search the criminal in his own district and the Punjab server.”³⁶⁷ Additionally, the Criminal Record Identifier (CRI), an application in the CRMS, also utilizes the fingerprints to identify criminals by matching the fingerprints stored in the “Megamatcher Fingerprints Matching Library that has a matching speed of 20 million fingerprints per second.”³⁶⁸ Moreover, on average, 50 to 60 criminals are being identified per day from different stations across Punjab due to this application.

Electronic records maintained by banks, DFIs and other financial institutions can also be used to trace evidence related to terrorism financing. In fact, the FMU is obliged under the law to maintain electronic records of the STRs received by the financial institutions. After receiving an STR, if the FMU suspects that the act is related to terrorism, it may forward the case for further investigation to the CTW of the FIA. These investigations may, however, run parallel to the investigation run by the CTD of the Police if the police discover a financial trail to the terrorism act.

Self-Assessment Question

How can electronic records be utilized as pieces of evidence?

CASE STUDY

Terrorist Financing and ATA

Mr. X is caught speeding in his car – lack of a valid driver's license prompts the police to search his car, where they find a high value of cash, along with ropes, duct tape, two knives, one pistol and a bottle of chloroform. There are also masks and balaclavas stuffed inside the glove box of the car.

Mr. X's WhatsApp record shows suspicious conversations via a cell phone with members of the Majlis-e-Jehaad and with a certain Politically Exposed Person (PEP) whose son was recently abducted. Given the high amount of cash recovered from Mr. X, the police suspect that he is involved in the kidnapping of the PEP's family member.

Additionally, there are also pamphlets of Majlis-e-Jehaad found in his car, along with bank receipts of transferring money into an account held by “Flood Relief Islam,” which is considered a front organization for Majlis-e-Jehaad – a proscribed terrorist organization mentioned under the 1st schedule of the ATA.

Mr. X is taken into custody and an investigation is started against him.

Discuss

- What pieces of financial and electronic evidence can be utilized in this case?
- What information can forensic accountants and data technicians recover from Mr. X's documents and bank transactions?
- What is the evidentiary value?
- What sections of the ATA are applicable here?

Crime Mapping

Conventional crime mapping techniques include drawing of maps manually and calculations of scale, latitude and longitude. However, such techniques are not only time consuming but may also be of less utility in the future, as the ink could fade, or the paper could tear off. Hence, modern techniques such as digital crime mapping and availability of satellite imagery through Google Maps can result in great efficiency. At this point, it would be pertinent to quote the example of the effective geo-mapping system employed by the Punjab Police. Just like the CRMS, PITB has deployed a web-developed, android-based application system to capture the location of a crime scene with an FIR number, pictures and other details to determine the frequency of crime in an area and identify similar crime clusters. For instance, when an “investigation officer visits a crime scene, he enters the location in the mobile app and geo-tags the crime scene. The data is then displayed on a dashboard for analysis.”³⁶⁹

³⁶⁷ Ibid.

³⁶⁸ Ibid.

³⁶⁹ Supra note 1, pg 38.

The Khyber Pakhtunkhwa Police has developed and launched a Centralized Crime Tracking and Analysis System. The new system is based on geo-tagging technology, and the tracked data includes pictures of the militants/crime scenes, latitude and longitude coordinates, and incident details.³⁷⁰ The data, when captured and submitted to the main server, is automatically plotted on Google Maps and can be utilized to analyze crime trends in the province.

Moreover, the system has a number of tools for analyzing the data, including heat maps, crime comparison maps and tables, and search, using advanced filters.

Collection of Evidence from Social Media and Electronic Devices³⁷¹

Evidence collected from social media pages can provide very powerful evidence, in some instances effectively tracking the activity of individuals. Terrorist entities actively engage in online recruitment and glorify terrorist acts by posting videos and messages, encouraging others to follow them and engage in violence. Whenever possible, efforts should be made to download online content in real time, before it is potentially erased, so that it can be used as evidence.³⁷²

When this is not possible, applications need to be submitted to preserve content³⁷³ in advance of either a Court order³⁷⁴ or Mutual Legal Assistance Request to the relevant overseas jurisdiction (see Model MLAR in and chapter 10 for more information). For instance, the only message content recoverable from WhatsApp is the undelivered messages (retained for 30 days).³⁷⁵

Retrieving and analysing evidence from recovered electronic communication devices is a highly skilled task. The vast number of different apps, ever increasing size of hard drives, encryption and other difficulties also mean that once retrieved, analysis and assessment of the data can be extremely time consuming. Efforts need to be triaged, initially (at least) focused on available operational information. Ideally, a more in-depth examination will then follow, as data can easily be hidden. Time can be saved, however, by building a library of propaganda and instructional media files found during the course of investigations. These can be indexed and their hash values³⁷⁶ can then be checked against future seizures, removing the need to repeatedly view and assess the same files.

Although some suspects will be very careful in hiding their online and computer history, others will be less technically aware or more brazen. Recovered phones and computers can be an evidential goldmine, revealing evidence of chat and other communications, financial activity, photographs and videos, and locations visited, together with browsing activity, showing operational planning or the viewing of propaganda.

In preparing a case for Court, analytical charts can illustrate the links between the accused and their actions online or elsewhere. Expert testimony can be presented to the Court to explain the technical elements underlying the recovery of data, while other subject matter experts can provide context on terrorist groups and the role played by social media in the funding of terrorism.

When attending a crime scene, there may be electronic evidence, and the following four main principles should be followed in a search:

- Do not change electronic evidence when it is seized or during the course of examination;
- If electronic evidence is found during a search, any Police Officer authorized and qualified to examine it must be competent to do so and understand the consequences of doing so;
- The Police Officer authorized and qualified to examine must have an audit trail of all actions;
- A senior officer should ensure these actions are adhered to; and
- If a computer or electronic device is turned off, ensure it is seized for examination by an expert for electronic evidence.

370 Developed by KP Police IT Wing-<http://kppolice.gov.pk/hotspot/>.

371 Investigation, Prosecution and Adjudication of Foreign Terrorist Fighter Cases for South and South-East Asia E-Book, UNODC, 2018.

372 The evidentiary standard used here will be the same as under Article 164 of the QSO.

373 Section 28 Prevention of Electronic Crimes Act (2016).

374 Section 31 Prevention of Electronic Crimes Act (2016).

375 Requesting Electronic Evidence Across Borders, UNODC, 2019.

376 A hash value is a numeric value of a fixed length that uniquely identifies data. Hash values represent large amounts of data as much smaller numeric values.

7.5. OBTAINING ADDITIONAL RECORDS (21EE)/AMLA/ATA/INVESTIGATION FOR FAIR TRIAL ACT (IFTA)

Under the ATA, the Superintendent of the Police is authorized during an investigation to call for additional records to facilitate the inquiry process. The Police may either call for information from any person or require that person to produce or deliver any document or thing useful or relevant to the ongoing inquiry. Moreover, after acquiring permission from the court, the CTD is also authorized to obtain information, records and bank statements from banks and financial institutions. This section is of particular use when investigating TF offences that have been committed via the formal banking channel. However, a major issue for all CTDs is that while they are the designated LEAs for the investigation of TF,³⁷⁷ they are not authorized to receive TF disseminations from the FMU, either spontaneously or by request. Since they ought to seek prior court approval for each request for information submitted to the FMU and vice versa, the FMU must have prior court approval to spontaneously disseminate STRs to the CTDs. This is a structural deficiency in Pakistan's TCFT regime that hampers CTDs' ability to deal with TF matters and is a stumbling block to effective TF investigations.

However, in order to expedite the process of obtaining bank records, STRs or CTRs from the FMU, an MOU (discussed in Chapter 5) has been signed by the law enforcement agencies to facilitate interagency coordination and investigation. It is through the establishment of JITs (pursuant to Section 19 of the ATA and the SOPs issued by NACTA³⁷⁸), that the FIA and CTDs can access FMU financial intelligence products. Moreover, with the formation of JITs and, under this provision, the CTD is also empowered to obtain information such as Call Data Records, encrypted messages, e-mails and other confidential information and use it as evidence for prosecution purposes. At this point, while highlighting the power of LEAs to obtain additional records under the umbrella of inter-agency coordination, it is relevant to discuss the powers of other agencies such as FIA, NAB, ANF and FBR.

The AMLA gives investigating officers the power to obtain documents and information related to the customer of a bank or other financial institution through an order of a competent court. This only relates to matters under enquiry or investigation; it does not provide a general power for an LEA to access this information in the absence of an investigation or enquiry.

LEAs have powers under their special legislations. These powers are listed as follows:

FIA: The investigating officer has the power to obtain and access records held by FIs, DNFBPs and other commercial entities under Section 5 of the FIA Act 1974.

ANF: Section 21 of the CNSA allows the ANF to search persons and premises, to call for information under Section 6 of ANFA, and to secure information from any departments/institutions under Section 31 of the CNSA. Section 6(3) of the ANFA also empowers ANF officers (not below the rank of Inspector) to arrest, without warrant, any person who has committed, or against whom a reasonable suspicion exists that he has committed, any of the offences relating to Narcotics.

NAB: Sections 19 and 27 of the NAO 1999 empower investigators to call for information and search people and premises.

FBR-Customs: Sections 26, 165, 166 and 168 of the Customs Act (1969) apply to FBR-Customs obligations to produce documents, provide information and give them power to examine persons, summon persons to give evidence and produce documents or things, and seize things liable to confiscation.

FBR-IR: Sections 175 and 176 of the ITO 2001 and Section 38 of the Sales Tax Act (1990) empower authorities of the Directorate General, Intelligence & Investigation, Inland Revenue to access computer systems of persons involved in ML and tax evasion. The relevant provisions under ITO 2001 are Sections 176 & 177 and 37 & 38(A) and (B) of the Sales Tax Act 1990 that enable the FBR-IR to obtain records held by any person.

Self-Assessment Question

Can the CTD obtain information from the FMU? If yes, how?

³⁷⁷ Regulation 30 of the FATF Recommendation.

³⁷⁸ Standard Operating Procedures for Joint Investigation Team (JIT) for Terrorist Financing Investigations (Annex I).

Obtaining Information under the Investigation for Fair Trial Act (IFTA)

This Act allows authorized officers of the Services Intelligence Agencies and the police³⁷⁹ to file for a warrant of surveillance if the applicant believes that a person is engaged in any suspicious conduct that may result in a scheduled offence being committed.³⁸⁰

Actions that may be taken under the warrant

The judge may authorize the officers to take the following measures against the suspects under the warrants, including but not limited to: interception and recording of telephonic conversations of the suspect with any person; video recording of persons, premises and events; interception of electronic transactions such as m-emails, SMS etc.; collection of evidence through any modern device; and use of human intelligence, covert surveillance and property interference. Taking over of electronic equipment that can be used in communication shall be allowed only when the authorized officer discloses a substantial threat or possibility of an attempt to commit the scheduled offence.³⁸¹

Process to be followed once it is established that the scheduled offence was likely to be committed.

If the data collected via the warrant reveals any elements of any scheduled offence (under the PPC or ATA), the applicant may immediately proceed to register a FIR under Section 154 of CrPC and hand over all the obtained evidence to the Investigation Officer. If the data collected is insufficient to lodge an FIR, it will be kept in custody and shall not be used without the court's permission.³⁸²

7.6. IDENTIFICATION PARADE PROCEEDING

This is an investigation tool used by the police to help identify the culprit, given there is a witness. It involves lining up the suspect of a crime with individuals that match their description. A witness is then required to identify the suspect out of the individuals. 'The identification test is normally conducted when an accused is not previously known to the witnesses, and they have only had a momentary glimpse of him/her. Furthermore, it becomes imperative to hold such a test if the witnesses claim that they can identify the accused if brought before them. Needless to mention, such an identification is to be conducted in accordance with certain rules and procedures. Admittedly, no instruction or the details regarding the holding of identification tests stand incorporated in the CrPC or in the QSO. Article 22 of the QSO, which is normally referred for identification tests, only pertains to its relevance and does not provide any procedure. However, certain guidelines are given in the Rules and Orders of the Lahore High Court Volume 3 Chapter 11, Part-C.³⁸³ The identification parade proceeding details are recorded in the case diaries, and the identification parade proceeding certificate is attached with the judicial file record.

The identification parade memo has been attached below in Appendix L.

7.7. MAINTAINING A POLICE FILE AND A JUDICIAL FILE

During the investigation of a criminal offence, every significant application, order, statement or document is recorded in writing in the form of a case file. This case file contains information in chronological order and contains documents including but not limited to the complaint, the FIR, the crime scene analysis, evidence collection memos, opinion of the IO, expert opinions such as the medical legal report or report of forensic analysis, evidence analysis submission applications, remand and bail applications, judicial orders and witness interrogation statements, confessional statements if any, CDR(s) if any, and the case diaries of the investigating officer etc.

Concept of Judicial and Police File: All over the world, for the sake of prosecuting terrorists, the evidence and material against an accused is compiled and presented by investigation agencies to the Court in a written form through a case file. The ideas, efforts, records, reports, evidence and intelligence are to be presented through a case file; in this sense, it is a tool.

379 Section 3(a)
380 Section 5
381 Section 16
382 Section 22
383 2018 MLD 43

Types of Case File: As required by the processes evolved under the legal framework applicable to Pakistan, in each terrorism case, as many as two case files are prepared. One is the Investigative Agency's file (or police file, in cases where police investigate the cases); the other is a judicial file, which is maintained by a court and contains judicial orders and proceeding details.

Contents of Case File: The contents of each case file differ. A police case file contains all the investigative information along with case diaries of the case. In case of judicial files, the case diaries are substituted by court proceeding papers/records.

Case File Management: Case file management means the manner in which a case file is to be maintained, updated and finally presented to the court of law.

Start of a Case File: It starts from the moment information about a terrorist incident is received by the police.

End of Case File: It continues throughout the stages of investigation, scrutiny by the prosecutor, trials by the judge and till the clemency proceedings come to an end.

Responsibility for Case File: Under the law, the Investigating Officer (IO) entrusted with investigation of a terrorism case is responsible for the case file management. He is also responsible for safe custody of the case file, which is also treated as part of case file management.

Effective case file management is crucial to the investigation process. Effective management requires that:

- Records are updated when required;
- New information is noted in a timely manner;
- Files are easy to reference for future use; and
- All the important annexures and documents relevant to the case are attached without any discrepancies.

Components of a Case File

A case file typically contains a number of significant documents, which are elaborated upon below.

However, before shedding light upon the components of a case file, it is important to understand the following:

- Police Report/Challan filed under Section 173 of the CrPC
- Interim and Final Report
- Supplementary Reports
- Case Diaries

Police Report

As noted above, a case file includes the police report, often referred to as a 'challan', which is furnished by the officer-in-charge of the police station as required under Section 173 of the CrPC

At the completion of an investigation by the police, the police are required to submit a report to the Court through prosecutors; these reports are called "police investigation reports." The reports must be submitted within fifteen days from the date of the registration of a case and are statutorily required. The investigation reports submitted by the IOs to the courts through the prosecutors can be final or interim in nature. Depending upon the nature of the reports, the police have assigned these reports vernacular names:

- 'mukamal challan' (final report to charge the accused);
- 'namukamal challan' (incomplete final report to charge the accused);
- 'tatima challan' (supplementary final report to charge the accused);
- 'adam patta' (untraced case report);
- 'saqit' (abated case report due to death of an accused etc.); and
- 'ikhraj' (cancellation report).

The police investigation report is a very important document, and the whole trial is based on it. It contains details of evidence besides providing relevant information about the case. The prosecutor vets the police report and helps the IO to remove legal defects, if any. The police report should include:
names of the parties;

- the nature of the information;
- the names of the persons who appear to be acquainted with the circumstances of the case; and
- a statement of whether the accused, if arrested, was handed over for judicial remand or was been released on his bond (whether with or without sureties).³⁸⁴

Under section 173 of the CrPC, the defense, in a trial, can also make an application for the report and the police is required under the law to provide a copy of the report to the defense. This report ought to be accompanied by a list of witnesses that are important for the police/prosecution's case. For the purposes of the section, it is important to distinguish the police file from the police report. The former is specifically intended for the reference and record of the police, and the latter is completed and sent to the courts for consideration in the trial. Thus, the police report, unlike the police file, contains original versions of all documents.

Investigations under the CrPC are to be completed within 14 days of the filing of the FIR, and with the expiration of this time period, a police report (challan) needs to be submitted to the Court through the public prosecutor. There is a similar requirement in terrorism cases, wherein the investigators or the Joint Investigation Team must complete the investigation within 30 days and submit a report accordingly. The report needs to be submitted directly to the Court by the officer-in-charge of the police station. In cases where the JIT is conducting the investigation, under sections 4 and 5 of the ATA, the police investigator, who is a member of the JIT, must submit the report to the Court.

Interim and Final Report

It is possible, after conducting an investigation, that the report cannot be fully completed within the stipulated deadline of 30 days under section 19 of the ATA. If not, the officer is required to prepare and send to the Court, through the public prosecutor, an interim report within 3 days of the expiration of the 30-day period. The interim report must state, 'therein the result of investigation made until then and the court shall commence the trial on the basis of such interim report, unless, for reasons to be recorded, the court decides that the trial may not so commence'.³⁸⁵ The investigation continues during the trial and, once complete, a final report will be sent to the court before the end of the trial. If the

384 173. Report of police officer: (1) Every investigation under this Chapter shall be completed without unnecessary delay, and, as soon as it is completed, the officer in-charge of the police-station shall [through the Public Prosecutor]-

(a) forward to a Magistrate empowered to take cognizance of the offence on a police-report, a report in the form prescribed by the Provincial Government, setting forth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case, and stating whether the accused (if arrested) has been forwarded in custody or has been released on his bond, and, if so, whether with or without sureties, and
(b) communicate, in such manner as may be prescribed by the Provincial Government, the action taken by him to the person, if any, by whom the information relating to the commission of the offence was first given:

[provided that, where investigation is not completed within a period of fourteen days from the date of recording of the first information report under Section 154, the officer in-charge of the police station shall, within three days of the expiration of such period, forward to the Magistrate through the Public Prosecutor, an interim report in the form prescribed by the Provincial Government stating therein the result of the investigation made until then and the Court shall commence the trial on the basis of such interim report, unless, for reasons to be recorded, the Court decides that the trial should not so commence].

(2) Where a superior officer of police has been appointed under Section 158, the report shall, in any cases in which the Provincial Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in-charge of the police-station to make further investigation.

(3) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

(4) A copy of any report forwarded under this section shall, on application, be furnished to the accused before the commencement of the inquiry or trial: Provided that the same shall be paid for unless the Magistrate for some special reason thinks fit to furnish it free of cost.

(5) Where the officer in-charge of a police station forwards a report under sub-section (1), he shall along with the report produce the witnesses in the case, except the public servants, and the Magistrate shall bind such witnesses for appearance before him or some other Court on the date fixed for trial.

385 According to Section 19 of the ATA, the investigating officer to the JIT, as case may be, shall complete the investigation in respect of cases triable by the court within thirty working days. The report under section 173 of the Code shall be signed and forwarded by the investigating officer of police directly to the court:

Provided that where the provisions of sections 4 and 5 have been invoked, the investigation shall be conducted by the JIT comprising members of armed or civil armed forces, as the case may be, intelligence agencies and other law enforcement agencies including an investigating officer of police not below the rank of Inspector who shall sign the report under section 173 of the Code and forward it to the Court:

Provided further that, where investigation is not completed within a period of thirty days from the date of recording of the first information report under section 154 of the code, the investigating officer or the JIT shall, within three days after expiration of such period, forward to the Court through the Public Prosecutor, an interim report under section 173 of the Code, stating therein the result of investigation made until then and the Court shall commence the trial on the basis of such interim report, unless, for reasons to be recorded, the Court decides that the trial may not so commence. The interim report shall be signed by the investigating officer of police.

investigators have done everything within their power and yet the investigation has not led to conclusive results, then the investigation may be suspended and a final report will be drafted.³⁸⁶

Challan Form

Final reports and incomplete reports recommending initiation of trial are sent in Form 25.56(1) of the Police Rules (1934). This is called the challanform. The challan is the report submitted by the police under section 173 of the CrPC

The challan form has seven columns and can only be prepared by the officer-in-charge of the police-station.

Completion of Challan Form

1. When the investigation is completed in accordance with chapter 14, section 169 and section 170 of the CrPC, the officer-in-charge of the police station ought to prepare the report as per the sample provided by the provincial government under the Police Rules (1934) without any undue delay.
2. The officer-in-charge of the police station has the power to investigate the crime under section 156 of the CrPC, but he may also delegate this responsibility to his/her subordinate under section 157(1) of the CrPC³⁸⁷. The investigating officer who carries out the investigation will have to submit his investigation report to the officer-in-charge of the Police Station under section 168 of the CrPC³⁸⁸.

However, in either case, the officer-in-charge of the police station would prepare the report u/s 173.

A Supplementary Report

It is possible, even after a final report has been filed, that new evidence or material has surfaced. It is under this sort of circumstance that the Court can allow for a supplementary report to be filed. The only limitation for such a report is that it be submitted during the trial. No new material can be brought forward after the conclusion of the case.

Under certain circumstances, a supplementary report may be required when a particular piece of evidence is not available at the time of submission of challan, such as a report from the forensic science laboratory etc. In such cases, a supplementary challan is preceded by an incomplete challan.

A supplementary challan is also submitted if a proclaimed offender has been arrested or has voluntarily appeared before the police. A supplementary challan in this case is preceded by a challan under section 512 CrPC (to the extent of the Proclaimed Offender (PO)).

For a police report to be complete, it is important that any (and all) important documents like the FIR and evidence reports are attached to it. The case is heavily dependent on how complete and correct the report is and thus must be filled out carefully and signed off by a senior police official (supervising officer). A thorough check of background information about the accused and witnesses must also be done when making the police report (e.g. to see whether the accused has any previous arrests or convictions, etc.).

³⁸⁶ 25.57. Close of investigation and final report.

- (1) If on any day, or days, a police officer in charge of the investigation of a case makes no investigation, he shall enter a statement to this effect in the case diary of the day on which he next does something towards the completion of the case.
- (2) [(i) When the police are unsuccessful, after taking all the measures in their power and it is considered advisable to suspend the investigation, a final report in Form 25.57(2) shall be submitted as required by Section 173, of the Code of Criminal Procedure, 1973. One carbon copy of final report shall be submitted to the District Crime Record Bureau of concerned District Headquarters for record by the concerned Station House Officer.]¹
(ii) In cases in which a final report is submitted under sub-rule (2)(i) above and in which a copy of the first information report has been sent to a Panchayat as required by Police Rule 24.4(2), a final report shall also be sent to the Panchayat containing information on the following points:
(a) Whether or not an offence has been proved.
(b) Whether or not the offence proved is triable by the Panchayat and explaining that the case has not been sent for trial.
- (3) If the informant is present when the final report is prepared, he shall be informed verbally of the result of the investigation and, after noting this fact in the final report, his signature or thumb mark shall be taken on it. If the informant is not present, he shall be informed in writing by postcard or by the delivery of a notice by hand, and the fact that this has been done shall be noted in the final report.
In final (untraced or cancelled) reports the facts of the case which the investigating officer believes to be correct should be summarised, together with the grounds, for his belief. Information so recorded should be utilised for the completion of preventive records.

³⁸⁷ Section 157 (1) If, from information received or otherwise an officer in-charge of a police-station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police-report, and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the Provincial Government may, by general or special order, prescribe in this behalf to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary to take measures for the discovery and arrest of the offender:

³⁸⁸ Section: 168. Report of investigation by subordinate police-officer. When any subordinate police-officer has made any investigation under this Chapter, he shall report the result of such investigation to the officer in-charge of police-station

Hence, a supplementary report may be filed after a final report. As is self-explanatory, the supplementary report is for the purpose of bringing any material or evidence on record, and there is no bar in law regarding the same. In *Mian Iftikhar Ahmad v. DSP Range Crime Branch*, (2016 YLR 495), the 'case was investigated twice and the order for second investigation has been made by the competent authority before the framing of Charge/Commencement of the trial and if any fresh material or evidence is brought on record, there is no bar to submit supplementary report under section 173.³⁸⁹

A reinvestigation and subsequent report are permissible if it would "definitely help [the] court for arriving at [a] just conclusion,"³⁹⁰ but it can only be done before the commencement of a trial pursuant to the final challan and not once the trial has concluded and the matter is up for appeal. In *Bahadur Khan v. Muhammad Azam*, (2006 SCMR 373), 'even after the decision of the criminal appeals by the High Court and after the lapse of a considerable period of time the second challan for trial of the offence under the sections of the PPC was submitted in the trial court having become functus officio (when the mandate of officer/agency expires) long before which directly took cognizance of the offence not permissible within the meaning of section 190 of the CrPC'. The High Court consequently set aside the conviction by the trial court and the criminal revision.³⁹¹

Case Diary and Daily Diary

Under Section 172 CrPC,³⁹² it is mandatory for an investigating officer to enter day-to-day proceedings of the investigation in a case diary known as a daily diary. The "daily diary" (register), which is usually register no. 2 being maintained at the police station, is made up of the daily diaries recorded by the officer, setting forth the time at which the information reached him; the time at which he began and closed his investigation; the place or places visited by him; the items recovered during the investigation and in custody of the police; and a statement of the circumstances ascertained through his investigation. Case diaries are required to be as brief as possible and must record only those incidents that have a bearing on the case.³⁹³

The diary may be used at the trial or inquiry, not as evidence in the case but to aid the Court in such inquiry or trial.³⁹⁴ The objective of recording "case diaries" under this section is to enable courts to check the method of investigation (and possibly track the chain of evidence) by the Police.³⁹⁵ Therefore, it is very crucial, that the case diary entries are accurate and made with diligence in order to minimize potential human rights abuses and to encourage compliance with law and procedure. If a police officer fails to keep a diary as required under Section 172, the statement of such a police officer may be open to adverse criticism and may consequently diminish its evidentiary value.³⁹⁶ The prosecution may also use this case diary to refresh the police witnesses' memory during recording of evidence, as provided under article 155 of QSO, 1984.³⁹⁷ Once the police witness has refreshed his memory using the diary, he may be subject to cross-examination by the defense. The defense or the Court in these circumstances are also allowed to view the particular portion of the diary that is concerned with the witness testimony.³⁹⁸ It must be noted that the Court is also permitted to see the police diaries, not only for the purpose of enabling the police officer who compiled it to refresh his memory, or for the purpose of contradicting him, but for the purpose of tracing the investigation through its various stages, the intervals which may have elapsed in it, and the steps by which a confession may have been elicited, or other important evidence may have been obtained. The Court may use the diary, not as evidence of any date, fact or statement referred to in it, but as containing indications of sources and lines of inquiry and as suggesting the names of persons whose evidence may be material for the purpose of doing justice between the state and the accused.

Should the Court consider that any date, fact or statement referred to in the police diary is, or may be, material, it cannot accept the diary as evidence, in any sense, of such date, fact, or statement, and must, before allowing any date, fact or statement referred to in the diary to influence its mind, establish such date, fact or statement by evidence.

389 *Mian Iftikhar Ahmad v. DSP Range Crime Branch*, 2016 YLR 495.

390 *Ibid.*

391 *Bahadur Khan v. Muhammad Azam*, 2006 SCMR 373.

392 Section 172. Diary of proceedings in investigation. (1) Every police-officer making an investigation under this Chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

393 The Police Rules, 1934, Rule 25.53.

394 19 Bom. BR 510.

395 *Peary Mohan Das v. D. Weston and Others*, 16 CWN 145.

396 *Zahiruddin v. Emperor*, PLD 1947 PC 13.

397 Qanun-e-Shahadat Order, 1984, Article 155, Refreshing memory: (1) A witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory. (2) The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if when he read it he knew it to be correct. (3) Whenever a witness may refresh his memory by reference to any document, he may with the permission of the Court, refer to a copy of such document: Provided the Court be satisfied that there is sufficient reason for the non-production of the original. (4) An expert may refresh his memory by reference to professional treatises.

398 *Kalimullah v. The State*, 2018 PCrLJ 553 Peshawar High Court.

Judges should avail themselves of the assistance of police diaries for the purpose of discovering sources and lines of inquiry and the names of persons who may be in a position to give material evidence, and should call for diaries for this purpose.³⁹⁹

The format of the case diary is provided in Form 25.54 (1) of the Police Rules. A case diary consists of sheets; each of which is numbered, dated and stamped with the police station stamp. As soon as each diary is completed, its number and date is recorded at the police station and one copy is sent to higher police officials to ensure that no changes are made. The case diary contains details of the stolen or recovered property;⁴⁰⁰ documentary evidence; details of the arrest; a concise summary of statements of the suspect, victim, the eyewitnesses; and all the proceedings carried out by the investigating officer in respect of said case.⁴⁰¹ A case diary acts as a procedural safeguard as it provides a check against individuals being picked at random by the authorities or illegally arrested. The efficacy of the diary or case diary as a procedural safeguard is ensured by the compliance of the police and the oversight by the court.

7.8. DUTY TO FURNISH A COPY OF THE FIR TO THE PROSECUTION

Although under Section 19 of the ATA, the public prosecutor is not involved in the submission of a final report, it is still a mandatory component for compliance with Section 173 of the Cr.P.C and Section 9(4) of the Punjab Criminal Prosecution Service Act (2006) for the police to furnish a copy of the report to the prosecution. Moreover, under Section 19-B of the ATA, it is obligatory for the public prosecutor to scrutinize the case file “to ensure that all pre-trial formalities have been committed.”

The powers, duties, expected conduct, and limitations to the powers of prosecutors in Pakistan are all promulgated in the following:

- Khyber Pakhtunkhwa Prosecution Service (Constitution, Functions and Powers) Act (2005),
- Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act (2006),
- Sindh Criminal Prosecution Service (Constitution, Functions and Powers) Act (2009),
- Balochistan Prosecution Service (Constitution, Functions and Powers) Act (2003).

The role of prosecutors in coordination with the police begins immediately after the registration of the FIR filed under Section 154 of the CrPC

Prosecutors also play a significant role in the inspection of an FIR. Using the Khyber Pakhtunkhwa province as an example, we find relevant provisions describing this inspection in Section 8(2) of the Khyber Pakhtunkhwa Prosecution Service Act (KPPS) as follows:

Section 8(2). Reports and Guidelines

On registration of the FIR, the Station House Officer (SHO) of the police station concerned shall send a copy of the FIR to the District Public Prosecutor/Public Prosecutor of the District who, upon receipt, shall inspect the same and issue necessary directions to the Head of Investigation, and shall also inspect, scrutinize and supervise the whole investigation process of various cases so registered in the District.

Therefore, it is evident from the aforementioned provision that the Police Officer is required to send a copy of the FIR to the District Public Prosecutor, who then inspects the same and issues necessary directions to the Head of Investigation. In *Farman Ullah vs. The State through Additional Advocate-General*,⁴⁰² the Peshawar High Court found that S.7 of Khyber Pakhtunkhwa Prosecution Service (Constitution, Functions and Powers) Act (2005), for example, had prescribed the powers of the prosecutor to scrutinize the case, and that any insertion or deletion of offences and sections of law in the FIR falls within the exclusive domain of the investigating officer and the prosecutor. The public prosecutor also inspects, scrutinizes and supervises the whole investigation process.⁴⁰³

399 Rules and Orders of the Lahore High Court Volume III Part H Chapter 12(3).

400 Pursuant to power granted under Section 5 (2) (iii), Anti-Terrorism Act, 1997.

401 The Police Rules, 1934, Form No. 25.54(1).

402 2016 PCrLJ 1096 Peshawar.

403 Section 8(2) of the Khyber Pakhtunkhwa Prosecution Service (Constitution, Functions and Powers) Act, 2005.

Moreover, in *Bahar Ali and Others vs the State*,⁴⁰⁴ the Peshawar High Court found the following:

"S. 8(2) of the North-West Frontier Province Prosecution Service (Constitution, Functions and Powers) Act, 2005 stipulates that a S.H.O. sends a copy of each FIR. of his police station to District Public Prosecutor and it bestows an extraordinary responsibility on District Public Prosecutor to inspect FIRs and wherever necessary to Suo Motu issue necessary guidelines to investigating officer and that would be in the shape of "Direction", to the Head of Investigation. He can also inspect, scrutinize and supervise the whole Investigation process of the cases. While reporting to Government under section 8(6) of the Act, the District Public Prosecutor can highlight lapses of the investigating officer in acute cases of negligence for appropriate departmental level punitive action to promote a sense of responsibility and accountability in the investigating officers."

Therefore, prosecutors have been given the power of scrutinizing the FIR as well as the entire investigation process under the relevant statute.

Self-Assessment Question

What are the four primary components of a casefile that signify that the judicial file is complete?

7.9. ML/TF INVESTIGATION

Planning a Money Laundering Investigation⁴⁰⁵

In any financial investigation (including money laundering), it takes time to obtain bank and business records. Even more time is required if the records are in another country. Proper planning will alert the investigator to seek foreign records early in the investigation and to initiate contact with his or her counterpart in the country in question. Although bank and business records figure in most financial investigations, they rarely provide sufficient evidence, on their own, to justify a conviction.

A money laundering case should be guided by a work plan that specifies:

- Witnesses to be contacted;
- Domestic and international financial records needed;
- Procedures for managing documents;
- Surveillance requirements;
- Desired evidence of criminal activity and proceeds;
- Analysis, summaries, and graphic representations of evidence; and
- Any special investigative techniques required.

The initial phases of the investigation should proceed as discreetly as possible. Surveillance of the subject and associates early in an investigation can provide valuable leads to evidence. However, early disclosure of an investigation can cause the subject and associates to take precautions that may make surveillance useless. It may also cause the suspect or key witnesses to destroy or alter records.

Bank records should be obtained early and discreetly. One set of records usually leads the investigator to seek another. When records are needed from other countries, the delay can be months. Delays in obtaining records can slow an investigation down, which is why it is vital to begin collecting them early on in the investigation, plan the use of search warrants, and to time their execution to maximize chances of obtaining evidence. Surveillance will provide information that can be used to set the time of the search (after a delivery, after a meeting, during a meeting, and so on). Sometimes, it is good practice to interview suspects or witnesses at the time of the search warrant execution.

Consider using special investigative techniques to assist in gathering evidence (see Chapter 8). The use of undercover operations, interception of communications, or consensual telephone monitoring can produce valuable evidence and applications for warrants under the Investigation for Fair Trial Act (2013) – which should be applied for at the earliest opportunity to ensure the product is admissible.

404 2008 PLD 28 Peshawar.

405 Combating Money Laundering and the Financing of Terrorism A Comprehensive Training Guide, The World Bank.

However, all these measures take planning and consideration of the admissibility of the final product. Just as crucial is consultation between the investigating officer and public prosecutor at an early stage to advise on admissibility and presentation at trial.

7.10. TERRORIST FINANCING INVESTIGATION UNDER THE AMLA REGIME⁴⁰⁶

Planning an investigation of terrorist financing begins with the formation of the investigative team:

Who are its members? In addition to investigators from the police and other investigative agencies, other specialists may be needed, such as intelligence officers and analysts, military officers, financial analysts (representing the FMU), accountants, and auditors.

Who will direct and manage the financial investigation? It could be the police, military, an intelligence service, or another appropriately qualified and authorized government entity. What are the roles and duties of each member of the team? Who gathers evidence from the public (such as banks, charities, NGOs, witnesses)?

The financial evidence gathered in a terrorist financing case is similar to that gathered in a money laundering case. Where was the money obtained? Who gathered it? Who deposited it? Who carried it across the border? Were wire transfers used? What banks or bankers were involved? Were attorneys or accountants involved?

Once evidence from financial institutions, businesses, NGOs, and witnesses is collected, it must be analyzed. Leads to additional evidence can also be gathered from informants or with search warrants and special investigative techniques.

Many different sources can provide information for use in initiating or pursuing ML/TF investigations, such as:⁴⁰⁷

- Intelligence from the Financial Monitoring Unit (FMU);
- Banks and financial institutions;
- Criminal cases, open or closed;
- Informants;
- Cooperating accused in criminal cases;
- Law enforcement agencies; and
- Cross-border operations from any of the above.

Sources of information for terrorist financing investigations are similar to those for money laundering investigations. An additional source for terrorist financing investigations may be intelligence gathered by police or other authorities on terrorist groups and their associates. It is often the case that much of the information on money laundering investigations also applies to terrorist financing investigations.

Financial Monitoring Unit

The FMU receives, analyzes, and disseminates to competent authorities, financial information that the financial institutions and designated non-financial businesses and professions (DNFBPs), referred to in AMLA as reporting entities, are obligated to disclose in the form of STR/CTR.⁴⁰⁸

Reporting Entities are Defined in AMLA as:⁴⁰⁹

Financial institutions, including any institution carrying on one or more of the following activities:⁴¹⁰

- Acceptance of deposits and other repayable funds from the public;
- Lending in whatsoever form;
- Financial leasing;
- Money or value transfer;
- Issuing and managing means of payments, including but not limited to credit and debit cards, cheques, traveler's cheques, money orders, bank drafts and electronic money;
- Financial guarantees and commitments;

⁴⁰⁶ Combating Money Laundering and the Financing of Terrorism A Comprehensive Training Guide, The World Bank.

⁴⁰⁷ Ibid.

⁴⁰⁸ Section 6(4)(a) and (b) and (c) Anti-Money Laundering Act (2010).

⁴⁰⁹ Section 2(u) Anti-Money Laundering Act (2010).

⁴¹⁰ Section 2(f) Anti-Money Laundering Act (2010).

- Trading in money market instruments; foreign exchange; exchange, interest rate and index instruments; transferable securities; commodity futures trading; etc.;
- Participation in shares issues and the provision of services related to such issues;
- Individual and collective portfolio management;
- Safekeeping and administration of cash or liquid securities on behalf of other persons;
- Investing, administering or managing funds or money on behalf of other persons;
- Insurance business transactions;
- Money and currency changing; and
- Carrying out business as intermediary.

Non-financial businesses and professions (DNFPBs):⁴¹¹

- Real estate agents;
- Jewellers;
- Dealers in precious metals or precious stones;
- Lawyers, notaries and other legal professionals;
- Accountants;
- Trust and company service providers; and
- Such other non-financial businesses and professions as may be notified by the Federal Government, which could include hawala and hundi banking.

The AMLA requires a report entity to file an STR with the FMU if it 'knows, suspects or has reason to suspect that a transaction or pattern of transactions':

- Involves funds derived from illegal activities or is intended or conducted in order to hide or disguise proceeds of crime;
- Is designed to evade any requirements of the reporting requirements;
- Has no apparent lawful purpose after examining the available facts, including the background and possible purpose of the transaction; or
- Involves financing of terrorism, including funds collected, provided, used or meant for, or otherwise linked or related to, terrorism, terrorist acts or organizations and individuals concerned with terrorism.

After analysis, the FMU forwards "high risk" STRs, CTRs or case referrals to relevant investigating agencies or regulators (SBP, SECP, etc.) for confidential review.⁴¹²

The FMU also may request information from FIUs in other countries or to search their databases for information on a suspect and on a transaction(s). In any investigation of a financial crime, such a database search should be requested where there is information that relates to another country.⁴¹³

Note that where a reporting entity willfully fails to comply with the STR process or gives false information, they are liable to imprisonment for a term which may extend to three years or with a fine which may extend to 100,000 rupees or both.⁴¹⁴ Further, disclosure of any STR or CTR to any person involved in the transaction by a reporting entity makes them liable to imprisonment for a term of three years or with a fine of 100,000 rupees or both.⁴¹⁵

Review and Consideration of FMU Referrals

After the FMU receives an STR of suspected money laundering, terrorist financing, or financial crimes from a financial institution or DNFBP, it should cross-check its own, the government's, and commercial databases for information about the persons, businesses, or entities mentioned in the report.⁴¹⁶ The FMU may also try to determine if any of the subjects has a criminal record by querying judicial or police records.

After compiling all the information from databases and other sources, the FMU prepares a report that includes an analysis of the transaction(s) reported. If the information is available, the FMU will analyze money movement between banks or bank accounts, companies, individuals, and countries.

⁴¹¹ Section 2(m) Anti-Money Laundering Act (2010).

⁴¹² Section 6(4)(c) Anti-Money Laundering Act (2010).

⁴¹³ Section 6(4)(g) Anti-Money Laundering Act (2010).

⁴¹⁴ Section 33 Anti-Money Laundering Act (2010).

⁴¹⁵ Section 34 Anti-Money Laundering Act (2010).

⁴¹⁶ Section 6(4)(d) Anti-Money Laundering Act (2010).

The Director of the FMU⁴¹⁷ can also postpone or suspend a suspicious transaction for 15 days if there are reasonable grounds to believe that the property is involved in money laundering.⁴¹⁸

An investigator receiving an FMU report should then decide if a criminal investigation is commenced on the subject(s) of the report. Certain circumstances are especially likely to lead to the opening of an investigation:⁴¹⁹

The subject of the report has a prior criminal record, and the amount of the reported financial transaction is large or very unusual;

A suspected intermediary—lawyer, accountant, or financial institution—is involved in the transaction;

The transaction appears to have been made in the name of someone other than the ultimate beneficiary, indicating an attempt to avoid scrutiny by authorities;

The transaction is of a high value than might be expected from the individuals concerned, considering their income or business;

The investigator already has intelligence about the subject of the STR (or other report);

The FMU referral details multiple reports of suspicious activities and/or transactions from one or more reporting entities.

Many factors may go into the decision to open a criminal investigation, but a report (or referral) from the FMU that reinforces or confirms information already available to a law enforcement officer can provide a good reason to open a money laundering investigation.

Investigators should keep an open mind when reviewing an FMU referral, using their experience and intuition to see beyond the bare facts of the referral for indications of criminal activity or terrorist financing.

Analysis of Suspicious Transaction Reports

The investigator or analyst reviewing the STR should first of all look for the following items that raise the intelligence value or investigative potential of a given STR:⁴²⁰

References to known criminals, or to individuals or companies that appear in numerous STRs;

Reports of the movement of money to countries that are sources of or transit locations for narcotics, or that are international tax havens or money centers;

References to financial activities that are known to be used in money laundering or financial fraud;

Reports from different financial institutions in the same area or region that detail similar financial activity, but by different individuals;

Conflicting data on individuals or entities mentioned in the STR, or data that conflicts between STRs (Note that reporting entities are required by section 7(4) of AMLA to retain STRs for 5 years.); and

Reports of deposits of domestic or foreign currency to business or individual accounts that are not justified by the size or nature of the business.

Hawala

There are many different strategies and techniques to identify illegal hawala and other similar service providers. Many of those are used in combination. Some of the most common methods used to detect such operations are:⁴²¹

- Specific targeted investigations and physical surveillance of suspicious entities;
- Identifying advertisements placed by such businesses in community newspapers;
- Conducting survey of open source material online;
- Searching through social media;
- Following up on leads from the general public or service providers;
- Use of AML monitoring systems especially leveraging on useful indications originating from STRs filled by financial institutions;
- Working in partnership with other agencies and gathering information from law enforcement and AML regulatory authority's investigations and inspections; and
- Targeted investigations and surveillance.

417 The Anti-Money Laundering Act 2010 at section 6(6) confers this power subject to regulations sanctioned by the National Executive Committee.

418 Section 6(6) Anti-Money Laundering Act (2010).

419 Combating Money Laundering and the Financing of Terrorism A Comprehensive Training Guide, The World Bank.

420 Ibid.

421 Role of Hawala and Other Similar Service Providers in Money Laundering and Terrorist Financing, FATF, October 2013.

It is important that all types of money service businesses including regulated hawala and hundi service providers report promptly to the FMU if they suspect or have reasonable grounds to suspect that funds are the proceeds of a criminal activity or are related to terrorist financing or an unlicensed money remittance business. The information collected by the FMU through STRs can be used by law enforcement agencies (or by supervisors) to conduct further investigations, which can help identify illegal hawala and other similar service providers. STRs can be very useful to track the flow of money, especially when banks and other financial institutions are used as a medium of settlement.⁴²²

Suspicious transaction patterns of illegal hawala include:⁴²³

- Extensive use of collective accounts. These can be identified by the reporting institutions if lots of small sums are deposited into the bank account of an individual (often stating their name in the reference line), or if large cash sums are deposited at regular intervals before transfers, aggregating all of the smaller amounts from the account are made to foreign accounts. Indicators of such collective accounts can be individuals possibly organized under the aegis of a cultural association collecting money through the banking system, or one or more individuals making an aggregated transfer of a large sum of money to a bank or money remitter abroad.
- Money being transferred at regular intervals to international locations such as Dubai. Dubai is a major international clearing house for remittances and other value transfers. Many trading companies/criminal groups route their money through Dubai to other destinations through hawala channel. Most of the hybrid hawala transactions are routed through some major international destination such as Dubai.
- An account being used as a temporary repository and the funds are transferred in and out of the account immediately.
- Usage of third-party accounts to disguise and avoid detection by authorities. Often such third-party accounts have no business connection to the hawaladar or sender.
- Frequent wire transfer activity from an account in the sending country to an international bank account.
- Wire transfers frequently sent by traders to foreign countries that do not seem to have any business connection to the destination countries.
- Money remitter or trader conducting transactions such that they fall beneath the identification, STR or CTR reporting threshold.
- Business accounts used to receive or disburse large sums of money but show virtually no normal business-related activities such as payment of payrolls, invoices, etc.
- Frequent deposits of third-party checks and money orders into business or personal accounts.
- Frequent international wire transfers from bank accounts, which appear inconsistent with stated business activities.
- Frequent deposits by multiple individuals into a single bank account, followed by international wire transfers and/or international withdrawals through ATMs.
- Sudden change in pattern of financial transactions from low value international fund transfers to large value transfers by a money remitter.

Currency Transaction Reports

AMLA defines a currency transaction report as a '*report on currency transactions exceeding 2 million PKR or as may be specified by the National Executive Committee by notification in the official Gazette.*'

Analysis of CTRs can identify individuals and businesses that are involved in financing of terrorism or money laundering activities. The investigator or analyst reviewing the CTR should look, in particular, for the following items, which raise the intelligence value or investigative potential of the CTR:⁴²⁴

- References to known criminals, or to individuals or companies that appear in numerous CTRs;
- Reports of the movement of money to countries that are sources of or transit locations for narcotics, or that are international tax havens or money centers;
- CTRs that report financial activity that is a known money laundering technique or financial fraud activity, such as the exchange of small bills for large ones;
- Reports from different financial institutions in the same area or region that detail similar financial activity, but by different individuals;
- Conflicting data on individuals or entities mentioned in the CTR, or data conflicts between CTRs, indicating an attempt to avoid scrutiny;

422 Ibid.

423 Ibid.

424 Ibid.

- Reports of transactions by businesses that are not large enough to justify the amounts deposited; and
- Reports of individuals who attempted to dissuade the bank or financial institution from filing the CTR.

Referrals from Financial Institutions

Another source of a potential money laundering investigation are referrals from bank and financial services regulators. Regulators of banks and other financial institutions are responsible for ensuring that financial service providers comply with relevant laws and regulations. They examine financial institutions for safety and soundness, assessing compliance with regulations related to credit practices, liquidity, capital adequacy, and operational risks in a wide range of areas. Examinations shall also include checks of institutions' anti-money laundering and combating the financing of terrorism (AML/CFT) programs.⁴²⁵

In the course of their work, examiners are also likely to do 'transaction testing' in risk areas, such as account deposits, wire transfers, loan portfolios, transactions or business relationships with politically exposed persons, correspondent banking relationships, and private banking. Some examples of information that could be uncovered during transaction testing:

- Suspicious wire transfer activity, such as a high volume of transfers, or simultaneous transfers;
- Evidence of account 'structuring' not readily observed in daily banking activity;
- Incomplete account information, such as omitted identifiers of nationality;
- Questionable loans and loan practices;
- Early payoffs of large loans;
- Cash reserves at a level inconsistent with banking volume; and
- Transactions with shell banks.

7.11. INTERNATIONAL COOPERATION

Where an investigation reveals a nexus between the offence committed by a proscribed organization or an individual in Pakistan and a foreign entity or individual, the MOI (upon request of the LEA (the CTD in this case)) may forward a Mutual Legal Assistance (MLA) request to the MOFA for onward submission to the concerned foreign government through proper diplomatic channels.

This will be discussed in more detail in Chapter 10 below.

⁴²⁵ Ibid

CHAPTER 8

SPECIAL INVESTIGATION TECHNIQUES

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INTRODUCTION

Special investigation techniques are the investigative tools that are used, in the context of criminal investigations, for the purposes of detecting and investigating serious crimes. They aim to gather information in such a manner as to not alert suspicion in those being targeted. These techniques include, inter alia, undercover operations, intercepting communications, accessing computer systems, and controlled delivery (concepts elaborated upon below). To ensure that any information thus obtained is admissible in court, it is imperative that actions taken be consistent both with the relevant international framework and domestic legal obligations. The use of such techniques is also included in FATF Recommendation 31, which notes that utilizing these techniques is critical to deterring money laundering and terrorist financing.

LEARNING OUTCOMES

After reading this chapter, the reader will be able to:

- Describe the investigative techniques and tools at the disposal of investigators.
- Understand the role of undercover operations, intercepting communications, using electronic devices and controlled delivery.
- Better apply the principles of FATF Recommendation 31.
- Contextualize and apply above-mentioned techniques to money laundering and terrorist financing operations.

ESSENTIAL READING

- FATF-Pakistan Mutual Evaluation Report (MER), 2019.
- FATF Recommendations for Pakistan.
- Standard Operating Procedures for Investigation of Terrorism Financing Cases.

8.1. FATF MUTUAL EVALUATION REPORT ON PAKISTAN⁴²⁶

The FATF, in its Mutual Evaluation Report of Pakistan, notes that Pakistan is only partly compliant with the FATF Recommendations relating to special investigation techniques. It notes that powers required by the criterion, as shown in Recommendation 31.2 of the FATF methodology, are not broadly granted to LEAs. It did note, however, that certain LEAs are empowered to use special investigation techniques:⁴²⁷

- The Inland Revenue Wing of the FBR is empowered under Sections 175 and 176 of the Income Tax Ordinance 2001, which allows the Commissioner Inland Revenue to compel the production of any accounts, records, and computer stored information. Section 38 of the Sales Tax Act (1990) further states that the FBR shall have unrestricted access to the premises, and records contained within, of any business governed by this Act, and that furthermore, assistance should be granted by all government departments, local bodies, autonomous bodies, corporation, or other such institutions to the authorized officer in the course of inquiry/investigation under this section.
- The NAB is empowered under Section 19(e) of the National Accountability Ordinance (1999) to conduct surveillance through undercover operations, conduct controlled deliveries, and access computer systems. Section 27 of the Ordinance also provides the power to seek assistance and call for any documents or information relevant to or connected with any matter, inquiry, or investigation pending before the National Accountability Bureau.
- The ANF, under Section 24 of the Controlled Narcotic Substances Act (1997), may conduct controlled delivery operations.

8.2. TYPES OF SPECIAL INVESTIGATION TECHNIQUES IN USE IN PAKISTAN⁴²⁸

Physical Surveillance

- Surveillance is employed to obtain general background and intelligence on individuals and businesses. It aids in deciphering the complexities of the lifestyle, habits, and relationships of suspects.
- In cases where there is a visible activity, such as the bulk transfer of physical currency, or consistent meetings with an individual, surveillance can be useful in identifying both the modes of terror financing and the individuals involved. This can potentially also include being led to places where financial (and other records) may be stored, thus leading to the discovery of assets.

Surveillance can yield valuable leads and evidence in a money laundering or terrorist financing investigation. It is recommended that the suspect in the investigation, as well as the suspect's employees or associates, be placed under surveillance.⁴²⁹

The suspect's residence and business location are equally important. If a bank or other any financial institution, or remittance agent is suspected of being used for money laundering or terrorist financing activity, surveillance of the institution can yield evidence of individuals or organizations using the institution to launder money.⁴³⁰

Surveillance operations should be conducted by trained operatives working in teams. Operatives should be skilled in surveillance techniques. Where possible, physical surveillance should be combined with electronic surveillance of the suspect, couriers, associates, and premises. Vehicles, luggage, and assets purchased with the proceeds of crime should be tracked electronically, if possible. Further, rubbish collections should be examined for disposal of any financial information.⁴³¹

⁴²⁶ 2nd Draft Mutual Evaluation Report (Pakistan).

⁴²⁷ FATF Methodology (R31 (31.2)).

Competent authorities conducting investigations should be able to use a wide range of investigative techniques for the investigation of money laundering, associated predicate offences and terrorist financing, including:

- a. undercover operations;
- b. intercepting communications;
- c. accessing computer systems; and
- d. controlled delivery.

⁴²⁸ Standard Operating Procedures for Investigation of Terrorism Financing Cases (Annex II).

⁴²⁹ Combating Money Laundering and the Financing of Terrorism: A Comprehensive Training Guide, The World Bank.

⁴³⁰ Ibid.

⁴³¹ Ibid.

It is imperative that applications to allow surveillance under the Investigation for Fair Trial Act (2013) are applied for at the earliest opportunity to ensure the surveillance that includes video recording of any person, premises or events is admissible and any property interference is permissible.⁴³²

IFTA

1. Application of the Act

The Act applies to all citizens of Pakistan within or outside Pakistan and to all transactions or communications originated or concluded within Pakistan or originated or concluded outside Pakistan by any citizen of Pakistan.⁴³³ This Act allows authorized officers of the Services Intelligence Agencies and the Police⁴³⁴ to file for a warrant of surveillance if the applicant believes that a person is engaged in any suspicious conduct that may result in a scheduled offence being committed.⁴³⁵

2. Time Limitation of Warrant

The warrant shall be issued for only sixty days.⁴³⁶ On expiry of such period, the court may re-issue the warrant for another sixty days if adequate reasons are shown by the authorized officer that justify the time-extension.⁴³⁸ The warrant of the court shall be served within seven days (if required) to the person or agency responsible for controlling the equipment or technology essential for the execution of the warrant.

3. Process to be followed once it is established that the scheduled offence was likely to be committed.

If the data collected via the warrant reveals any elements of any scheduled offence (under the PPC or ATA), the applicant may immediately proceed to register a FIR under section 154 of CrPC and hand over all the obtained evidence to the Investigation Officer; if the data collected is insufficient to lodge an FIR, it will be kept in custody and shall not be used without the Court's permission.⁴³⁹

4. Jurisdiction of Warrant

It is important to note that warrants may be served and executed within states outside Pakistan, and if any warrant for surveillance is requested from another country, it may also be executed in Pakistan by the designated agency or body.⁴⁴⁰

Informants/Confidential Sources

Intelligence obtained from informants or other confidential sources can be of great value. It is, however, important to note that informants usually have ulterior motives of their own. It is, therefore, imperative that any information obtained through them be corroborated by other sources.

Informants can provide valuable information in a money laundering investigation. An informant is a person who possesses direct or indirect knowledge of criminal or other unlawful activity and who makes that information available to a representative of law enforcement. Some informants may wish to remain anonymous and may not want to testify in future criminal proceedings. Some informants provide information to law enforcement officers on an ongoing basis.⁴⁴¹

The potential role of informants in money laundering investigations should not be underestimated. Informants can reduce the time spent on an investigation.

Informants can give investigators valuable insight into the inner workings of criminal organizations and provide leads that would not have been available through other investigative means. They can even be used in undercover situations, where warranted. For example, an informant may be a member of the criminal group under investigation or a friend of the group's members. In such cases, the informant can be used to introduce an undercover police officer to the group so that the officer can collect evidence of criminal activity.⁴⁴²

⁴³² Combating Money Laundering and the Financing of Terrorism: A Comprehensive Training Guide, The World Bank.

⁴³³ The Investigation for the Fair Trial Act 2013, Section 2 available on: http://www.na.gov.pk/uploads/documents/1361943916_947.pdf.

⁴³⁴ Section 3(a).

⁴³⁵ Section 5.

⁴³⁶ Section 14.

⁴³⁷ Ibid.

⁴³⁸ Section 17.

⁴³⁹ Section 22.

⁴⁴⁰ Sections 31 and 32.

⁴⁴¹ Ibid.

⁴⁴² Ibid.

Useful tips in this matter are:⁴⁴³

- Thoroughly interview informants who have information on the movement of money from criminals and criminal organizations;
- Be sure to establish the parameters of what the informant can or cannot do to ensure the integrity of the investigation;
- Develop all information provided by the informant to the fullest extent possible; and
- Cross-check it with other sources of intelligence.

When cultivating informants, it is important to consider motives. An individual's motives for becoming an informant may be an indicator of reliability or credibility. Generally, an informant's motives will fall into one or more of the following categories:⁴⁴⁴

- **Monetary gain:** The informant may be looking to be rewarded for participating in an investigation;
- **Revenge:** The informant may be attempting to get even with someone by providing information in an investigation;
- **Altruism:** The informant may be concerned about the well-being of others;
- **Self-aggrandizement:** The informant may seek to present an exaggerated image of himself or herself;
- **Personal gain:** The person is seeking some sort of personal gain in exchange for his or her cooperation, such as the elimination of his or her competition; and/or
- **Other motives:** These might include a fascination with law enforcement or the pursuit of some kind of thrill.

Be aware that an informant may be providing false or misleading information. At times, it may be necessary to verify an informant's credibility by talking with other law enforcement officers or departments who know the individual.

At times, informants may be asked to obtain specific information needed for an investigation. Be sure to know and respect local laws and practices when managing informants. Failure to do so may compromise your investigation.

Cooperating Accused⁴⁴⁵

Like informants, cooperating accused can be an invaluable tool in developing leads or otherwise assisting in investigations. Cooperating accused are persons who have been convicted or are facing legal action for having committed a crime. Their primary motive is usually personal gain. They are looking to 'cut a deal' or obtain leniency in exchange for providing information or testimony relative to criminal activity. Like informants, they can offer insight into the criminal operation that may not be available through other investigative means.⁴⁴⁶

In a money laundering investigation, the cooperating accused can provide valuable information on the movement of money to or from a criminal organization and testimony about the extent of the organization's money laundering. He or she may also be able to identify additional co-conspirators and professionals, attorneys, or accountants who have assisted in any money laundering scheme. Finally, such an individual can be useful in identifying assets derived from criminal ventures and in interpreting ledgers, books, and other records maintained by the criminal organization.⁴⁴⁷

Within existing common law rules, prosecutorial discretion can be used to secure the cooperation of potential co-accused in an informal and strategic manner. Examples of the exercise of this discretion might include:

- A review decision by the public prosecutor to prosecute only the main offenders and to call peripheral offenders as witnesses;
- Informing the Court, when an accomplice or other witness gives evidence, that the witness will not be prosecuted on the basis of anything he may say in the course of truthful evidence on that occasion. This situation may arise at short notice when the Court, of its own motion, warns the witness against self-incrimination during the course of their testimony. However, it is preferable for such ad hoc non-prosecution undertakings to be expressly limited to offenses of which the prosecution is aware or to which the offender has already admitted in the course of his evidence; blanket undertakings not to prosecute any offending which is revealed should never be given.⁴⁴⁸

⁴⁴³ Ibid.

⁴⁴⁴ Combating Money Laundering and the Financing of Terrorism: A Comprehensive Training Guide, The World Bank.

⁴⁴⁵ Ibid.

⁴⁴⁶ Ibid.

⁴⁴⁷ Ibid.

⁴⁴⁸ Ibid.

Important factors to consider about accomplice evidence and whether to prosecute them include:⁴⁴⁹

- The quality of the evidence as well as the quality of the witness;
- The value of the evidence to the investigators in an operation against a serious, organized criminal may not lead to the prosecuting of a witness;
- The gravity of the offence committed by the witness; generally, the more serious the offence, the more likely the witness will be prosecuted.

It should be further noted that, ordinarily, a participant in the crime for which the accused is accused should not be called as a prosecution witness without a clear indication from that accomplice that he is willing to give evidence in favour of the prosecution (*R v Sinclair*, *The Times* 18 April 1989, CA.) Where it is proposed to call an accomplice for the prosecution at the High Court, it is the practice to omit him from the indictment or take his plea of guilty on arraignment.⁴⁵⁰

In appropriate cases, the prosecution may give an undertaking not to prosecute or further prosecute an accused who has been charged. This immunity is usually granted for an accomplice who agrees to give evidence against another accomplice. Effective counterterrorism investigations and prosecutions often rely on the cooperation of an accused. Testimonial evidence of this nature is often critical to the outcome of a trial, and therefore, there are many protections and limitations set forth with respect to its collection and use. The testimony of co-defendants and accomplices who are willing to cooperate and provide evidence against former associates is an important tool for the prevention of terrorism.⁴⁵¹

To secure a cooperator, there must be incentives for testimony, as well as protections for the individuals who agree to testify. These efforts are critical because the establishment of adequate incentive programs such as witness protection programs⁴⁵² may encourage terrorist suspects and others to cooperate with authorities by reducing their fear of reprisal from members of the terrorist organization.⁴⁵³

As stated in the Rabat Memorandum:

'[w]ithout adequate incentives, those with knowledge of or involvement in terrorist activity may have little reason to cooperate with law enforcement authorities, especially given the fear of retribution by members of a terrorist organization.'⁴⁵⁴

In making special provisions for the protection of witnesses, judges should also be careful in allowing the use of anonymous witnesses, which may violate an accused's right to a fair trial. Judges should also authenticate the validity of confessions and take steps to ensure that they were not obtained under duress. Police officers can also engage in various forms of misconduct, varying from mistreatment of suspects under custody, the inappropriate use of informants, compelling false testimony and accepting bribes, to list a few.

Factors for an investigator or prosecutor to assess the reliability and credibility of evidence of a co-accused include:

- The seriousness of any offence(s) the potential witness might have committed, in comparison with (a) above, including the extent to which the potential witness had coerced or incited another person to take part in the offence(s) under investigation;
- The importance and value of the evidence, information, cooperation, assistance or other benefit to be provided;
- Whether it is possible to obtain the evidence, information, cooperation, assistance or other benefit from another witness, or in another manner;
- The strength of the prosecution case without the evidence the witness is expected to give; and, if some other charge could be established against the defendant without the witness' evidence, the extent to which that other charge would reflect the defendant's criminality;

⁴⁴⁹ Guide to Investigating and Prosecuting Serious Organized Crime, 5th Edition, Dan and Nicola Suter.

⁴⁵⁰ Ibid.

⁴⁵¹ South Asia Regional Toolkit for Judges Supporting the Development of National Bench Books for the Effective Adjudication of Terrorism Cases, page 49.

⁴⁵² Section 21 of the ATA, (The 2014 amendment to the ATA included a provision to provide protection to witnesses, judges, prosecutors and lawyers.). Moreover, each province also has special laws for witness protection except for the KP.

⁴⁵³ Ibid.

⁴⁵⁴ Global Counterterrorism Forum (GCTF), 'The Rabat Memorandum on Good Practices for Effective Counterterrorism Practice in the Criminal Justice Sector' 7, <https://www.thegctf.org/Portals/1/Documents/Framework%20Documents/A/GCTF-Rabat-Memorandum-ENG.pdf> (Rabat Memorandum).

- The impact of the evidence that it is expected that the witness can give on the prospects of conviction in the case (the prospects of conviction may be reduced because of the bad character and lack of candor of the witness when giving evidence);
- The criminal history of the witness and full details of his or her contacts with the investigators in order to assess credibility;
- Whether there are other indicators tending to confirm that the evidence or information that the witness might give is true;
- The number of occasions and the circumstances in which any undertaking has been made with the witness in the past; the expectation of an undertaking should not be seen as a license to continue to commit offences; and
- Whether the interests of justice (including the protection of the public and the interests of the victim) would be better served by obtaining the proposed evidence, information, cooperation, assistance or other benefit or by the conviction of the co-accused offering such evidence, etc.

The terms of the undertaking should be written and stipulate that the undertaken may be withdrawn if the beneficiary does not give evidence in accordance with the statement provided to the prosecution.

Controlled Deliveries

- Controlled deliveries refer to the transportation of a delivery (contraband, currency, etc.) to suspected violators, while under either the direction or surveillance of LEA officers. The primary objective of a controlled delivery is to identify suspects, arrest them and have them convicted in order to disrupt and dismantle the organizational structure of a militant organization or, barring that, to expand the scope of an investigation through the identification of additional (and potentially higher level) offenders.
- This technique carries with it significant risk, in that evidence can be lost during the controlled delivery. It is therefore necessary that such risks be mitigated with clear policy and procedural guidelines for those implementing it, and with proper oversight from superiors.

Intercepting Communications

Electronic surveillance techniques like electronic intercepts of phones and oral communication can be very useful in financial investigations. It can help identify co-conspirators, provide insight into operational activities of the terrorist organizations, provide real time information/evidence that can be acted upon using other investigative techniques and can lead to the discovery of assets, financial records, etc.

Accessing Computer Systems

Access to computer systems can be useful for monitoring the activities and communications of the suspect. Gaining access to messaging systems being used by terrorists can prove imperative in furthering a financial investigation.

Undercover Operations

Law Enforcement Officers, under the direction of a law enforcement agency, may take covert action to obtain evidence. The usage of this technique may allow access to crucial evidence that cannot be obtained by other means. Due to the inherent risks in an undercover operation, it is recommended that such an action only be considered as a measure of last resort.

An undercover operation is the infiltration or joining of a criminal enterprise by an informant or law enforcement officer to secure information or evidence relating to criminal activity.

Undercover operations can aid a criminal investigation by:

- Determining the illegal activity from which money is generated;
- Identifying unknown violators (including money launderers or those who finance terrorist or terrorist organizations);
- Identifying co-conspirators and key witnesses; and/or
- Identifying and tracing the proceeds from crime or funds to be used in financing of terrorism.⁴⁵⁵

455 Combating Money Laundering and the Financing of Terrorism: A Comprehensive Training Guide, The World Bank.

An undercover operation may take one of two forms in a money laundering investigation:

- Law enforcement officers may launder money for a criminal or criminal organization, or
- A money laundering organization may be recruited to launder government money.

The goal of such undercover operations is to gather evidence against the persons handling the money (bankers, attorneys, accountants, or others) or to establish the movement of money (to and from banks, businesses, countries).⁴⁵⁶

It is important that applications to allow undercover operations under the Investigation for Fair Trial Act (2013) are applied for at the earliest opportunity to ensure the collection of evidence is admissible.⁴⁵⁷

8.3. JOINT INVESTIGATION TEAMS (JITS)⁴⁵⁸

Constitution of a JIT

A JIT may be constituted by the government in accordance with Section 19(1) of the ATA 1997. A JIT is a five-member grouping, headed by an investigating officer of the police who is not below the rank of Superintendent of Police, with the remaining membership of the JIT being filled by officers of equivalent rank from the intelligence agencies, armed forces, and civil armed forces.

Decision-Making and Recording

The JIT shall decide the outline and parameters of a financial investigation and shall thereon supervise the progress of the investigation as it proceeds. In order to carry out the assigned responsibilities, they shall endeavor to always advance the course of the investigation, manage any associated risks, and decide on the allocation and use of resources. All investigation progress and decisions (with reasoning) must be accurately recorded in the case file.

In order to conduct parallel financial investigations in each terrorism case immediately after its registration, the JIT shall launch a prompt and parallel financial enquiry to operate in conjunction with the primary investigation.

Parameters of the JIT

- The discovery of sources of funding for terrorist activities, identification of the financiers of terrorism (donors, fundraisers, facilitators, operatives, and any other person with linkages to a terrorist financing activity), and the exploration of linkages between the origins of money, intermediaries, and ultimate beneficiaries;
- Accounting for the terrorist financing risks during the course of an investigation, such as drug trafficking, kidnapping for ransom, extortion from businesses, vehicle snatching, robbery, dealing in foreign exchange, case couriers, hundi/hawala transactions, and the misuse of NPOs & NGOs;
- Accessing the widest possible range of financial, administrative, and law enforcement information, including open or public sources and information collected and/or maintained by other departments and organizations;
- Identifying, during the course of investigation for possible action under Section 11O of the ATA 1997, money or other property owned or controlled, wholly or partially, directly or indirectly, by a proscribed person or organization;⁴⁵⁹
- Seeking information about the newest and most innovative modes of funds generation, including the use of crypto-currencies and the internet as a means of terrorism financing; and/or
- The application of the relevant terrorism financing provisions so as to ensure effective prosecution of the case.

⁴⁵⁶ Combating Money Laundering and the Financing of Terrorism: A Comprehensive Training Guide, The World Bank.

⁴⁵⁷ Ibid.

⁴⁵⁸ Standard Operating Procedures for Joint Investigation Team (JIT) for Terrorist Financing Investigations (Annex I).

⁴⁵⁹ Seizure, freeze and detention: Money or other property owned by a proscribed organization shall be frozen or seized. It may not be transferred, and violation of any provisions of this section may incur a fine.

Terrorist Financing Offences

In addition to the offences of terrorism under the ATA 1997, the JIT should also specifically take into account provisions criminalizing financing of terrorism:

- Section 11H of the ATA 1997: Fund Raising
- Section 11L of the ATA 1997: Use and Possession of Money or other Property
- Section 11J of the ATA 1997: Funding Arrangements
- Section 11K of the ATA 1997: Money Laundering
- Section 11N of the ATA 1997: Punishment
- Section 21EE of the ATA 1997: Power to demand financial documents from financial institutions.

Responsibilities of JITs

AUTHORITY	ACTION TO BE TAKEN
General Responsibilities	<ul style="list-style-type: none"> • To examine and preserve the crime scene(s) and ensure that an accurate site map is prepared. • To examine the situation report – first inspection notes. • To ensure that the offices, business premises, frequently visited places and residences of the accused are searched and all records, whether manual or digital. • To make use of human intelligence throughout the investigation process. • To identify any witnesses, including potentially through house-to-house enquiries. • To identify and investigate the accused and to find out his or her previous record. • To identify any other suspects in the case. • To ensure proper use of resources that have been allocated to the investigation. • To seek assistance from FIA, FMU, SECP, and SBP for the purposes of financial investigations. • To seek assistance and cooperation from other federal/provincial departments and state organizations, wherever required.
Terrorism Financing Responsibilities	<ul style="list-style-type: none"> • To verify that the case is of terror financing, as stated in sections 11H to 11K and 11N of the ATA. • To ensure that members of the JIT are fully briefed by the former IO or complainant and witnesses. • To collect identification details (CNIC number) of the accused and his associates and check their account details. • To contact Money Service Businesses (MSBs) for any possible transactions of the suspect. • To examine call records, financial records, and personal interviews of the suspect to develop a course of action on who else to investigate and what future avenues the investigation may take. • To obtain the details of lockers/safe deposit boxes which might be maintained by the person, while writing to banks and financial institutions for the account statements. Such lockers/safe deposit boxes will be carefully searched after securing proper court order.

- To maintain records of the statements of officers, wherever a financial record is obtained from a third party such as banker or Registrar of Companies under Section 161 of the Cr.P.C.
- To seek assistance from high end financial experts and, where necessary, make use of available mechanisms (bilateral and multilateral) for exchange of information where the suspect has been found to have made use of front businesses for layering, inter alia, multiple bank accounts, structuring techniques, dubious charitable organizations, shell companies, or offshore businesses.
- To seek international cooperation, formal and informal (Police-to-Police, FMU to FIU), in consultation with MOI wherever required.
- To discover the facilitator/sympathizers who make donations to proscribed organizations.
- To affect recovery of the receipts of proscribed organizations from the suspect.
- To prepare the recovery memo, incorporating the denomination of currency notes and numbers.
- To obtain Call Data Records (CDRs) from telecommunication companies for checking money transactions through cell phones.
- To trace the person(s) who printed receipts or made arrangements regarding receipt books.
- To uncover the communication channels of transactions to proscribed organizations/terrorist networks.
- To collect evidence in relation to the case and ensure preservation by using modern techniques and their dispatch for expert examinations.
- To manage the arrest and interrogation of facilitators, donors and sympathizers of proscribed organizations.
- To prepare high quality case files in regular consultation with prosecutors.
- To engage with, and utilize the resources of, the Intelligence Wing of sister agencies to support the investigative process.
- To examine/scrutinize the records as early as possible for developing further lines of investigation and decide immediately which of the records or gadgets is to be dispatched for forensic/lab tests.
- To keep focus on financial information and associated non-financial information in the financial documents, such as phone numbers, addresses, passport numbers, etc.
- To decide, in consultation with the legal counsel or prosecutor, which of the terrorist financing sections of ATA and other laws are attracted, based upon the nature/mode of terrorist financing.
- To requisition the video recordings of CCTV cameras inside or outside the bank and of ATM cameras, to identify the individuals making transactions from the accused or suspects' accounts.
- To investigate the informal modes of financial transactions made by the accused or suspect from origin to destination, including intermediaries, to identify the donors, facilitators, beneficiaries and end users in a terrorist activity (informal modes include Hundi/Hawala, cash couriers or any other mode in the informal sector).

	<ul style="list-style-type: none"> To requisition details of moveable and immoveable assets of individuals and organizations involved in terrorist financing from different agencies, including land revenue, housing/development authorities, motor registration authorities (The purpose is to trace the parked assets of terrorists, which might be used to facilitate or generate funds for terrorism).
Monitoring and Evaluation	<ul style="list-style-type: none"> The JIT must establish a matrix of actions, as per the priorities that arise from the investigation. The priority of the action must be specified: high, medium, or low. The result of the action must be introduced into the information system, in order to contribute to the overall investigation picture. The JIT will continue to direct the enquiries as an on-going process and will carefully consider and assess the results of actions and queries to set new investigation strategies and issue further actions in support of the investigative objectives. The JIT must prepare case studies of the investigations to provide guidance for future investigations. There must be parallel sharing of best practices and lessons learnt/ experiences during physical investigation of TF cases with LEAs/ intelligence agencies, including the latest modes of fund generation and trends observed. The services of financial experts may be made available to the JIT (as and when required), including through hiring from the open market, within the ambit of law and relevant rules, on a case-by-case basis, to get information on complex methods used for flow of funds, such as businesses through layering, multiple bank accounts, structuring techniques, dubious charity organizations, shell companies and offshore business structures. The JIT may also forward a case to the FMU for better financial analysis.

8.4. CHECKING OF ASSETS WITHOUT NOTIFICATION TO THE OWNER

Prevention of Electronic Crimes Act (2016)

The Prevention of Electronic Crimes Act (2016) allows Courts to issue warrants to a law enforcement officers to seize and search through any data that 'may reasonably be required' for a criminal investigation. It also allows a law enforcement officer to require a person to hand over data without the production of a warrant if the officer believes that such data is 'reasonably required' for a criminal investigation. This power is entirely discretionary, with the only caveat being that the officer must provide notice to the Court of such a seizure within 24 hours of acquisition.

Additionally, Section 32 of the Act provides for far-ranging powers to authorized officers to conduct searches and seizure of data. In so doing, they must follow guidelines as provided under Section 35.⁴⁶⁰ One such condition placed by the legislation is to take all precautions to maintain the integrity and secrecy of the information and data that has been seized or collected.

Section 39 allows for real-time monitoring and collection of data if a Court is satisfied that such monitoring and collection is necessary for a criminal investigation. This can go on for a period of 7 days. If the Court is satisfied as to the

⁴⁶⁰ Section 35(2) of the PECA, 2016 (Act No. XL of 2016).

efficacy of the monitoring, and is of the belief that continued monitoring is necessary, it may extend the surveillance period.⁴⁶¹

Furthermore, Section 42 allows the government to share any data obtained from its investigation with any foreign government or international agency if such sharing would, in the opinion of the Federal Government, further the aims of the Act.⁴⁶²

Pakistan Telecommunications (Re-Organization) Act (1996)

Sections 54(1) and 57(2) of the Act provide that, in the interest of national security or in the apprehension of any offence, the Federal Government may authorize the interception of communications and make rules for said interception without setting any standards.⁴⁶³

The Investigation for Fair Trial Act (2013)

The Investigation for Fair Trial Act (2013) aims to regulate the powers of law enforcement and intelligence agencies, in order to strike a balance between the protection of fundamental rights and the need to use advanced surveillance and investigative tactics.

When issuing a warrant (of surveillance or interception), a judge is required to ensure that the warrant shall not unduly interfere with the privacy of any person or property.⁴⁶⁴ Any warrants so issued last for a period of 60 days, which may be further extended if suitable progress has been made with the information collected.⁴⁶⁵

Section 16(1) of the Act provides for a list of techniques for which a warrant may be issued;⁴⁶⁶ however, this is not an exhaustive list and may be amended to account for other special investigation techniques as is stated in Section 16(2) of the Act.⁴⁶⁷

461 Bytes for all, 'State of Privacy Pakistan' (Privacy International 2018).

462 Bytes for All, 'State of Privacy Pakistan' (Privacy International 2018).

463 Umer Gilani and others, 'Electronic Data Protection in Pakistan: What Needs to be Done?' (Bytes for All, Pakistan 2017).

464 'Section 10 of the Investigation of Fair Trial Act, 2013.

465 'Section 14 of the Investigation of Fair Trial Act, 2013.

466 Namely, recording of telephone communication of the suspect with any person, video recording of any person(s), premises, event situation, etc., the interception or recording or obtaining of 'any' electronic transaction including but not limited to emails, SMS, etc., and the interception and taking over of any equipment used in the communication, such as the individuals telephone, cell phone, mobile sims, electronic database, etc.

467 Section 16(2) of the Investigation of Fair Trial Act, 2013.

CHAPTER 9

ADJUDICATION OF TERRORISM FINANCING CASES

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INTRODUCTION

This chapter aims to lay out the best practices when it comes to adjudicating terrorism cases generally and terror financing cases in particular. Accordingly, emphasis has been placed on methods for effective case management, with an aim of reducing backlogs and maintaining court security. Efficient case management systems, such as calendar systems and case information management systems, are also covered. The chapter further deals with ideal methods of crafting judgments, ranging from what issues should be included, what style of writing is most effective at communicating with broad audiences, and how judgments may be effectively delivered. Finally, it gives an overview of the QSO framework and then assesses the probative value of evidence which is relevant to ML/TF.

LEARNING OUTCOMES

By the end of this Chapter and the relevant readings, you should be able to:

- Understand what constitutes an effective case management system.
- Understand what The Hague Memorandum asks for in relation to case management.
- Understand why automated court management systems are to be encouraged.
- Understand how to craft a judgment, both in relation to the content to be included, as well as the style in which it should be presented.
- Understand how to effectively deliver a judgment.

ESSENTIAL READING

- Prosecutors' Handbook - Guidelines for Prosecutors
- Case Flow Management System and Court Automation by Zafar Ahmed Khan Sherwani
- Case & Court Management – District Judiciary Punjab – Courting the Law
- The Rabat Memorandum on Good Practices for Effective Counterterrorism Practice in the Criminal Justice Sector – Global Counterterrorism Forum
- Good Practices for Courts: Helpful Elements for Good Court Performance and the World Banks Quality of Judicial Process Indicators – World Bank, 2016
- 'Module 4 Planning Investigations: Investigation of Corruption and Money Laundering (Adopted From The Handbook For Practitioners On Asset Recovery Under Star Initiative)
- Judicial Writing Manual: A Pocket Guide for Judges, Federal Judicial Center 2013

9.1. CASE MANAGEMENT

The concept of case management may be defined as 'the entire set of actions that a court takes to monitor and control the progress of cases, from initiation through trial or other initial disposition to the completion of all post-disposition court work, to make sure that justice is done properly.'⁴⁶⁸

The aforementioned definition lays emphasis on the said action being taken by courts. In turn, judicially driven trial management is integral when it comes to preventing unnecessary delays or interruptions in the trial process. This becomes especially important under the ATA regime. Pursuant to Section 19(7) of ATA, an Anti-Terrorism Court is to decide the case in seven days on taking cognizance of the case. To make this possible, section 13(2) of the ATA stipulates that cases shall be assigned to the ATCs one after the other provided that, 'in order to ensure that the time of the court is not wasted, if for some reason a given case cannot proceed, more than one case can be assigned to it at any time or from time to time.' However, in January 2019, it was reported that the 53 ATCs in Sindh had 3,210 cases pending trial.⁴⁶⁹ This shows the importance of case management for the justice sector as a whole but particularly the ATCs, which are legally bound to decide a case as expeditiously as seven days.

Traditionally, the courts have tended to allow the parties to dictate the speed of the trial. In Pakistan, the courts have tended to take a lenient approach and have been generous in allowing parties to seek adjournments. Most stakeholders are of the view that the main reason for delay in disposition of cases is the indiscriminate allowance of adjournments and extensions at all stages of the trial in both civil and criminal courts. This has had the consequence of cases spanning over years, and in some cases, over decades. Over time, however, many jurisdictions have begun to deviate from this approach wherein the judiciary has started to play a more active role to better manage increasing workloads.

The Constitution, through Article 37(d), stipulates that the State shall ensure inexpensive and expeditious justice, and so it is imperative that the court system operates as efficiently and inexpensively as possible. Key to accomplishing this aim is case flow management; namely, the management of the time and events necessary to move a case from litigation to disposition or adjudication.

Case flow management is the coordination of all processes and resources of the court to ensure that cases progress in a timely fashion. Best practices for case flow management include setting a standard timeline for case disposition, inviting early court intervention, and asserting continuous control over case progress. This can be done through establishing meaningful pretrial events and schedules, maximizing dispositions before setting specific trial dates and monitoring case load information systems, among other things.

Therefore, this chapter endeavors to illustrate best practices when it comes to case management so as to ensure expediency of trials, particularly those suspected of terror financing. To that end, there ought to be in place standards or rules that can then be consistently applied to the plethora of cases that come before the ATCs.

9.2. CASE INFORMATION MANAGEMENT SYSTEM

Such systems may be manual or electronic. These systems, coupled with the court staff, can relieve the judge to perform only their actual judicial functions. Here, preliminary hearings can be of utmost value where the ground rules may be set for the trial to commence further. These can include:

- To ensure that the challan is filed within the prescribed time in accordance with Section 19 of the ATA;
- The identification of special requirements or accommodations. These may include identifying and making necessary accommodations for qualified interpreters in accordance with Chapter XXV of the CrPC;
- Specifying what technology is permissible in the courtroom, such as television screens, cell phones, video cameras, or real-time recordings; and
- The identification of any witness issues or other specific legal, evidentiary or procedural complexities that may require court action or have the potential to delay proceedings, and including, in particular, the arrangement of protections afforded under section 21 of the ATA.⁴⁷⁰

⁴⁶⁸ David Steelman et al., *Caseflow Management: The Heart of Court Management in the New Millennium* (National Center for State Courts 2004), available at <http://ncsc.contentdm.oclc.org/cdm/singleitem/collection/ctadmin/id/1498/rec/2>.

⁴⁶⁹ Naeem Sahoutara, 'Over 3,200 Cases Pending Trial In 53 Atcs In Sindh' (dawn.com, 2019) <<https://www.dawn.com/news/1455908>> accessed 16 August 2019.

⁴⁷⁰ Protection to Judges, Counsel, Public Prosecutor, witnesses and persons concerned with court proceedings.

In addition, the trial judge, upon consultation with the parties, ought to also do the following:

- Set a firm trial date, ensuring continuity and predictability; and
- Be receptive to using technology, as may be available, in managing the trial and the presentation of evidence, relying upon Art. 164 of QSO and section 27-B of the ATA.

Calendar System

A calendar system can determine how responsibility for processing the case is handled. The three typical calendar systems are individual, master or hybrid.

- Individual calendar system: A Judge is solely responsible for each case assigned to him or her from filing to disposition.
- Master calendar system: The responsibility for processing each case is apportioned among several Judges, each of whom handles a portion of the processing task.
- Hybrid calendar: This Model relies on elements of both the individual and master calendar systems in various combinations applied during one or more steps of the proceedings.

Automated Court Management Systems

Although the process of automation is an arduous task, once it has been implemented, it can simplify the administration of cases. These systems may be implemented to serve a variety of functions or combination of functions. The relatively basic ones include: automating administrative tasks such as case tracking; case management systems and automation. More advanced systems include: judicial electronic data interchange between different agencies or between Courts and the parties (e-justice or e-filing) and implementing hearing room technologies (e.g., use of computerized stenotype, of audio and video-recording to take records, or use of video-conferencing for taking video-depositions). In some respects, the latter has been implemented by the Supreme Court of Pakistan to integrate the registries with the Supreme Court itself;⁴⁷¹ however, such systems are yet to be implemented by trial courts, including the ATCs.

That is not to say that there is no automation currently in the Pakistani court system. In the Lahore High Court, for example, listings are automatically populated through use of an electronic system. This system tracks time spent by the Court on each case, which parties were present in Court, and the recording of orders and judgments. The data entry is done by the readers of the Court, with little need for technical know-how, and once the system has been updated, case status and proceedings are easily viewable online.⁴⁷² Such systems are also available in the other High Courts of Pakistan.

Such systems are also in the process of being implemented in the district level courts of Pakistan, with Syed Mansoor Ali Shah, the then Chief Justice of the Lahore High Court stating,

Our objective is to reduce the shelf life of every case that is filed before us in order to provide swift justice to a common man. In order to build a robust and an efficient justice and grievance redressal system we are continuously adjusting, reforming and changing ourselves. Case and Court Management Plan for the District Judiciary will redefine the working of the district judiciary and take the justice system to the next level. All our efforts are for the common man who has reposed trust in us.⁴⁷³

Implementing an automated system entails conducting a thorough and careful feasibility and cost/benefit analysis, and answering questions about who needs what type of information, when, and for what purpose. Furthermore, initial development efforts require significant funding and resource support for planning, design, testing and implementation; long-term success requires the ongoing commitment of resources for regular maintenance, updates and cyclical replacement of hardware and software.

471 Naeem Sahoutra, 'Delivering Swift Justice 1,450Km From Courtroom' (Dawn.com, 2019) <<https://www.dawn.com/news/1484964>> accessed 16 August 2019.

472 'Case Management | Lahore High Court' (Lhc.gov.pk, 2019) <https://www.lhc.gov.pk/case_management> accessed 20 August 2019.

473 'Case & Court Management - District Judiciary Punjab' (Courtingthelaw.com, 2019) <<http://courtingthelaw.com/2017/08/29/updates/case-court-management-district-judiciary-punjab/>> accessed 20 August 2019.

9.3. HAGUE MEMORANDUM ON GOOD PRACTICES FOR THE JUDICIARY IN ADJUDICATING TERRORISM OFFENSES

Development of Enhanced Courthouse and Judicial Security Protocols and Effective Courtroom Security

The document is based on relevant international guidance and developed under the auspices of the 30-nation Global Counter Terrorism Forum. Good Practice 7 caters to 'the Development of Enhanced Courthouse and Judicial Security Protocols and Effective Courtroom Security.' It is reproduced hereunder:

Good Practice 7: Contribute to the Development of Enhanced Courthouse and Judicial Security Protocols and Effective Courtroom Security

Given the history of violence and acts of intimidation that have accompanied terrorism cases in many countries, providing the necessary security for judges, court personnel, victims, and witnesses, is essential to ensure a fair and effective criminal justice system that is free from intimidation, retaliation, and obstruction of justice. It also increases the likelihood that victims and witnesses will more consistently trust the criminal justice system to resolve disputes and protect those already traumatized by acts or threats of violence. Although the potential for disruptions, intimidation, and violence cannot be eliminated altogether, it has become clear that the most effective approach is to have all parts of the justice system coordinate their operations and function in a collaborative effort to address the issue of security. The judiciary has the opportunity to facilitate this interaction in many ways, contributing to the development of appropriate procedures and practices that balance the need for a secure environment with one that is transparent, accessible, and which supports the due process of law rights of those accused of criminal conduct.

While security solutions for courthouses vary in complexity and are tied to available resources, judges can contribute to the development of basic rules that may promote a secure environment in their respective courthouses, for the just and orderly adjudication of criminal offenses. For example, they can assist in the development of rules for applying enhanced safety measures in the courthouse through coordination with responsible security/court officers and request sufficient funds to make the courthouse as safe as necessary from the appropriate authorities. Once developed, the security policy and accompanying procedures should be triggered when charges involving terrorism or other national security offenses are filed in the jurisdiction. Enhanced security, as appropriate, may include: (1) increased police or other security staff both in and outside the courtroom; (2) the strategic use of security checkpoints and screening procedures; (3) the use of metal detectors, x-ray scanning devices, and other screening technology at the public entrance(s) to the courthouse and courtroom; (4) prohibiting the possession of cell phones and other electronic devices in the courthouse and courtrooms; and (5) separate and secure parking and entrances for judges, prosecutors, and court personnel.

In addition, strong judicial leadership is essential to successful implementation of rules of procedure and conduct in the individual courtrooms to ensure a secure and fair trial environment. This leadership is particularly important in terrorism cases because the heightened tensions and emotional atmosphere that accompany such cases have the potential to impact the conduct of the judicial proceedings. While judges alone cannot initiate change, their support and leadership are critical to reforming court practice.

Like all effective leaders, judges must have a vision for what can and should be accomplished in their respective trial environments. This vision should be clearly communicated by the words and actions of the presiding judge to court personnel, the litigants, and the victims and witnesses who may participate in the trial process.

For example, trial judges can:

- Assist in the adoption of courtroom rules supporting a secure trial venue that can be consistently applied in all cases; these courtroom rules should clearly outline courtroom requirements for the litigants, for those actively participating in the trial process, and for observers in the courtroom. The rules should be reinforced by the judge/court security as appropriate throughout the duration of the case;
- Discuss court security with the litigants, including the accused, during pre-trial conferences and meetings and prior to the beginning of court proceedings. These conduct guidelines should be highlighted daily and consistently applied throughout the proceedings;

- And take steps to reduce the risk of threats, intimidation, and confrontation involving victims and witnesses and to increase their safety. These may include: (i) designating seating arrangements for victims, witnesses, and family members to help reduce opportunities for intimidation within the courtroom; (ii) ordering staggered departures of the various groups and parties; and, where possible, (iii) providing secure waiting areas for victims and witnesses and separate entrances and exits to and from the courtroom for court personnel, the accused, and witnesses. Judges should be thoughtful in their approach, exercising discretion in fashioning appropriate security solutions for threats that are identified.

Media Management

The Hague Memorandum on Good Practices for the Judiciary in Adjudicating Terrorism Offenses contains Good Practice 8: Develop and Articulate Media Guidelines for the Court and Parties.

Good Practice 8: Develop and Articulate Media Guidelines for the Court and Parties

Trials involving the prosecution of terrorism offenses are generally high profile by their nature, inviting scrutiny from the general public and the media. As a general rule, timely access to accurate information of court proceedings increases transparency and public confidence in the fairness of the justice system. The judiciary should develop rules and procedures for media coverage of public judicial proceedings, with good practices including the following:

- Providing the trial judge with latitude to control the conduct of the proceedings to: (i) maintain decorum and prevent distractions; (ii) guarantee the safety of any court official, party, witness, or juror (where applicable); and (iii) ensure the fair and impartial administration of justice in the pending case.
- Where the media is seeking special or additional coverage of the case, the court should establish a consistent policy that requests by representatives of the media for such coverage are made in writing to the trial judge, prior to the scheduled trial date or specific trial event. Written requests for specific or enhanced coverage may be supported by affidavits as appropriate. Notification that the media has requested such coverage should be provided by the court to the attorneys of record in the case, with the parties provided an opportunity to object.
- Before denying, limiting, suspending, or terminating media coverage, the trial judge may hold a hearing, if such a hearing will not delay or disrupt the judicial proceeding or receive affidavits to consider the positions of the parties.
- Any finding that media coverage should be denied, limited, suspended, or terminated should be supported by a finding of the court that outlines the underlying justifications for its actions.
- The court may prohibit the use of any audio pickup, recording, broadcast, or video close-up of conferences, which occur in a court facility, between attorneys and their clients, between co-counsel of a client, and between counsel and the presiding judge held at the trial.
- When more than one request for media coverage is made and the trial judge has granted permission, the court may request that the media select a representative to serve as a liaison and be responsible for arranging "pooling" among the media if such is required by limitations on equipment and personnel as a result of courtroom space limitations or as directed by the court.
- Where non-print media is covering a trial, the judge may impose additional guidelines which limit the use of photographic and audio equipment to that which does not produce distracting sound or light and may limit or prohibit the use of moving lights or flash attachments.

9.4. JUDGMENT WRITING

A judgment can be defined as the determination that a judge (or anyone acting in a capacity to determine facts) has arrived at after an application of the law upon established facts. To be effective, the judgment must accurately communicate the conclusion the judge has reached and the reasoning behind such conclusions.

The primary function of a judgment is resolution of a dispute between parties to a certain level of procedural satisfaction, in that no party should be left unhappy or unsatisfied simply due to an opaque or byzantine judicial system. Whatever conclusions are arrived at must be clearly and concisely communicated, with the reasoning behind those conclusions being both within the letter and spirit of the law. In the Pakistani legal system, judgments also serve to establish binding precedent, in that they bind lower courts to interpretations of the law.

Whichever style of judgment-writing is used, it is important to remember the following basic criteria:

- The relevant facts must be included in sufficient detail.
- Relevant legal principles must be considered.
- Relevant legal principles must be applied coherently to the relevant facts of the case.⁴⁷⁴

When writing a judgment, a judge should be inclined towards a style of writing that makes a judgment readable. Excessive quotations, unnecessarily verbose wording, and fanciful rhetoric can all distract from the quality and readability of the judgment. While the use of precedent cases is necessary (along with explanations of why they apply), it is preferable that these be added as footnotes wherever possible so that the judgment can visibly be said to be the opinion of the judge and not those of other past judges.

Outline

Before beginning to write an opinion, judges should think through what they want to say and how they want to say it. They should consider the scope of the opinion, the prospective audience, and whether the opinion will be published. They should marshal the material facts, identify the issues and applicable rules of law, and determine the appropriate form of judicial relief. In short, they must break the case down into its components. A judge should have reached a decision— if only a tentative one—before beginning to write an opinion. Setting down the reasons in writing then constitutes the process of justifying the decision.

- A judgment should have clearly identifiable parts that are arranged in a logical sequence. By breaking up the judgment in this manner, the judge will be able to easily draft each individual segment, and later stitch them together to form a cohesive document.
- At the outset, the judgment should address any preliminary issues that must be resolved before the case can proceed on its merits. These would include checking whether such procedural aspects as notice being given to the defendant, fair trial rights, and other constitutional protections have been addressed or not.
- Depending on the facts of the case, either a thematic or chronological approach may be adopted.
- The outline should also incorporate a segment for discussion of applicable law. This shows that a judge is familiar with the necessary legal concepts and case law and can use that knowledge to arrive at a reasonable judgment.
- Trial judges should support findings with sufficient reasons to show that they are not arbitrary or capricious. The thought process used by the judge to arrive at conclusions should be transparent in the judgment.
- It may be possible to establish a drafting outline template in most cases, which the judge would later be able to use by simply plugging in details of the current case

⁴⁷⁴ Chapter 1, Part H(1) of the Rules and Orders of the Lahore High Court, Volume III.

Sample Judgment Outline

Introduction
Preliminary Issues
Summary of Prosecution's Case
Summary of Accused's Case
Issues to be Determined
Evidence and Factual Findings
Prosecution's Case on Issue A <ul style="list-style-type: none"> • Prosecution evidence in support • Defense evidence
The Judge's evaluation of the evidence Prosecution's Case on Issue B <ul style="list-style-type: none"> • Prosecution evidence in support • Defense evidence • The Judge's evaluation of the evidence
Prosecution's Case on Issue C <ul style="list-style-type: none"> • Prosecution evidence in support • Defense evidence • The Judge's evaluation of the evidence
Applicable Law
A Statement of the Law on Issue A <ul style="list-style-type: none"> • Statutory Law • Case Law
A Statement of the Law on Issue B <ul style="list-style-type: none"> • Statutory Law • Case Law
A Statement of the Law on Issue C <ul style="list-style-type: none"> • Statutory Law • Case Law

Deliberations

- Applying the Law to the Facts
- These facts [In issue A, B or C]...
- When viewed in the context of this section of the Constitution/Law/ Regulation/Precedent/ [choose one]...

Logically lead to this conclusion [judgment]
Finding of Guilt (or Acquittal)

Factual Allegations

The judge must not simply record the statement of a witness into the judgment, instead the judge must analyze the evidence, determine what is important in the context of the case, establish and summarize what the important issues are, and present all of this in an easily digestible and understandable document.⁴⁷⁵

When hearing the evidence, the judge should take notes, and when able, add annotations to the transcripts of the proceedings. The judge should prepare a summary of testimony immediately after its conclusion, which would prove to be a great aid, especially in complex and large cases, where there can be a great many witnesses.

Once the presentation of evidence has concluded, the judge should draft the factual portions of the judgment, with separate sections for each factual allegation in the indictment/pleadings, or in criminal cases, for each crime in which the accused is directly implicated. If the trial involves multiple offences, each offence ought to be handled separately, in chronological order. As mentioned earlier, this sectioning of the judgment aids in the creation of a coherent and easily understandable document down the line.

An ideal approach would be a methodical one, such as:

- Picking out the relevant particulars of the charge;
- Reviewing oral submissions made during closing arguments;
- Examining all Prosecution Exhibits;
- Analyzing transcripts of testimony of Prosecution Witnesses, including cross-examination testimony, and any inconsistent statements they may have made; and
- Repeating these steps for the accused.

Crafting the Judgment

A judicial opinion should identify the issues presented, set out the relevant facts, and apply the governing law to produce a clear, well-reasoned decision of the issues that must be resolved. A full opinion should contain the following five elements:

- An introductory statement of the nature, procedural posture, and result of the case;
- A statement of the issues to be decided;
- A statement of the material facts;
- A discussion of the governing legal principles and resolution of the issues; and
- The necessary instructions.

The organizational style of the opinions will, of course, vary from case to case, and judge to judge, but this is the general framework upon which a judgment should be built. Clear and logical organization of the opinion will aid to the readers' ability to understand the content, and the use of headings, subheadings, numbering systems, or other means of establishing an organizational structure is always helpful, especially so when the judgment is long, and the subject matter complex. Headings, subheadings, and subdivisions also aid in organizing the thoughts of the writer, and aid in testing the logic of the judgment.

⁴⁷⁵ Chapter 1, Part E(2) of the Rules and Orders of the Lahore High Court, Volume III.

Introduction

The purpose of the introduction is to orient the reader to the case. It should state concisely what the case is about, the legal subject matter, and the result. It may, if necessary, cover the following:

- The parties: they should be identified, if not right at the outset, then early on in the judgment, preferably by names, and whatever nomenclature is decided upon, should thereafter be followed consistently.
- The procedural and jurisdictional status: The basis for jurisdiction, prior proceedings, and how the case arrived at this particular court should be explained.
- The issues: The issues to be decided should be clearly identified, unless they are so complex as to warrant their own separate section.

Statement of Issues

The statement of issues forms the cornerstone of a judgment. How the issues are formulated determines which of the facts are of material relevance, and which legal principles are at play. Judges should not find themselves constrained by the analysis of the parties, and should instead endeavor to state the issues as they perceive them, even if this differs from the stance of the attorneys' analyses. The issues raised by the parties are not necessarily material to the case, and do not necessarily warrant inclusion in the judgment simply by virtue of them being raised; the judge should instead assess relevance based on his own thinking and legal analysis. Lastly, the statement of issues is not to be mistaken for simply a verbatim reproduction of the parties' contentions. Lengthy statements of their contentions, which occasionally find their way into judgments, do not qualify as a substitute for legal analysis and reasoning, and should therefore be avoided unless completely necessary.

Statement of Facts

In a simple case, where only one issue is in contention, a statement of facts can be provided early in the judgment. However, where the case raises a series of issues, some facts may not be relevant to all issues. The judge is then entrusted with the task of sifting through the facts and including only those that are of relevance, and that would need to be included for later portions of the judgment to make sense.

In such a case, the initial statement of facts may be limited only to the required historical background, with additional facts being included as and when they are required for the analysis of the various issues. Only facts necessary to explain the decision should ordinarily be included, with an aim to avoid miring the entire process in dates and other such minutiae that may, contrary to the aim of achieving clarity, may instead, result in a disjointed and mundane judgment.

Discussion of Legal Principles

The discussion of legal principles and policies stands at the heart of a judgment. It must clearly demonstrate that the conclusion arrived at is based on reason and logic. It should endeavor to convince the reader (and parties) of the correctness of the decision by the power of its reasoning, and not instead simply on the basis of argument or advocacy. Although the judgment need not address every contention made by the parties, the discussion of legal principles must be sufficiently broad as to demonstrate to the losing party that the court has not ignored their position and that instead, after much deliberation, has arrived at a contrary stance.

Issues to Address

Issues not necessary to the decision but seriously raised by the losing party should be discussed only to the extent necessary to show that they have been considered. The line between what is necessary to the decision and what is not, however, is not always clear. Occasionally, a full explanation of the rationale for a decision may be enhanced by discussion of matters not strictly a part of the holding. Moreover, a judge may find it efficient to address issues not necessary to the decision if the judge can thereby provide useful guidance for the lower court on remand. However, judges must be careful not to decide issues that are not before them and to avoid advisory opinions and unnecessary expressions of views that may tie the court's hands in a future case.

Case Citations

Most points of law should be supported by citations of the latest decision on the particular legal issue, or a landmark case if there is one. If there is no particular authority, then persuasive opinions of other courts should be relied on, and if even that is unavailable, with the court judging on a completely novel issue, instead the evolution of the law, should be meticulously analyzed to support the judgment.

Law review articles, manifestoes and texts and non-legal sources should not be used as primary authorities. They should be cited sparingly, and even then, only when they serve to support a particular analysis in support of the judgment. Some authors may be so well-respected in their fields that, in the absence of case law, their words can be persuasive.

Style

The judgment should be written in plain language, and not unnecessary legalese. Only legitimate terms of art, namely words that cannot be easily translated due to the specific legal context within which those terms are couched, such as *habeas corpus* or *audi alteram partem*, should be used.

Wordiness

Wordiness means not just using two words when one will do, but trying to convey too much information and covering too many issues. Often wordiness reflects the writer's failure (or inability) to separate the material from the immaterial.

Lack of Precision and Clarity

Precision and clarity are the main concerns of good writing. Some legal writers lack the ability to write simple, straightforward prose. Often this is the result of some lawyers' tendency to overgeneralize when they are not sure of a legal principle or of how to state it precisely; they finesse the difficulty with vague expression. To write with clarity and precision, the writer must know exactly what he or she wants to say and must say that and nothing else.

Precision in judicial writing is important because judges write for posterity. Once an opinion is filed, lawyers and others will read it with an eye to how they can use it to serve their particular purpose, no matter how different that may be from what the judge had in mind. Thus, it is important for judicial writers to think about how their words might be used and to write in a manner that will forestall their misuse.

Poor Organization

Another problem in judicial writing is poor organization. A sound opinion is the reflection of a logical process of reasoning from premises through principles to conclusions. The framework in which that process takes place should be visible to the reader from the organization of the opinion. That organization will be a road map that enables the reader to follow the reasoning from the beginning to the end without getting lost.

Delivery

The manner in which the judgment is delivered is also within the domain of the Judge. If the judgment in question is very lengthy, it may be unnecessary for the Judge to read out the entire judgment, and instead a summarization of the substance may be adequate. However, it is important to make clear to the audience that this is not the full judgment, and merely a summary.

On occasion, a judge will orally announce a ruling and state that an opinion will follow. This presents obvious hazards: with the case more or less decided, the pressure is off, and the judge may have trouble getting around to writing the opinion. Moreover, the judge may later find it difficult to write an opinion in a way consistent with the earlier oral ruling and might even arrive at a different result.

9.5. EVIDENCE

Definition of Evidence

'Evidence' has been derived from the Latin word 'evidence' or 'evidere', which means to show clearly, or to make clear or discover clearly, etc.⁴⁷⁶ Black's Law Dictionary has defined evidence as, "something (including testimony, documents, and tangible objects) that tends to prove or disprove the existence of an alleged fact."⁴⁷⁷

In the case *Bashir Ahmad vs. Muhammad Baksh*,⁴⁷⁸ the Lahore High Court, upon examination of Art. 2(1)(c) of QSO, stated that evidence means and includes:

- Such statements of witnesses which are produced in Court in relation to the case being tried by the Court; and
- Documents which are produced in a Court in relation to the case being tried.

Moreover, "the word "evidence" cannot be restricted merely to the statement of a party or to any one specific witness. It will include the statements of all the witnesses recorded by the Court and the documents produced during trial."⁴⁷⁹

Oral and Documentary Evidence

Art. 2(1)(c) of Qanoon-e-Shahadat Order (1984) categorizes evidence into two major categories: Oral Evidence and the Documentary Evidence.

ORAL EVIDENCE	DOCUMENTARY EVIDENCE
All statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence.	All documents produced for the inspection of the Court; such documents are called documentary evidence.
All facts, except the contents of documents, may be proved by oral evidence.	"Document means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter."
Oral Evidence must, in all cases whatever, be direct, that is to say - If it refers to a fact which could be seen/heard/perceived or grounds of an opinion, it must be the evidence of a witness who says he saw/heard/perceived or had an opinion on the said grounds.	Documentary evidence is, "evidence supplied by a writing or other document, which must be authenticated before the evidence is admissible."
Oral evidence of witnesses should not be accepted at face value unless the same was vouched and supported by unimpeachable documentary and/or circumstantial evidence.	Documentary evidence cannot be rebutted by oral evidence.

⁴⁷⁶ Usman Iqbal and Zafar Iqbal, *Law of Evidence at FIRst Sight* (Manzoor Law Book House).

⁴⁷⁷ Bryan A Garner and Henry Campbell Black, *Black's Law Dictionary* (8th edn, Thomson West) 595.

⁴⁷⁸ PLD 2016 Lah. 130, 137.

⁴⁷⁹ PLD 2016 Lah. 130, 138.

If oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.

A document once brought on record can be given effect by the Court even in the absence of a plea by a party to such effect.

Direct and Indirect Evidence

DIRECT EVIDENCE	INDIRECT EVIDENCE
Direct Evidence is evidence which directly proves a fact. No inference or deduction is required here because the existence of this evidence itself proves a fact.	Indirect Evidence is also known as circumstantial evidence from which the adjudicator of fact (i.e. the Judge) can make a logical inference or a reasonable deduction that can prove a fact.
This could come in many forms such as through witness testimony (which we could call oral evidence), or by showing a physical object which proves a fact.	This type of evidence can also come in many forms such as forensic evidence, physical evidence, etc.

The following are some examples of Direct and Indirect Evidence:

DIRECT EVIDENCE	
Documentary Evidence	"A" has signed a document or contract with "C" in which he has committed to financing Al-Shabab (a proscribed entity) and the primary contract is found as evidence.
	This would be direct evidence to prove the fact that "A" had financed a proscribed entity.
Witness Testimony	A witness provides oral evidence in court that he accompanied "B", the co-conspirator, to the bank to transfer illicit funds to ISIS.
	This would be direct evidence that "B" transferred illicit funds to ISIS.

Use of Modern Technology

In relation to modern technology, the admissibility of the same has already been enshrined within Art. 164 of the QSO as well as Section 27-B of the ATA. The following table lists evidence that the judiciary may deem admissible when it comes to adjudicating terror financing cases.

TYPE OF EVIDENCE	RELEVANT JURISPRUDENCE
SIMcards and Call Data Records	In <i>Arsalan vs. the State</i> , these two pieces of evidence were used to corroborate the statements of the accused.
Call Data Records	In <i>Abdul Razzaq vs. The State</i> , the Court held that "petitioner/accused had every right to prove himself innocent by making use of the very same call data record".
Call Data Records	In <i>Salman Alias Lamba and Another vs. The State</i> , the Investigation Officer had collected Call Data Records (CDRs) of the mobile phones recovered from the possession of the accused and completed the process of verification of the SIMs and National Identity Cards issued by National Data and Registration Authority. Evidence of Police Officials was not trustworthy. No evidence had been produced to satisfy that recovered cell phone SIMs were kept in safe custody. Records showed that there was no verification from the mobile companies as to in whose names such SIMs were issued nor the persons in whose names such SIMs were issued were interrogated by the investigating officer.
Mobile Data	In <i>Faheem Khan vs. The State</i> , the accused had exhibited his Mobile DATA and Mobile Data of the complainant, which negated the version of the prosecution as, at the time of arrest, the accused was not having any mobile with him as stated by prosecution witness.
Mobile Data and Call Data Record	In <i>Sabir Shah vs. Muhammad Usman and another</i> , records showed that the hand-written SMS attributed to the accused and the data of the SIM recovered from the spot owned by the deceased assailant did not tally with the CDR record. The SIM record had not been scientifically downloaded, printed and tallied.

CDs and USBs	In <i>Sikandar Ali Lahsari vs. The State</i> , by virtue of the application of Section 27-B and Article 164 of the QSO, the accused was to be supplied the copies of CDs and USBs in compliance with Section 265-C of the Code of Criminal Procedure (1898).
Memory Card	In <i>Yasir Ayyaz vs. The State</i> , a considerable reliance was placed upon digital modes wherein a memory card had been discovered, containing videos of the rape incident.
Audio Files, Statements in a USB and personal computer	In <i>Tahir Ahmed Naseem vs. The State</i> , where blasphemous criminal acts were approbated by the recovered articles which were seized by the authorities and sent to the Forensic Science Laboratory where it was analyzed and examined which confirmed the authenticity of such documents.
Internet Devices and Content extracted from laptops and mobile Phones	In <i>Adnan Hafeez vs. The State</i> , the FIA's cybercrime wing seized three laptops, mobile phone and one PTCL Evo Wingle. These were then forwarded to the Forensic Science Agency where it was proved that multiple SSL I.D.s were being used by the accused.

Primary and Secondary Evidence

Primary Evidence

- Primary evidence or best evidence is evidence of the highest relevance or probative value.
- It includes the original document itself or an oral account of the original evidence, for example, a person who saw the occurrence and gives an account of it.⁴⁸⁰

Secondary Evidence

- Secondary evidence is inferior to the primary (best) evidence and can be even more valuable when the primary or best evidence is lost or inaccessible.⁴⁸¹
- Secondary evidence means and includes certified copies, copies made from the original by mechanical process which themselves ensure the accuracy of the copy, and copies compared with such copies; copies made from or compared with the original, counterparts of documents as against the parties who did not execute them and oral accounts of the contents of a document given by some person who has himself seen it.⁴⁸²

Under Pakistani law, the same is governed under the Qanoon-e-Shahadat Order (1984), which stipulates that the contents of documents may be proved either by primary or by secondary evidence.⁴⁸³ Therefore, Art. 73 of the QSO denotes primary evidence as the production of the actual document itself, which is to be produced for inspection before the Court.⁴⁸⁴ Such types of documents afford the greatest certainty of the facts in question. Typical examples of such evidence would include original copies of documents, affidavits, bank records, receipts, original business records, etc.

⁴⁸⁰ Bryan A Garner and Henry Campbell Black, *Black's Law Dictionary* (8th edn, Thomson West).

⁴⁸¹ Bryan A Garner and Henry Campbell Black, *Black's Law Dictionary* (8th edn, Thomson West).

⁴⁸² Qanoon-e-Shahadat Order, 1984, Article 74.

⁴⁸³ Art. 72 of the QSO.

⁴⁸⁴ Art. 73 of the QSO.

More specifically, within the confines of Art. 73 of the QSO, when it comes to using the same as primary evidence, the superior courts have categorically stated that copies of electronically generated information can fall within the confines of primary evidence.⁴⁸⁵ Similarly, Explanation 2 to the provision stipulates that, when a number of documents are prepared by one uniform process such as printing or photography, each is primary evidence of the contents. It must be noted that the mere production of such documents is not, in and of itself, sufficient. Instead, the writer or the person associated with the document is required to be deposed to ascertain the truth of the documents.⁴⁸⁶

Conversely, secondary evidence, as per Art. 74 of the QSO, can comprise of different types of evidence. It can only be admitted in accordance with the terms of Art. 76 of the QSO and with the permission of the Court. This includes copies made from the original by a mechanical process,⁴⁸⁷ copies made from or compared from the original,⁴⁸⁸ certified copies such as those issued by a Court after the production of the original document before it,⁴⁸⁹ and oral accounts of the contents of a document by some person who has read it.⁴⁹⁰ However, the Court under this provision cannot accept copies that have been made from copies.

The following table provides a comparative analysis of primary and secondary evidence:

PRIMARY EVIDENCE	SECONDARY EVIDENCE
"Primary Evidence means the documents itself produced for the inspection of the Court. Where a document is executed in several parts, each part is primary evidence of the document. Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, counterpart is primary evidence as against the parties executing it."	Secondary Evidence means and includes certified copies, copies made from the original by a mechanical process which themselves ensure the accuracy of the copy, and copies compared with such copies; copies made from or compared with the original, counterparts of documents as against the parties who did not execute them and oral accounts of the contents of a document given by some person who has himself seen it.
Where a number of documents are all made by one uniform process, as in the case of printing, Lithography or photography, each is primary evidence of the contents of the rest; but where they are all copies of a common original, they are not primary evidence of the contents of the original.	Neither an oral account of a copy compared with the original, nor an oral account of a photograph or machine-copy of the original, is secondary evidence of the original.
For example, a person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other, but no one of them is primary evidence of the contents of the original.	Illustrations: (a) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.

485 PLD 2015 Lah. 231 (The Court noted that although an SMS can fall within the confines of Art. 73 of the QSO, yet if a facts need proving, the requisite process would also need to be followed).

486 AIR 1971 SC 1949.

487 Photocopies of original documents can only be treated as secondary evidence and can only be deemed admissible once the original copies have been examined (Air 1994 SC 591).

488 This includes instances where a copy is prepared word for word from the original and it is necessary to prove that it was prepared by a uniform process or was compared with the original.

489 AIR 1993 29.

490 AIR 1964 338

- (b) A copy, compared with a copy of a letter made by a copying machine, is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying machine was made from the original.
- (c) A copy transcribed from a copy, but afterwards compared with the original, is secondary evidence, but a copy not so compared is not secondary evidence of the original, although the copy from which it was transcribed was compared with the original.

Interplay of AML/CFT and Evidence

Evidence Specific to AML/CFT Offences

One of the biggest challenges in ML/TF cases is producing evidence that can conclusively prove, beyond all reasonable doubt, that the accused (whether a natural or legal person) is involved in such activities. This includes, inter alia, evidence that links assets to criminal activities or proves that money earned through a legitimate source is then being utilized to finance terrorism. Here, the Court can seek reference to a plethora financial documents, which upon compliance with procedural formalities can be admitted as evidence (see above). The following is a non-exhaustive list of financial documents that may be used by the Courts as direct evidence:⁴⁹¹

Account Opening Documents: The KYC and CDD requirements that have been imposed by the State Bank now require banks to review and seek all relevant information from the account holders. In addition, in cases of Politically Exposed Persons, there is an enhanced requirement to ensure due diligence in respect of their economic background, etc. This can help to identify the beneficial owners and to find contradictions with other evidence that has been provided by the prosecution or defence.

Bank Account Statements: The bank account statements can be perused by a judge to make determinations on the origination of funds which enter and exit the account and to also note as to where the funds have been transferred. This can help to clearly establish a chain through which the end destination of the funds or the beneficiary may be traced.

Cash deposits or withdrawals, however, present a challenge in this respect. In order to defeat this hurdle, bank receipts may also be ordered by the judge or presented into evidence by the prosecution or defence. Provided that there is a corroborating witness, the same can then be used as direct evidence.

Wire Transfers: Cases have shown that large amounts of proceeds of crime are placed into financial institutions and are transferred across the world through wire transfers. In this respect, use can be made of the wire transfer message itself, as well as different documents which the financial institutions generate in the process of wire transfers.

Accounting Records: Businesses, particularly when it comes to finances, keep a journal which documents all financial transactions that have taken place. It is the job of the prosecution to look for discrepancies within the records; however, the judge may also attempt to reconcile the same through other means of evidence as have been highlighted herein.

491 'Module 4 Planning Investigations: Investigation Of Corruption And Money Laundering (Adopted From The Handbook For Practitioners On Asset Recovery Under Star Initiative)' (publics.worldbank.org) <<http://pubdocs.worldbank.org/en/220301427730119930/AML-Module-4.pdf>> accessed 16 September 2019.

Purchase and Sale Documents: Such documents include the purchase and sale of assets. As has been recognized by FATF, the real estate sector is susceptible to abuse in Pakistan. Therefore, the judiciary must be wary of any movement of assets and these include land registry documents, purchase and sale agreements, loans, mortgages, financial statements, tax returns, etc. Here, the emphasis should be on documenting the value and dates of purchase and sale, name of buyer or seller, how the property was paid for, or how the proceeds were received. In addition, discrepancies must also be taken into account (i.e. if the property is being sold at exorbitant rates or is being sold at less than market value). To this end, use can be made of experts to give their testimony in accordance with Art. 59 of the QSO.

In addition, the following may, inter alia, be used as primary evidence:

Social Media: Publicly available social media content may be deemed admissible by the judiciary. Social media can be utilized by terrorist elements in a myriad of ways. These include the raising of funds, planning and coordinating attacks, recruitment, etc.

Call Data Record: This can, inter alia, assist in corroborating evidence. For instance, evidence suggests that “B” was an accomplice who helped “A” launder money. Calls between the two can corroborate that the offence took place.

Evidence Obtained through Special Investigative Techniques: As has been expounded upon in Chapter 8, information such as public and commercial records, evidence gained pursuant to a search warrant, marking of ATM transactions, etc. can all be brought into evidence insofar as they are compliant with the rules set forth in Section 1.7.5.

Jurisprudence on Evidence in TF Cases

As a rule, it is important to note that almost all forms of evidence may, tangentially or directly, become relevant to a TF case. However, from a perusal of past precedent, the following evidence has been utilized by the Courts of Pakistan:

In **The State v. Hafiz Muhammad Iqbal**, the accused was charged for the offences of collecting funds for, and being affiliated with, a proscribed organization under Section 11F(2) and 11N of the ATA. A subscription book, which related to the collection of funds, was found to be filled with the handwriting of the accused, which was then used by the Prosecution to secure a conviction.

Sohail Babar v. The State pertained to a bail application filed in pursuance of the accused having connections to Daa'ish who then fabricated arm-licenses in order to carry out terrorist activities. During investigation, the CTD found several blank license-registers, iron embossing seals, round rubber stamps, religious literature, forged arm-licenses, three Kalashnikovs, fifteen (15) live bullets as well as cash. Similarly, the petitioners also confessed that they had been involved in the sale and purchase of illicit arms.

For the purposes of the bail application, the High Court found no grounds to grant the petitioners bail in the present matter as the evidence against them confirmed the fact that they were either non-entities or had possessed fake licenses.

In **The State v. Muhammad Bilal Makki**, the accused was raising funds for JeM, as well as distributing books, in order to stir up sectarian violence and hatred. The accused was charged under Sections 11F(5), 11-H, 11-I, 11-J, 11-N and Section 8-9 of the ATA. When the accused was raided, a receipt book of funds and collected money were recovered from him. Specifically, within the receipt book, out of serial Nos. 151 to 185, Nos. 151 to 167

were cut off and had signatures of the accused. To this end, the prosecution relied upon police witnesses and the items themselves. In response, defence counsel argued that the receipt book contained no information of any donors.

On a totality of evidence, as well as the testimonies of prosecution witnesses, the Court was able to find the accused guilty. In turn, this case demonstrates how primary evidence was utilized and linked to one another so as to form a coherent narrative which was then able to secure a conviction for TF.

Summary:

The process of securing a conviction in criminal cases begins by diligent investigations, followed by a prosecutor laying out a case which proves guilt beyond all reasonable doubt. Ultimately, it is the responsibility of a judge to decide whether the investigators and the prosecutors, in joint efforts, have been able to build a case supporting a conviction. In this respect, evidence plays a vital role. Cases pertaining to ML/TF present a combination of both conventional and unique modes of evidence, which must be analyzed hand in hand by the judiciary to come to a reasoned conclusion. Alongside this aspect, it is important for the judiciary to author a judgment which can hold its own at the appellate stage. Finally, in order to smooth the functioning of the trial, best practices derived from the international plane have been laid out in a Pakistan specific context.

CHAPTER 10

INTERNATIONAL COOPERATION

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INTRODUCTION

As terrorist organizations begin to evolve into organized entities, the nature of terrorist activities often become extra-territorial. In turn, there is an increased need to enable prosecuting and investigating agencies to collaborate within the realms of Mutual Legal Assistance and Extradition. Accordingly, this requires that actors of the Criminal Justice System i.e. Police, Prosecutors and the Judiciary be aware of the existence of such frameworks, which may be utilized so as to secure effective convictions, particularly in the complex field of Terror-Financing. This chapter will show which legal frameworks exist that may be utilized for this mutual collaboration.

LEARNING OUTCOMES

By the end of this Chapter and the relevant readings you should understand:

- The concepts of Mutual Legal Assistance and Extradition of forensic evidence;
- The Legal basis for Mutual Legal Assistance and Extradition;
- How Mutual Legal Assistance and Extradition Requests function.

ESSENTIAL READING

- United Nations Convention against Transnational Organized Crime;
- United Nations Convention Against Corruption;
- United Nations Office on Drugs and Crime's Manual on Mutual Legal Assistance and Extradition (2012);
- Mutual Legal Assistance Extradition and Recovery of Proceeds of Corruption in Asia and the Pacific (Asian Development Bank and Organization for Economic Co-operation and Development);
- Practical Guide for Requesting Electronic Evidence Across Borders (UNODC).

RECOMMENDED READING

Combating Money Laundering and the Financing of Terrorism – A Comprehensive Training Guide: Workbook 5 (World Bank).

10.1. INTERNATIONAL COOPERATION: MUTUAL LEGAL ASSISTANCE AND EXTRADITION

Terror-Financing is an issue that not only threatens the very core of State security but also severely damages a State's economy, the integrity of its financial systems, and its transparency. Exchange of information between States and cross-border cooperation can help curb this issue significantly. This cooperation requires States to speedily trace illicit financial flows, engage in intelligence sharing, secure evidence etc.

Requesting evidence from other States is integral to the process of securing convictions for Terror-Financing, particularly when the financing has a cross-border element attached to it. This chapter will analyze the legal mechanisms through which trans-border investigations may be enhanced. These are governed by a large number of international conventions that may be utilized not only in mutual legal assistance but also in extraditions.

Mutual Legal Assistance (MLA) may be defined as the provision of assistance, usually in the gathering and transmission of evidence by a competent authority of one State to that of another, in response to a written request for assistance.⁴⁹² Similarly, extradition is the formal process where a State surrenders an individual to another State so as to enable the Requested State to prosecute or punish crimes committed within its jurisdiction.⁴⁹³ FATF's recommendation No. 36 and 37 place great emphasis on the importance of MLA in terms of limiting ML/TF activities.

10.2. FUNDAMENTAL CONCEPTS RELATING TO MUTUAL LEGAL ASSISTANCE AND EXTRADITION

Treaties

International Cooperation between States is governed, primarily, through treaties amongst them. Treaties are the most formal vehicle for States to cooperate in the fields of MLA and Extradition. Such treaties can take the form of multilateral treaties – wherein multiple State parties agree to cooperate with one another. The examples include the United Nations Transnational Organized Crime (UNTOC) and the United Nations Convention Against Corruption (UNCAC), which notes “[any offence falling within the remit of the provisions of this convention] will be deemed to be included as an extraditable offence in any extradition treaty existing between States parties.”⁴⁹⁴

Other agreements take the form of bilateral treaties through which two States tailor the requisite terms and conditions. Pakistan is a party to such bilateral treaties which include agreement with countries as Sri Lanka, Turkey, Kazakhstan, etc.⁴⁹⁵ This bilateral framework is expounded upon in more detail later in this chapter.

Domestic Law

One mechanism through which such cooperation may be extended is through provisions of domestic law which have a transnational element and grant the State the authority to deal with such incoming requests.⁴⁹⁶ Thus reviewing a country's domestic law is integral if there is an absence of a treaty framework between two countries, either multilateral or bilateral. Therefore, domestic law can help in two ways: directing in terms of implementation of international treaties and forming a basis for international assistance in the absence of a treaty. Such examples include, in particular, Kazakhstan Chapters 55 and 56 of the Criminal Procedure Code⁴⁹⁷ or the Extradition Act, 1972 and National Accountability Ordinance, 1999 in Pakistan, Mutual Legal Assistance Act in Kenya, Mutual Assistance in Criminal Matters Act, 1987 in Australia etc.⁴⁹⁸

Reciprocity

The principle of reciprocity has its footing in the relations of States with respect to matters of international law and diplomacy. Reciprocity is thus a covenant between the Requested State to provide such assistance that is likely to be

492 'Manual On Mutual Legal Assistance And Extradition' (undoc.org, 2012) <https://www.unodc.org/documents/organized-crime/Publications/Mutual_Legal_Assistance_Ebook_E.pdf> accessed 19 July 2019 at page 19

493 Jonathan Maesters, 'What Is Extradition' (cfr.org, 2019) <<https://www.cfr.org/backgrounder/what-extradition>> accessed 19 July 2019.

494 UN Convention Against Corruption, United Nations (UNCAC).
<https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf>

495 The Government Of The Democratic Socialist Republic Of Sri Lanka And The Government Of Islamic Republic Of Pakistan On Mutual Legal Assistance On Criminal Matters' (oecd.org, 2005) <<http://www.oecd.org/site/adboecdanti-corruptioninitiative/40079371.pdf>> accessed 19 July 2019.

496 'Manual On Mutual Legal Assistance And Extradition' (undoc.org, 2012) <https://www.unodc.org/documents/organized-crime/Publications/Mutual_Legal_Assistance_Ebook_E.pdf> accessed 19 July 2019 at page 22

497 'Kazakhstan: Criminal Procedure Code Chapters 55 And 56' (OECD.org, 2019) <<http://www.oecd.org/site/adboecdanti-corruptioninitiative/39360817.pdf>> accessed 19 July 2019.

498 International Cooperation Directorate – Anti Narcotics Force (ANF),
http://anf.gov.pk/ic_mou.php

provided by the Requesting State, if the Requesting State was asked to do so. For instance, if State A requests that a perpetrator is extradited from State B, and State B obliges, later, State A should honor any extradition requests by State B. At times, this principle is codified in treaties and domestic law.⁴⁹⁹ Other times, particularly in common law states, this is based on courtesy and not an obligatory principle.

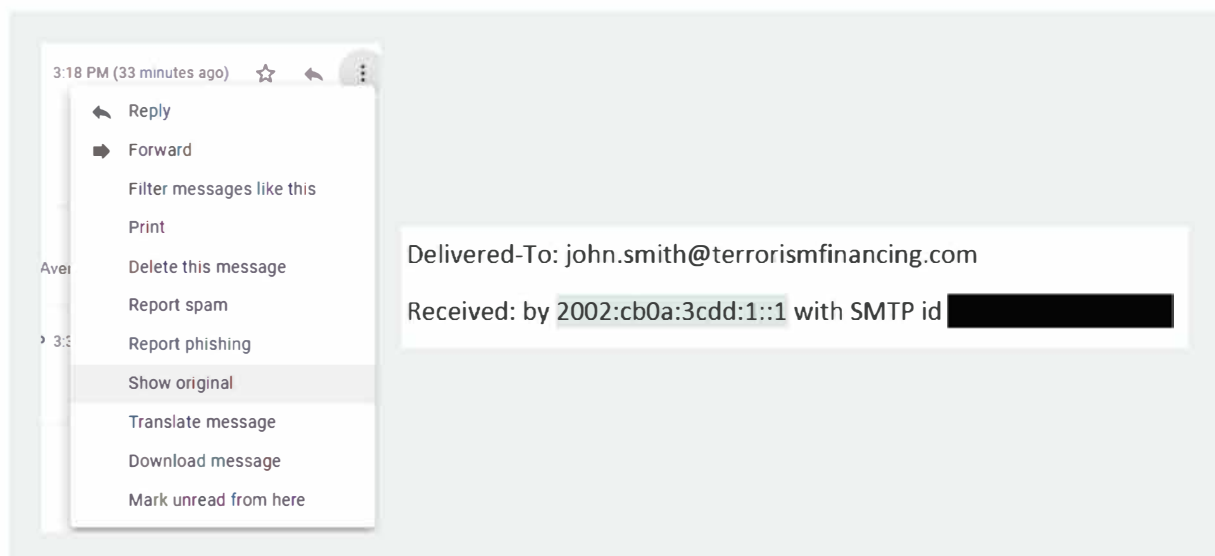
The UNTOC, however, specifically obliges States parties to adhere to this principle pursuant to Art. 18(1).⁵⁰⁰ As such, all parties to the UNTOC must abide by this principle when it comes to matters of international cooperation in criminal investigations within the scope of the Convention.

10.3. PRE-MUTUAL LEGAL ASSISTANCE

Methods exist whereby cooperation may be done with agencies within different jurisdictions even without the absence of an existing MLA Framework. For instance, police-to-police channels are used to liaise and to request assistance in obtaining evidence or undertaking enquiries abroad. Article 18(4) of the United Nations Transnational Organized Crime Convention and Article 46(4) of the United Nations Convention against Corruption⁵⁰¹ contain spontaneous information provisions which are subject to domestic law. Essentially, these provisions may be relied upon by State authorities to cooperate with one another through information sharing insofar as it can lead to 'undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this convention.'

This is a speedy, time-saving method. For such coordination and cooperation States tend to also utilize single points of contact such as Interpol National Central Bureaus or rely on Memorandums of Understanding (MOUs) which define the parameters for the sharing of intelligence. Use of such MOUs has also been encouraged by FATF through Recommendation No. 40.⁵⁰²

During the MLA process, the authorities can also rely upon open-source materials that indicate assets or wealth, particularly through websites. Examples of the latter include open source bank accounts through International Banking Account Numbers (IBAN)⁵⁰³ or through publicly available information on companies,⁵⁰⁴ information on social media platforms and finally through the Internet Protocol Address that may have been used by persons suspected to be involved in ML/TF offences.⁵⁰⁵



499 Japan provides international cooperation (mutual legal assistance and extradition) based on its domestic laws that consider assurances of reciprocity as preconditions to providing such assistance (see art. 3, para. (ii), of the Act of Extradition, and art. 4, para. (ii), of the Act on International Assistance in Investigation and Other Related Matters; both are available from the Ministry of Justice of Japan at www.MOJ.go.jp/ENGLISH).

500 The article states, in part, that States "shall reciprocally extend to one another similar assistance".

501 UN Convention Against Corruption, United Nations (UNCAC).
https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf

502 INTERNATIONAL STANDARDS ON COMBATING MONEY LAUNDERING AND THE FINANCING OF TERRORISM & PROLIFERATION The FATF Recommendations' (fatf-gafi, 2019) <<http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>> accessed 26 July 2019 at page 28

503 These are accessible through HYPERLINK "<http://www.iban.com>" www.iban.com. Alternatively, Business Identifier Code (BIC) may be located through HYPERLINK "<http://www.iban.com>" www.iban.com or HYPERLINK "<http://www.bank-code.net>" www.bank-code.net

504 See HYPERLINK "<https://opencorporates.com>" <https://opencorporates.com>; HYPERLINK "<http://www.companychecks.co.uk>" www.companychecks.co.uk; HYPERLINK "<http://www.commercial-register.sg.ch>" <http://www.commercial-register.sg.ch>

505 See HYPERLINK "<https://whatismyipaddress.com/ip-lookup>" <https://whatismyipaddress.com/ip-lookup>; HYPERLINK "<https://www.iplocation.net>" <https://www.iplocation.net>; HYPERLINK "<https://www.whois.com.au/whois/ip.html>" <https://www.whois.com.au/whois/ip.html>

A phishing email is sent to a victim requesting their banking details to pay a fictitious company to claim a cheque from a fraudulent lottery scheme. The preceding sequence of images shows us how we can view the details of which servers, IP addresses, and individuals were involved in a particular email chain. The portion of text highlighted in yellow displays the recipients IP address. The IP address (highlighted in yellow) may then be used to trace the location from which the email was sent from.

Obtaining Evidence Without a Formal MLA Process

The following conditions are important for obtaining evidence without a formal MLA process:

- Legality under the laws of both States;
- Consent from the Requested State.

However, it should be noted that for legal actions that may need to be conducted in a Requested State such as freezing of assets, confiscation or recovery of proceeds would require an MLA framework between the two countries.

Care must be taken, however, that any such evidence deemed to have been obtained unlawfully or not in accordance with the domestic laws of the Requested State could damage the case in the Requested State. In such circumstances, the evidence obtained may still come in handy as a confirmatory source in terms of the presence of assets or to give a better direction to the investigation which is being carried out. However, the same cannot be made admitted to court if it does not comply with the standards set out in the QSO.⁵⁰⁶ The same may also be attached into subsequent MLA Requests (MLAR).

Using Informal Assistance to Bolster an MLAR

It is important to take into account the potential enquiries that may be resolved through informal means so as to reduce the count in the actual MLAR. Thus, it is preferable if the MLAR is restricted to only the most essential of enquiries and particularly those unattainable through informal means. Thereby, the fewer and more specific the number of enquiries the better the chances of expedited execution and precision from the Requested State.

Self-Assessment Questions

- A, residing in State X is willing to travel to State Y to record his statement in an ongoing investigation.
- A, residing in State X is willing to visit the Embassy/High Commission of State Y to record his statement in an ongoing investigation.
- A, residing in State X is willing to get his statement recorded by police officers through telephone.
- A, residing in State X is a subject of an ongoing investigation and the authorities in State Y intend to confiscate his assets unwillingly

Which one of these may be done without an MLA framework?

1. Enquiries which do not require an MLAR:

- a. Obtaining public records (e.g. land registration documents, papers relating to company registration);
- b. Contacting potential witnesses to see if they are prepared to assist in enquiries voluntarily;
- c. Taking a statement from a voluntary witness;
- d. Locating missing persons;
- e. Obtaining lists of previous convictions;
- f. Obtaining basic subscriber details from communication service providers

⁵⁰⁶ See Section 9.7

2. International Cooperation through Networks (EGMONT, CARIN, ARIN-AP)

Although Pakistan is not a member of any of the aforementioned groups, it is nonetheless important to highlight the benefit of such groups since these networks contribute to the overall international framework on State cooperation, and Pakistan may consider joining these networks.

Egmont Group

The Egmont Group provides a forum to secure exchange of expertise and financial intelligence in a bid to curb Terror-Financing. The Financial Intelligence Units of the Members of the Egmont Group serve at the national centre for the analysis of Suspicious Transaction Reports and other relevant information to potential ML/TF offences.⁵⁰⁷ In turn, they serve as a gateway to the sharing of information in accordance with global AML/CFT standards.

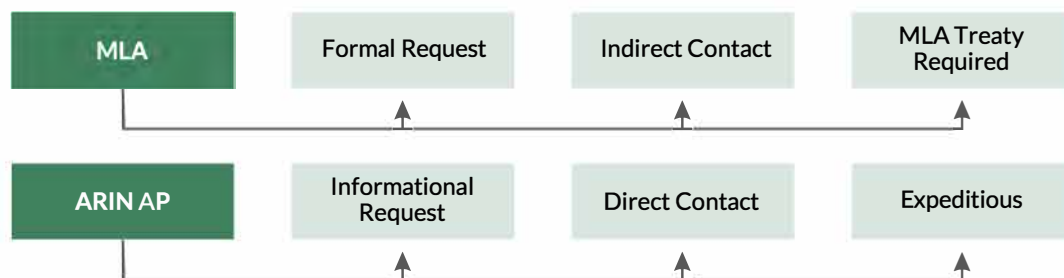
CARIN (Camden Asset Recovery International Network)

It is an informal network of law enforcement agencies and judicial actors in the field of asset tracing, freezing, confiscation and seizure. Its purpose is to deprive criminals and criminal entities so as to deprive their illicit profits. The representatives of the member states serve as the contact points to in this respect.⁵⁰⁸

Currently, CARIN has 54 registered member jurisdictions and is linked to five regional asset recovery networks (ARINs).

ARIN-AP (Asset Recovery Interagency Network – Asia Pacific)

ARIN-AP is a network that seeks to improve the effectiveness of depriving criminals of their illicit profits and establishes a network of contact points. To increase its effectiveness, the ARIN-AP also has a strong international network which consists of organizations such as the UNODC and CARIN.



Self-Assessment Question:

List down the benefits of a formal mechanism of MLA over and above the informal mechanism of international cooperation.

10.4. MUTUAL LEGAL ASSISTANCE

As has been described above⁵⁰⁹ the MLA framework can be utilized in the form of bilateral treaties or multilateral treaties. The benefit of such MLA framework allows the use of received evidence in accordance with the law of the Requested State which in this case would be the Code of Criminal Procedure, 1898 and Qanun-e-Shahadat Order, 1984.⁵¹⁰

Although the Anti-Terrorism Act, 1997 (ATA) contains no such provisions, the Anti-Money Laundering Act, 2010 (AMLA) does codify such provisions. Section 27 allows the investigating authorities under the Act to request a

507 'Financial Intelligence Units (FIU)' (egmontgroup.org) <<https://egmontgroup.org/en/content/financial-intelligence-units-fius>> accessed 23 July 2019.

508 'CARIN - The Asset Recovery Network' (CARIN.Network) <<https://www.carin.network/>> accessed 23 July 2019.

509 See Section 1.2

510 Qanun-e-Shahadat Order, 1984.

<https://punjabpolice.gov.pk/system/files/qanun-e-shahadat-order-1984.pdf>

contracting State,⁵¹¹ subject to the permission of the head of the investigating agency, for evidence. Further, sub-section 27(3) of the Act deems such evidence to be a part of the investigation and thus removing any encumbrances that may exist in respect to utilizing informal methods of cooperation as enunciated above.

Contrary to the informal methods of Cooperation between Law Enforcement Authorities in different jurisdictions, the AMLA also provides for making a request for the attachment, seizure, and forfeiture, etc. of property in a Requested State pursuant to Section 30.

Self-Assessment Question

What are some of the encumbrances that may come in the way of successful MLA Requests?

10.5. THE ROLE OF FINANCIAL ACTION TASK FORCE (FATF) IN INTERNATIONAL COOPERATION

As expounded upon in Chapter I, the role of FATF in curbing terror financing cannot be under emphasized. This is particularly the case for Pakistan – a country that has been placed on the grey-list. Therefore, it is important that the domestic actors understand what these Recommendations entail, particularly, in the realm of international cooperation. At the same time, these Recommendations can also be seen as a means of encouraging and facilitating international cooperation, if implemented by all States in their good faith.

In this spirit, the FATF regime contains a total of 40 Recommendations, within which Recommendations 36-40 relate to international cooperation. In addition, among the FATF's Nine Special Recommendations on Terrorist Financing, Recommendations I and V lay a special emphasis on international cooperation. These will be elaborated upon in more detail hereunder:

FATF Recommendation No. 36 and Special Recommendation I

A great emphasis has been placed under the FATF regime to ratify relevant international conventions and to adhere to relevant UN instruments. These include, inter alia, the UNTOC, the UNCAC, the International Convention on the Suppression and Financing of Terrorism⁵¹² and the relevant UNSC Resolutions relating to CFT including but not limited to UNSCR 1373.⁵¹³

FATF Recommendations No. 37, 38 and Special Recommendation V (MLA)

The Recommendations place a great emphasis on the use of MLA between States on ML/TF, particularly in the freezing and confiscation of assets.⁵¹⁴ They iterate that States must have legal mechanisms in place through 'treaties, arrangements or other mechanisms' to enhance cooperation. This entails that the process of MLA must not be hampered through undue restrictions and must also possess a central authority, or any other related mechanism to effectively undertake and transmit MLARs.⁵¹⁵

To that end, States are urged to provide complete factual and legal information allowing for expediting the process of cooperation. A great emphasis is also placed on the existence of a central authority which must possess the requisite expertise in the field.⁵¹⁶ Although, Pakistan does not have a central authority in respect to MLA, the Ministry of Interior is to provide as much information as possible to the Ministry of Foreign Affairs after their receipt of formal request through proper diplomatic channels.⁵¹⁷

511 Section 26(3)(a) defines the term as 'any country or place outside Pakistan in respect of which arrangements have been made by the Federal Government with the Government of such country through a treaty or otherwise.'

512 'International Standards on Combating Money Laundering and The Financing Of Terrorism & Proliferation The FATF Recommendations' (FATF-gafi, 2019) <<http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>> accessed 26 July 2019 at page 25

513 'FATF IX Special Recommendations' (fat-gafi.org, 2019) <<http://www.citethisforme.com/cite/sources/websitemanualcite>> accessed 26 July 2019 at page 2

514 FATF Recommendation No. 38 and Special Recommendation III which focuses completely on this issue within the framework of MLA.

515 International Standards On Combating Money Laundering and The Financing Of Terrorism & Proliferation The FATF Recommendations' (FATF-Gafi, 2019) <<http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>> accessed 26 July 2019 at page 25

516 Ibid

517 'Guidelines on Actions to be taken by Competent Authorities for implementation of United Nations Security Council Resolution No. 1373' (nacta.gov.pk) <<https://nacta.gov.pk/wp-content/uploads/2018/11/15102018-Guidelines-on-Actions-to-be-taken-by-competent-authorities-for-implementation-of-United-Nations-Security-Council-Resolution-No.-1373-without-covering-letter-1.pdf>> accessed 9 August 2019.

FATF Recommendation No. 39 and Special Recommendation V (Extradition)

Collectively, the recommendations urge States to deny safe havens to individuals involved in the financing of terrorism, terrorist acts, or terrorist organizations and, wherever possible, should provide procedures to extradite such individuals.⁵¹⁸ In addition, requests for extradition must not be hampered through onerous processes.

10.6. INTERNATIONAL LEGAL FRAMEWORK

Reference to FATF Recommendations (see *infra*) and to International Legal Framework binding upon the Requested State can be highly integral in an MLAR. This section highlights some of the relevant provisions which may be utilized by the criminal justice actors to enhance convictions. To that end, it is important to mention that when drafting an MLAR, reference is given to the operative legal provisions as well as the Recommendations of the FATF.

UNTOC

The UNTOC is the broadest instrument for international cooperation provided that there is not a bilateral agreement between States. The object and purpose of the UNTOC is to achieve international judicial cooperation against transnational organized crime. The word transnational connotes something that extends or operates beyond national boundaries. Thus, the UNTOC serves as an effective tool in combating criminal activities such as money-laundering, illicit trafficking and the growing links between the transnational organized crime and terrorist crimes.⁵¹⁹

The primary applicability of the UNTOC would be where there is an absence of bilateral MLAT. The operative provisions in this respect include both Extradition⁵²⁰ and Mutual Legal Assistance.⁵²¹

Article 18(3) of the UNTOC allows for a wide array of cooperation and includes:

- (a) Taking evidence or statements from persons;
- (b) Effecting service of judicial documents;
- (c) Executing searches and seizures, and freezing;
- (d) Examining objects and sites;
- (e) Providing information, evidentiary items and expert evaluations;
- (f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;
- (g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;
- (h) Facilitating the voluntary appearance of persons in the Requested State Party;
- (i) Any other type of assistance that is not contrary to the domestic law of the Requested State Party.

In addition, an MLAR which may be issued under the UNTOC shall contain, as per Art. 18(15):

- (a) The identity of the authority making the request;
- (b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;
- (c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;
- (d) A description of the assistance sought and details of any particular procedure that the Requested State Party wishes to be followed;
- (e) Where possible, the identity, location and nationality of any person concerned; and
- (f) The purpose for which the evidence, information or action is sought.

⁵¹⁸ 'FATF IX Special Recommendations' (fat-gafi.org, 2019) <<http://www.citethisforme.com/cite/sources/website/manual/cite>> accessed 26 July 2019 at page 2

⁵¹⁹ Art. 2(a) of the UNTOC defines organized criminal group it as 'a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit.'

⁵²⁰ Art. 16 of the UNTOC

⁵²¹ Art. 18 of the UNTOC

United Nations Convention against Corruption (UNCAC)⁵²²

Another international convention which may be integral to international cooperation is the UNCAC, which was promulgated to combat and prevent corruption. It is capable of regulating MLA requests in the absence of a bilateral treaty amongst States as per Article 46. Article 48 encourages States to cooperate closely so as to establish channels between them in order to facilitate the rapid exchange of offences covered by the Convention.

International Convention for the Suppression of the Financing of Terrorism (ICSFT)

In the absence of a bilateral framework, States party to the ICSFT convention, including Pakistan, may rely upon Article 12(5), which mandates the provision of assistance in criminal investigations in the absence of a bilateral framework or another multilateral framework.

UNSCR 1373

The UNSCR as a binding UN instrument which must be implemented by States in good faith pursuant to Special Recommendation I of the FATF. Operative paragraph 2(f) of the Resolution reads as follows:

To afford one another the greatest measure in assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings.⁵²³

In addition, the Resolution provides a legal basis for many such actions that can be taken as the legal basis for international cooperation. With respect to the freezing and confiscation of assets as expounded in Special Recommendation V and FATF Recommendation No. 38, the Resolution's Operative paragraph 1(c) may be used as a legal basis by State authorities. However, this obligation is one that is not aimed directly at international cooperation. Rather, international cooperation could be seen as a subset of the broader obligation of freezing and confiscating any and all assets belonging to terrorists or such entities.

However, if both operative paragraph 2(f) and 1(c) are read conjunctively, that interpretation is capable of constituting a basis for requesting another State for MLA.

Finally, the international cooperation regime must be seen as that which imposes broader obligations which outweigh obligations of a more specific nature. For instance, in for the sake of international cooperation, a State should not refuse an MLAR⁵²⁴ on the basis of the principle of bank secrecy⁵²⁵ when the request concerns an offence of a grave nature.⁵²⁶

10.7. SUBSTANCE OF THE MLA

As has already been specified, the types of MLA are quite broad and encompass varying forms of information that may be requested. This is particularly evident through Article 18(3) of the UNTOC. At the outset, however, it is pertinent to mention that there must be: sufficiency of evidence; dual/double criminality (the offence or underlying criminality in question being criminalized in both States);⁵²⁷ restricting the information to the investigation, proceedings or prosecution at hand.⁵²⁸ Conversely, a Requested State may deny such a request based on:

1. National or public interest
2. Severity of punishment;
3. Political offences⁵²⁹
4. Human rights considerations;
5. Double jeopardy;
6. The rights of suspects charged with criminal offences;

⁵²² UN Convention Against Corruption, United Nations (UNCAC). https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf

⁵²³ Article 12 of the International Convention for the Suppression of the Financing of Terrorism states: "States Parties shall afford one another the greatest measure of assistance"; also see article 10 of the International Convention for the Suppression of Terrorist Bombings.

⁵²⁴ 'Manual On International Cooperation In Criminal Matters Related To Terrorism' (unodc.org, 2009)

<https://www.unodc.org/documents/terrorism/Publications/Manual_Int_Coop_Criminal_Matters/English.pdf> accessed 26 July 2019 at page 98

⁵²⁵ Art. 12(2) of the International Convention for the Suppression of the Financing of Terrorism

⁵²⁶ Art. 13 of the International Convention for the Suppression of the Financing of Terrorism

⁵²⁷ See also Art. 18(9) of the UNTOC

⁵²⁸ Art. 18(19) of the UNTOC

⁵²⁹ Para 2(g) of UNSCR 1373 obliges states to ensure that 'claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists'

For further elaboration on this point, see Chapter VII of the Manual on Mutual Legal Assistance and Extradition (UNODC).⁵³⁰

Banking Evidence

For investigations into offences pertaining to terror financing, banking evidence can be integral towards effective prosecutions. Information, in this respect, can range from confirming details of a bank account in another jurisdiction to obtaining transaction details.

MLARs that may be made in pursuance of obtaining banking evidence must first establish a strong nexus between the case facts and the evidence requested especially in matters which warrant a disclosure of personal data.

Please review Model MLAR in Appendix A and Appendix E checklist.

Asset Recovery

Both UNTOC and UNCAC leave room for freezing or forfeiture⁵³¹ insofar as it is in confines of their domestic legal systems. This may either be done to enforce an order passed by a domestic court in Pakistan or the MLAR is being issued to obtain a domestic order in the foreign jurisdiction.

It is, however, important that coordination continue to take place prior to the MLAR not only to confirm the process of asset recovery, but also to use these communication channels to prevent any delays which may occur in the execution of such orders.

Please review Appendix A MLAR and Appendix E Checklist.

Search and Seizure

Before a MLAR containing search and seizure of physical property is made, it is important that the authorities endeavor to confirm as much information as possible of the premises against which they require an order for search and seizure. This should then be added, inasmuch detail as possible, within the MLAR. The MLAR could, if necessary, specify as to whether the search and seizure are to take place during the presence of the occupier.

Much like MLARs for banking evidence, the fundamental right to privacy must be kept in mind, and accordingly, the request must seek to be proportional to the aims that are intended from the search and seizure. This is why it is very important for these requests to be as detailed as possible so as to indicate that an offence has been committed or is being committed and that evidence to that effect would be found on the premises.

A MLAR should not ask for generic contents which are required as evidence within an ongoing investigation in Pakistan. As such, the following things must be kept in mind when drafting an MLAR for search and seizure:

1. Clearly describe the material sought
2. Give details of its assumed location and reasons for believing so
3. Note its known or suspected ownership or provenance[?]
4. State what should be done with the items seized[?]
5. Explain why the material requested is considered both relevant and important evidence to the investigation or proceedings[?]
6. Indicate why the material could not be produced by less coercive measures, such as with consent.

Please review Model MLAR in Appendix A and Appendix E checklist.

Witnesses

In order to interview witnesses or suspects and take their testimonies, recourse may be made to MLARs. However, such

⁵³⁰ Manual on Mutual Legal Assistance and Extradition (UNODC) https://www.unodc.org/documents/organized-crime/Publications/Mutual_Legal_Assistance_Ebook_E.pdf
⁵³¹ Art. 13(1) UNTOC and Art. 54(1) UNCAC

MLARs must stipulate the details of such persons in as much detail as is available. The purpose for adding specific details of such persons of interest is so that the Requested State may be able to act on such requests diligently, as opposed to that State having to trace such persons and conduct enquiries on behalf of the Requested State. In addition, the questions which are to be posed to such persons of interest need to also be attached to the MLAR. However, through willing witnesses may be contacted without a need for an MLAR, the official request is necessary in the cases of unwilling persons and suspects. In addition, many States do not allow a direct approach. On the other hand, prisoners may also be questioned if they are detained or are serving a sentence in another State party in accordance with the provisions of the UNTOC.⁵³² However, in order to do so, it is important to have the prisoner's consent as well as that of the State Party in which the prisoner is detained or serving a sentence.

In order to ensure the admissibility of the testimony recorded in adherence to the MLA framework, it is integral that the testimony be kept in such a format which may then be actionable under the laws of Pakistan.

Please review Model MLAR in Appendix A and Appendix E checklist.

Video Conference

The UNTOC, under Article 18(18) mandates the use of video conferencing to question witnesses insofar as it is "possible and consistent with fundamental principles of domestic law."⁵³³ Article 24(2)(b) of the UNTOC, in reference to protection of witnesses, also stipulates the use of video links. The law of the Requested State will consider whether such assistance is to be granted and whether judicial supervision is required in such questioning.

However, there are some practical considerations which must be taken into account for the utilization of such technology. These include the availability of technical facilities and the cost incurred in arranging such a testimony.

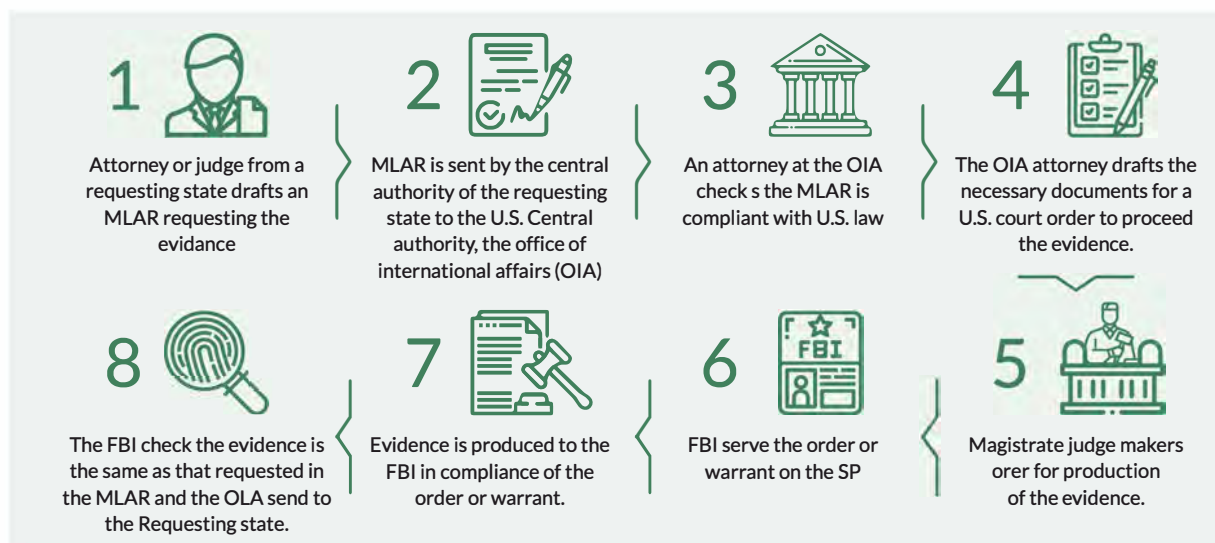
Special Investigation Techniques (SITs)

SITs are applied in an attempt to detect investigating serious crimes in a covert manner so as to not alert the target persons. Article 20 of the UNTOC permits SITs, insofar as domestic legal systems permit and, similarly, Article 50 of the UNCAC warrants the use of such techniques to combat corruption. Thus, any MLARs which may be made for the use of such SITs must refer to these legal provisions.

Please review Appendix A Model MLAR and Appendix E checklist.

Electronic Evidence

The following diagram illustrates how electronic evidence may be requested through the MLA framework to the United States where the major service providers are located:



532 United Nations Convention against Transnational Organized Crime and the Protocols (UNTOC)
<https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html>

533 Ibid.

Obtaining electronic evidence frequently involves a three-step process:

- A request to 'preserve' the evidence
- Enquiries to assess what data can be obtained without an MLAR (voluntary disclosure from Service Providers (SPs) through a direct request for non-content data); and
- An MLAR to obtain electronic evidence

When drafting an MLAR asking for evidence from a SP bear in mind that the requested authorities will frequently have to obtain a court or other relevant order before the Service Provider will supply the required evidence. Therefore, always provide a strong case and nexus for requesting such evidence.

For more information on the process for requesting evidence from the major Service Providers in the U.S. (Facebook, Google, Yahoo, Microsoft and Twitter etc) see the Guidance published by UNODC.⁵³⁴

Please review Model MLARs in Appendix A and Appendix E checklist.

Telephone Evidence

Such MLARs may be directed towards obtaining:

- Telephone subscriber information (i.e. to whom a phone is registered);
- Call Data Records;
- Location of the caller.

It must be noted that the MLAR must restrict the evidence that is requested to a specific period of time and must be proportional to the right to privacy.

Please review the Model MLAR Appendix A and Appendix E checklist.

Self-Assessment Questions

A, a citizen of State Y has witnessed a bombing in the Requested State Z. The authorities of the Requested State want to question him. Answer the following questions:

1. What are the potential methods of interviewing the witness or having him interviewed?
2. What are the factors that should be taken into account before proceeding with the interview?
3. Would you prefer to give primacy to informal means or a formal MLAR? Elaborate with reasons

10.8. EXTRADITION

Extradition is among the oldest forms of international cooperation. Originally, it was utilized to ensure the return of persons who may have committed political offences. Today, however, it is broad enough to cover a wide array of offences. Extradition has received a firm footing within international law through bilateral treaties between States as well as States ratifying multilateral treaties. The 'obligation' to extradite emanates through the presence of such an aforementioned framework. However, extradition consists of a physical transfer of the individual - the arrest, prosecution, sentencing and/or punishment that may follow after trial, is not purported within extradition.

Relevant International Legal Instruments

- United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20 December 1988 (Vienna Convention), Article 6 (Extradition)
- United Nations Convention against Transnational Organized Crime of 15 November 2000 (UNTOC), Article 16 (Extradition)

⁵³⁴ See: <https://www.unodc.org/unodc/en/frontpage/2019/January/unodc-and-partners-release-practical-guide-for-requesting-electronic-evidence-across-boarders.html>

- United Nations Convention against Corruption of 31 October 2003 (UNCAC), Article 44 (Extradition)
- London Scheme for Extradition within the Commonwealth

Specific Counter-Terrorism Conventions that Include Extradition Provisions:

- 1970 Convention for the Suppression of Unlawful Seizure of Aircraft, Articles 6-8
- 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Articles 6-8
- 1979 International Convention against the Taking of Hostages, Articles 6-10
- 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation
- 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, Articles 6-7
- 1997 International Convention for the Suppression of Terrorist Bombings, Articles 6-12
- 1999 International Convention for the Suppression of the Financing of Terrorism Articles 7 and 9-15

Criterion for Extradition

- Natural Persons can only be extradited - not juridical persons such as businesses or organisations;
- The fugitive must be convicted or an alleged criminal who is wanted by law enforcement, rather than a mere suspect (i.e. when suspects are involved, States typically invoke Mutual Legal Assistance Treaties);
- Dual Criminality (Country A's prosecutor must convince country B's authorities that the crime in question is a crime in both countries)
- Convicted criminals include those who have escaped from police custody or prison before receiving or serving out their assigned sentences, while alleged ones have been charged with a crime (or the functional equivalent thereof);
- Non-Extradition of Nationals (Particularly in Civil Law Jurisdictions) (not an absolute rule)⁵³⁵
- The fugitive should not be a minor (those under the age of majority, typically 18) as in this case special protective rules apply to them.

Extradition Steps

The extradition process is a complex balancing act where the rights of the accused, the domestic set of laws and legal procedures, and the integrity of a justice system are at play. Here, the first task is to locate the suspect and then analyze if the Requested State is able to extradite the person, discover the legal basis for such extradition, and to ascertain the domestic law of the Requested State.⁵³⁶ Thereafter, a Requested State may also resort to a provisional arrest whereby suspects may be detained prior to extradition. This is integral in cases where there is a network of terrorists at play which may be utilized by them to evade the authorities. For such warrants, an application may be sent through diplomatic channels or through an Interpol 'red-notice'⁵³⁷ which, after assessing the elements,⁵³⁸ issue the notice.

For Extradition Requests samples see Appendix G, H and I.

⁵³⁵ 'Manual On Mutual Legal Assistance And Extradition' (undoc.org, 2012) <https://www.unodc.org/documents/organized-crime/Publications/Mutual_Legal_Assistance_Ebook_E.pdf> accessed 19 July 2019 at page 49

⁵³⁶ Ibid at 56; See also 2004 Report of the Informal Expert Working Group on Effective Extradition Casework Practice, paras 113-115

⁵³⁷ For more information see: <https://www.interpol.int/INTERPOL-expertise/Notices/Red-Notices>

⁵³⁸ Particulars such as their Identity, Judicial information confirming the particulars of the offence and an assurance that extradition will be requested thereon

CHAPTER 11

UNDERSTANDING FOREIGN TERRORIST FIGHTERS

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INTRODUCTION

Although foreign fighters have been a feature of international and non-international armed conflicts for decades, such as in the response to the Soviet invasion of Afghanistan, so-called “foreign terrorist fighters” rose to global prominence in 2012 with the influx of foreigners to Iraq and Syria to join the Islamic State/Daesh and Al-Nusrah Front.

Foreign terrorist fighters (FTFs) can have an impact on their origin, transit, and destination countries, including in planning operations and facilitating the influx of recruits and arms, as well as increasing the proliferation of the terrorist threat upon their return to their home or to third countries.⁵³⁹ Foreign terrorist fighters have also been shown to affect the intensity, duration and intractability of conflicts.⁵⁴⁰

LEARNING OUTCOMES

By the end of this Chapter and the relevant readings you should:

- Understand the Security Council Resolutions applicable to foreign terrorist fighters
- Be aware of the measures for the detection of, intervention against and prevention of the incitement, recruitment and facilitation of foreign terrorist fighters
- Be acquainted with means for prevention of travel by foreign terrorist fighters, including through operational measures, the use of advance passenger information and measures to strengthen border security
- Understand the criminalization, investigation, and prosecution strategies for returnees
- Understand the Pakistani Laws Applicable to Foreign Terrorist Fighters
- Understand the key definitional issues as well as those involved in the intersection with IHL

ESSENTIAL READINGS

- United Nations Security Council Resolution 2178 (2014)
- United Nations Security Council Resolution 2396 (2017)
- United Nations Security Council, bringing terrorists to justice: challenges in prosecutions related to foreign terrorist fighters, S/2015/123 Annex (February 2015)
- International Committee of the Red Cross, International Humanitarian Law and the Challenges of Contemporary Armed Conflicts: Recommitting to Protection in Armed Conflict on the 70th Anniversary of the Geneva Conventions (2019)
- OSCE Office for Democratic Institutions and Human Rights (ODIHR), Guidelines for Addressing the Threats and Challenges of “Foreign Terrorist Fighters” within a Human Rights Framework (2018)
- Madrid Guiding Principles, S/2015/939 (23 December 2015)
- Geneva Academy of International Humanitarian Law and Human Rights, “Foreign Fighters under International Law”, Academy Briefing No. 7 (October 2014).

⁵³⁹ Global Counterterrorism Forum, The Hague – Marrakech Memorandum on Good Practices for a More Effective Response to the FTF Phenomenon (14 September 2019), p. 1.

⁵⁴⁰ United Nations Security Council Resolution 2178 (2014).

11.1. UNSECURITY COUNCIL RESOLUTIONS 2178 (2014) AND 2396 (2017)

In response to the threat posed by FTFs to international peace and security, UN Security Council (UNSC) Resolution 2178 (2014), adopted in September 2014 under binding Chapter VII powers, put in place wide-reaching obligations on States to take all necessary and feasible measures to combat foreign terrorist fighters. Subsequent international initiatives, such as UNSC Resolution 2396 (2017), reiterated UNSCR 2178's characterization of foreign terrorist fighters, particularly their return, as a grave threat to peace and security and broadened States' obligations to respond to its manifestations.⁵⁴¹

UNSCR 2178 defines FTFs as "individuals who travel to a State other than their State of residence or nationality for the purpose of the perpetration, planning or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, including in connection with armed conflict."⁵⁴² The Resolution demands that all FTFs immediately disarm and cease all terrorist acts and participation in armed conflict⁵⁴³ and calls on Member States to cooperate in efforts to address the threat posed by FTFs, including by preventing radicalization to terrorism and recruitment of foreign terrorist fighters, including children; preventing FTFs from crossing their borders; disrupting and preventing financial support to FTFs; and developing and implementing prosecution, rehabilitation and reintegration strategies for returning foreign terrorist fighters.⁵⁴⁴ The Resolution also decides that Member States shall, consistent with international human rights law, international refugee law, and international humanitarian law, prevent and suppress the recruiting, organizing, transporting or equipping of FTFs, as well as the financing of their travel and activities.⁵⁴⁵ Recalling its resolution 1373 (2001), the Council reiterated the requirement that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts be brought to justice.⁵⁴⁶ Significantly, the Security Council decided in Resolution 2178 that all States shall ensure that their domestic laws and regulations establish serious criminal offences sufficient to provide States the ability to prosecute and penalize travel or attempted travel to a State other than the State of one's residence or nationality for the purpose of perpetrating, planning, or preparing, or participating in, terrorist acts, or the providing or receiving of terrorist training; the provision or collection of funds for such travel; and the willful organization of facilitation, including acts of recruitment, of such travel.⁵⁴⁷ While the resolution primarily targets individuals travelling to Iraq and the Syrian Arab Republic to join terrorist factions there, it uses a wider definition that restricts travel in all manner and form for the purposes of "perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training".

Since the collapse of the "Islamic State" caliphate in Iraq in October 2017 and the ongoing decline of Daesh and Al-Nusrah Front control over territory in Syria, a key issue for States has been the concern that FTFs will return to and conduct terrorist attacks in their home countries.⁵⁴⁸ Many fighters leave their homes with no intention of returning, but rather with the intention of starting a new life abroad, building a new "State" or dying as martyrs.⁵⁴⁹ While not all FTFs return to their countries of origin, others may return to their States of residence or nationality. Those who do return may do so precisely because they have become disillusioned and no longer wish to participate in armed conflict. On the other hand, a small number of returning foreign terrorist fighters may pose a significant threat to international peace and security due to the extreme violence, sophisticated training and battlefield experience they experienced their destinations.⁵⁵⁰

Although unreliable, available information suggests that, as of late 2017, an estimated 40,000 FTFs had travelled to and actively engaged with Daesh, Al-Qaida and associated groups in Iraq and Syria.⁵⁵¹ Intelligence authorities in the Netherlands estimated that up to 160 foreign terrorist fighters from that country had traveled to Iraq and the Syrian Arab Republic as of 2014, of which 30 had returned. Approximately 56 foreign terrorist fighters from Indonesia had been identified as travelling to Iraq and the Syrian Arab Republic to join Daesh as of late 2014.⁵⁵² In recent years, however, the flow of FTFs has reversed course, with evidence pointing to a sharp decrease in the number of individuals travelling to Iraq and Syria and a growing concern regarding the impact of FTFs returning to their home States or

541 OSCE Office for Democratic Institutions and Human Rights (ODIHR), Guidelines for Addressing the Threats and Challenges of "Foreign Terrorist Fighters" within a Human Rights Framework (2018), p. 8.

542 United Nations Security Council Resolution 2178 (2014).

543 United Nations Security Council Resolution 2178 (2014), ¶1.

544 United Nations Security Council Resolution 2178 (2014), ¶4.

545 United Nations Security Council Resolution 2178 (2014), ¶5.

546 United Nations Security Council, Bringing terrorists to justice: challenges in prosecutions related to foreign terrorist fighters, S/2015/123 Annex (February 2015).

547 United Nations Security Council Resolution 2178 (2014), ¶6.

548 OSCE Office for Democratic Institutions and Human Rights (ODIHR), Guidelines for Addressing the Threats and Challenges of "Foreign Terrorist Fighters" within a Human Rights Framework (2018), p. 12.

549 Madrid Guiding Principles, S/2015/939 (23 December 2015), p. 5.

550 Madrid Guiding Principles, S/2015/939 (23 December 2015), p. 5.

551 OSCE Office for Democratic Institutions and Human Rights (ODIHR), Guidelines for Addressing the Threats and Challenges of "Foreign Terrorist Fighters" within a Human Rights Framework (2018), p. 11.

552 United Nations Security Council, Bringing terrorists to justice: challenges in prosecutions related to foreign terrorist fighters, S/2015/123 Annex ¶15 (February 2015).

moving on to other – sometimes unknown – locations.⁵⁵³ Although reliable statistics remain elusive, one report tracked 5,600 fighters who had returned to their home countries globally by 2015. Another report, focused on the FTF issue in the European Union (EU), suggested that some 30 per cent of FTFs had returned or moved to other states by 2016.⁵⁵⁴ As of December 2014, Bosnia and Herzegovina estimated that, of the 150 persons who had travelled from its territory to Iraq and the Syrian Arab Republic, 30 had been killed and 30 had returned. As of the same date, an estimated 250 out of 500 FTFs from the United Kingdom had returned home.⁵⁵⁵ According to the UN, returned FTFs have perpetrated attacks in locations such as Belgium, France and Spain, including 72 cases of terrorism in France linked to the conflict in the Syrian Arab Republic as of October 2014. Approximately 100 individuals were prosecuted, and two thirds of them were in prison.⁵⁵⁶

Acknowledging that returning and relocating foreign terrorist fighters had attempted, organized, planned, or participated in attacks in their countries of origin or nationality, or third countries, and that Daesh in particular had called on its supporters and affiliates to carry out attacks wherever they were located, the UN Security Council adopted Resolution 2396 (2017) on 21 December 2017 to address the threat posed by returning FTFs.⁵⁵⁷ While reaffirming UNSCR 2178, Resolution 2396⁵⁵⁸ calls for further judicial cooperation and implementation of appropriate prosecution, as well as rehabilitation and reintegration strategies, for FTFs and their accompanying family members. The resolution directs all States to collect biometric data as a means to detect and counter the movement of foreign terrorist fighters, especially those returning from conflict zones. It also welcomed the development of novel measures to strengthen travel security, including the approval of a new Global Aviation Security Plan by the International Civil Aviation Organization (ICAO) and monitoring procedures, calling for continuous upgrading of such procedures in line with developing threats. This includes using Passenger Name Record (PNR) and Advance Passenger Information (API), and watch-lists to prevent FTFs from travelling.

11.2. IMPLEMENTING UNSCRS 2178 (2014) AND 2396 (2017)

Like other responses to terrorism, Resolutions 2178 (2014) and 2396 (2017) have been criticized for creating obligations for States to take broad-reaching measures, without clearly defining the target.⁵⁵⁹ Since their adoption, however, both the United Nations and other international organizations and initiatives have organized conferences and workshops and issued guidance to assist States to implement their obligations under these Security Council Resolutions.

In recognition of the ongoing and salient challenge posed by foreign terrorist fighters, in September 2013, Morocco and the Netherlands launched an initiative under the auspices of the Global Counterterrorism Forum (GCTF) to bring together practitioners and policymakers from a range of countries and disciplines to share lessons learned, good practices, and challenges in responding to the FTF threat in all its manifestations. Through this initiative, the GCTF produced The Hague–Marrakech Memorandum on Good Practices for a More Effective Response to the FTF Phenomenon. The good practices contained in this non-binding Memorandum are intended to inform and guide governments as they develop policies, programs, and approaches to address the FTF phenomenon. They can also be used to shape bilateral or multilateral technical or other capacity-building assistance that is provided in this area.⁵⁶⁰

On 28 July 2015, the United Nations Security Council Counter-Terrorism Committee held a special meeting in Madrid, Spain on stemming the flow of foreign terrorist fighters (FTFs). In accordance with Security Council Resolution 2178 (2014), participants discussed principal gaps in the capacities of Member States to implement Resolutions 1373 (2001) and 1624 (2005) that may hinder their ability to stem the flow of FTFs. Pursuant to their discussions, participants identified a set of guiding principles, for use by Member States in their efforts to combat terrorism and, in particular, to stem the flow of foreign terrorist fighters in accordance with resolution 2178 (2014). The 35 Guiding Principles were subsequently adopted by the Security Council (S/2015/939).⁵⁶¹

In order to support Member States in their efforts to address the challenges of bringing terrorists to justice, the Counter-Terrorism Committee Executive Directorate, acting on behalf of the Counter-Terrorism Committee,

553 OSCE Office for Democratic Institutions and Human Rights (ODIHR), Guidelines for Addressing the Threats and Challenges of "Foreign Terrorist Fighters" within a Human Rights Framework (2018), p. 12.

554 OSCE Office for Democratic Institutions and Human Rights (ODIHR), Guidelines for Addressing the Threats and Challenges of "Foreign Terrorist Fighters" within a Human Rights Framework (2018), p. 12.

555 United Nations Security Council, Bringing terrorists to justice: challenges in prosecutions related to foreign terrorist fighters, S/2015/123 Annex ¶15 (February 2015).

556 United Nations Security Council, Bringing terrorists to justice: challenges in prosecutions related to foreign terrorist fighters, S/2015/123 Annex ¶15 (February 2015).

557 United Nations Security Council Resolution 2396 (2017).

558 UN Resolution 2396 – Press Release, <https://www.un.org/press/en/2017/sc13138.doc.htm>.

559 OSCE Office for Democratic Institutions and Human Rights (ODIHR), Guidelines for Addressing the Threats and Challenges of "Foreign Terrorist Fighters" within a Human Rights Framework (2018), p. 9.

560 Global Counterterrorism Forum, The Hague – Marrakech Memorandum on Good Practices for a More Effective Response to the FTF Phenomenon (14 September 2019), p. 1-2.

561 Madrid Guiding Principles, S/2015/939 (23 December 2015), Preface.

facilitated a series of seminars for prominent counterterrorism prosecutors on bringing terrorists to justice. The initial seminar, held at United Nations Headquarters in December 2010, was followed by seminars in Ankara in July 2011, Algiers in June 2012, Dar es Salaam, United Republic of Tanzania, in February 2013 and Tunis in December 2013. The sixth seminar, focused on challenges in prosecutions related to foreign terrorist fighters, was held in Valletta, Malta from 15 to 17 December 2014, in cooperation with the International Institute for Justice and the Rule of Law.⁵⁶²

This following section outlines the core guidance available through the United Nations 2015 Madrid Guiding Principles, the Global Counterterrorism Forum's Hague-Marrakech Memorandum on Good Practices for a More Effective Response to the FTF Phenomenon, UNODC's Investigation, Prosecution and Adjudication of Foreign Terrorist Fighter Cases for South and South-East Asia, 2018, and the UN Security Council's "Bringing terrorists to justice: challenges in prosecutions related to foreign terrorist fighters". It is organized around the major topics from the Madrid Guiding Principles.

Detection of, intervention against and prevention of the incitement, recruitment and facilitation of foreign terrorist fighters

1. Understand the threat and create strategic partnerships

As noted in the Madrid Guiding Principles, stemming the flow of FTFs requires the involvement of many different stakeholders, all of whom should strive to build a climate of trust and to understand the issues affecting different communities. Efforts to detect and prevent FTF activities should involve not only law-enforcement agencies but also a wide variety of community stakeholders. In order to prevent individuals from becoming FTFs, it is essential to identify grievances and other social or personal factors that may lead individuals to consider travel for the purpose of engaging in terrorist acts.⁵⁶³

The first six Madrid Guiding Principles are designed to help States understand the FTF threat and create strategic partnerships to address it. The Hague-Marrakech Memorandum likewise includes good practices to assist States in cultivating trusted relationships with vulnerable communities. In particular,

GCTF Good Practice #1 -- Invest in the long-term cultivation of trusted relationships with communities susceptible to recruitment, considering the broader set of issues and concerns affecting the community.

GCTF Good Practice #2 -- Develop a wide range of proactive, positive counter-narratives and alternative activities, offering non-violent, productive alternatives to help those in need, as means to channel frustration, anger, and concerns without turning to violence.

GCTF Good Practice #5 -- Prevent the identification of the FTF phenomenon or violent extremism with any religion, culture, ethnic group, nationality, or race.

2. Community engagement and empowerment of local communities and civil society

Terrorism will not be defeated by military force, law-enforcement measures and intelligence operations alone. States must also engage with local communities and non-governmental actors to develop strategies to counter the violent extremist narratives that can incite terrorist acts, including by empowering youth, families, women, religious, cultural and education leaders and all other concerned civil society groups.⁵⁶⁴ Madrid Guiding Principles seven through ten offer guidance on community engagement to counter violent extremism. The Hague-Marrakech Memorandum similarly recommends:

GCTF Good Practice #4 -- Empower those who are best-placed to affect change, including youth, families, women, and civil society, to take ownership in the development and messaging of positive counter-narratives to the violent extremist agenda

GCTF Good Practice #9 -- Adopt tailored and targeted approaches for CVE responses to radicalization and recruitment, based on the specific motivational factors and intended audience.

3. Community-policing and Internet-related law-enforcement initiatives

Law-enforcement measures are essential to stemming the flow of foreign terrorist fighters. There is therefore a need to promote dialogue through methods that include engagement with communities and a commitment to transparency.

⁵⁶² United Nations Security Council, Bringing terrorists to justice: challenges in prosecutions related to foreign terrorist fighters, S/2015/123 Annex ¶2, 6 (February 2015).

⁵⁶³ Madrid Guiding Principles, S/2015/939 (23 December 2015), p. 7.

⁵⁶⁴ Madrid Guiding Principles, S/2015/939 (23 December 2015), p. 9.

One approach adopted by an increasing number of States is the use of community-policing techniques. States should also pay close attention to communication related to FTFs, whether at public gatherings or through the Internet and other communications technologies, while ensuring respect for human rights, including freedom of expression, and for privacy.⁵⁶⁵ Traditional recruitment and facilitation networks operated by established terrorist organizations, which may target specific communities, persist in some target specific environments, while Internet-based radicalization may occur in others. In between these two extremes are hybrid models that take advantage of the Internet's scale and anonymity while retaining some elements of the traditional model, such as ethnic or linguistic affinity.⁵⁶⁶

Madrid Guiding Principles 11 through 14 address community policing and Internet-related law enforcement initiatives. The Hague-Marrakech Memorandum suggests the following:

GCTF Good Practice #3—Bring together social media, analytic experts, and technology innovators to develop and produce compelling counter-narrative content.

GCTF Good Practice #6—Reach out to communities to develop awareness of the FTF threat and build resilience to violent extremist messages.

GCTF Good Practice #7 -- Collect and fuse detailed information from government agencies, front line workers, communities, and social media to detect recruitment and facilitation while respecting the rule of law and human rights.

GCTF Good Practice #8—Pool resources, share information, and collaborate with the private sector to curb online recruitment of FTFs.

Online evidence from social media can be powerful, especially in tracking locations and those using social networking sites for recruitment. This evidence should be downloaded in real time before it is erased. If this is not possible, applications need to be made to either the sites or web hosting companies to preserve the content. States should be aware, however, that such requests may be fruitless, depending on the provider. The UNODC Handbook, for instances, notes that only undelivered messages are recoverable from WhatsApp, and Facebook messages are only available for 90 days after deletion by the account holder.⁵⁶⁷

CASE STUDY

In January 2014, British national Imran Khawaja left the United Kingdom for the Syrian Arab Republic, to join a group of ex-criminal gang members from London who had travelled to fight alongside Daesh. There, Khawaja undertook weapons training, and under the *nomme-de-guerre* of Abu Daigham al-Britani, he appeared in videos and social media posts encouraging other United Kingdom nationals to join the conflict. The online postings were monitored and captured evidentially by counter-terrorism investigators. Then, in May 2014, it was announced on Instagram that Abu Daigham had been killed in battle. This was false. Khawaja was still alive and had travelled out of the Syrian Arab Republic to Sofia, Bulgaria. There he met his cousin Tahir Bhatti, who had driven across Europe in a hired car to drive back to London together, where it was believed Khawaja intended to engage in further terrorist activity.

A week later, both men were stopped entering the United Kingdom and arrested on suspicion of involvement in terrorism. The evidence against Khawaja was initially extremely thin; in the videos he had been fully masked, and he claimed to have been on holiday touring Europe. He was wearing new clothes, purchased in France, and stated his mobile phone had been stolen. Searches were conducted at the homes of family members and associates, and their smartphones and computers were seized and examined. Discovered on these devices were photographs sent by Khawaja with chat messages, showing him unmasked and handling firearms.

These images were forensically examined against those downloaded from social media. Experts in facial mapping compared facial features, body features and identifying characteristics of clothing. Military experts identified the weapons shown in photographs, while others, using satellite imagery, were able to show that the locations depicted were in areas of combat in the Syrian Arab Republic. Encrypted chats with family members were also recovered from phones and decrypted. In messages, Khawaja spoke of training with Daesh, stating that he intended to die a martyr.

⁵⁶⁵ Madrid Guiding Principles, S/2015/939 (23 December 2015), p. 10.

⁵⁶⁶ Global Counterterrorism Forum, The Hague – Marrakech Memorandum on Good Practices for a More Effective Response to the FTF Phenomenon (14 September 2019), p. 4.

⁵⁶⁷ UNODC - Investigation, Prosecution and Adjudication of Foreign Terrorist Fighter Cases for South and South-East Asia, 2018, https://www.unodc.org/documents/terrorism/Publications/FTF%20SSEA/Foreign_Terrorist_Fighters_Asia_Ebook.pdf.

Due to the weight of the evidence against him, Khawaja pleaded guilty at court. Admitting the offences of preparation of terrorist acts, attending a terrorist training camp and receiving weapons training, he was sentenced to 12 years' imprisonment. His cousin Bhatti received 21 months' imprisonment for the offence of assisting an offender.

Taken from: UNODC - Investigation, Prosecution and Adjudication of Foreign Terrorist Fighter Cases for South and South-East Asia, 2018

Prevention of travel by foreign terrorist fighters, including through operational measures, the use of advance passenger information and measures to strengthen border security

1. Operational measures to stem the flow of foreign terrorist fighters

- Collection of information related to foreign terrorist fighters from various sources

In order to effectively address the cross-border flow of foreign terrorist fighters, appropriate information about the identity of existing or potential fighters, upon which border authorities can make informed decisions, should be made available in a timely manner to border posts and other relevant agencies for further action.⁵⁶⁸ Unfortunately, a significant proportion of FTFs are not known to authorities before they travel, making it difficult to detect when they enter the international travel system or to provide other States sufficient warning to interdict them en route. FTFs may also try to disguise their travel by first transiting through third countries.⁵⁶⁹

Information on FTFs may be either specific or general in nature. Specific information includes information obtained from sources such as law-enforcement and intelligence agencies; advance passenger information; biometrics; national and international watch lists; notices of the International Criminal Police Organization (INTERPOL), databases, including the one of foreign terrorist fighters, diffusion notices, and analytical products; and informants. General information includes passenger name record data and the results of trends analysis and risk assessments.⁵⁷⁰

Madrid Guiding Principle 15 recommends that States consult national, regional and international sources of information on FTFs; that national law-enforcement and security agencies actively transmit relevant information that may be used to identify existing or potential FTFs; that relevant regional and international organizations provide the tools and means, such as a database of foreign terrorist fighters, for the collection and dissemination of specific and general forms of information related to FTFs; that information be transmitted to officials at land, air and maritime ports of entry or to a centralized location for processing, prior to the arrival or departure of travelers; and that collection, storage and sharing of information be conducted in a non-discriminatory manner consistent with international human rights law.⁵⁷¹

For its part, the Hague-Marrakech Memorandum recommends the following:

GCTF Good Practice #10–Increase the sharing of local public, law enforcement and intelligence information and analysis, and corresponding best practices, through bilateral relationships and multilateral fora to prevent FTF travel.

GCTF Good Practice #12–Apply appropriate screening measures designed to disrupt FTF travel, with particular attention to air travel.

Frontline officers (e.g. border control) require updated information to conduct effective evidence-based screenings of travelers in order to identify potential FTFs. Targeted questioning of suspects and searches of baggage may additionally reveal immigration offences or the possession of prohibited articles (such as large amounts of cash of over 10,000 USD), thereby preventing suspects from leaving the country or at the very least delaying travel while other action is considered.⁵⁷²

- Reliance on analysis to make general information on foreign terrorist fighters actionable

Information received must be processed and analysed to effectively identify existing or potential FTFs. In many cases, the specific information received should be analysed for comparison against known profiles of FTFs as well as to

⁵⁶⁸ Madrid Guiding Principles, S/2015/939 (23 December 2015), p. 11.

⁵⁶⁹ Global Counterterrorism Forum, The Hague –Marrakech Memorandum on Good Practices for a More Effective Response to the FTF Phenomenon, (14 September 2019), p. 5.

⁵⁷⁰ Madrid Guiding Principles, S/2015/939 (23 December 2015), p. 11.

⁵⁷¹ Madrid Guiding Principles, S/2015/939 (23 December 2015), p. 11-12.

⁵⁷² UNODC - Investigation, Prosecution and Adjudication of Foreign Terrorist Fighter Cases for South and South-East Asia, 2018, https://www.unodc.org/documents/terrorism/Publications/FTF%20SSEA/Foreign_Terrorist_Fighters_Asia_Ebook.pdf.

develop new profiles to better inform future analyses. A specific challenge associated with the analysis of FTF activities is their use of evasive travel patterns, or “broken travel” (breaking long-distance travel into multiple segments so that it becomes difficult to ascertain travel history and origin) to prevent border authorities and counter-terrorism officials from accurately determining where FTFs were prior to their arrival in a particular State. An associated challenge is distinguishing “broken travel”, intended to evade counter-terrorism authorities, from benign travel patterns that appear broken but which have an innocuous purpose, such as cost savings or the redemption of frequent flyer miles.⁵⁷³ Madrid Guiding Principle 16 focuses on information analysis. Good Practice #12, discussed above, is also relevant here.

- Transmitting analysis and information on foreign terrorist fighters nationally and internationally

Information and related analyses on existing and potential foreign terrorist fighters should be shared across the national security hierarchy and with competent border authorities internationally through coordination and mechanisms for information exchange. To this end, Madrid Guiding Principle 17 recommends inter alia that States enact legislation and implementing procedures needed to collect and use traveler information; put in place procedures to ensure that information about known and suspected FTFs can be transmitted to border security; and expand access to, and the utilization of, the global information-sharing tools and resources of INTERPOL.⁵⁷⁴

- Effective utilization of information related to foreign terrorist fighters at border points

It is essential to provide appropriate training and updated instructions to front-line officers on the risks posed by terrorism, particularly FTFs, and the manner in which available information and tools can be fully and effectively utilized to identify existing or potential fighters at border entry and departure points. Madrid Guiding Principle 18 advises States to ensure that border-control stations are sufficiently resourced and border control officers sufficiently well trained to receive and use information about known and suspected FTFs.⁵⁷⁵

- Addressing gaps in the use of advance passenger information and expanding its use to stem the flow of foreign terrorist fighters

An advance passenger information system enables border authorities to determine passenger risk before flights arrive in their territories, before passengers are approved for outbound departure or before attempted entry into or transit through their territories. The use of passenger name record systems, if permissible under national law, can complement advance passenger information data and help to inform decisions on FTFs.⁵⁷⁶ Madrid Guiding Principle 18 recommends, among other things, that States consider implementing an advance passenger information system that complies with annex 9 to the Convention on International Civil Aviation and the guidelines on advance passenger information of the World Customs Organization, the International Air Transport Association and the International Civil Aviation Organization, and integrating advance passenger information with the global indices and capabilities of INTERPOL, which include its Stolen and Lost Travel Documents database and Travel Documents Associated with Notices system.⁵⁷⁷ The Hague-Marrakech Memorandum similarly recommends that States take all possible steps to prevent the use of falsely obtained, stolen, forged, or otherwise misused passports, including by making greater use of INTERPOL's Lost and Stolen Passport Database, and by implementing international standards for passport control and the use of biometric information.⁵⁷⁸

GCTF Good Practice #13 -- Use all available tools to prevent the misuse of travel documents for FTF travel.

Many States have legislated to introduce administrative measures in order to restrict the movements of suspected FTFs and prevent their travel abroad. These measures include:

- Preventive detention;
- Control/restriction orders—restricting the movement of the suspect;
- Travel bans; and
- Denying the issue of, or revoking, passports and other travel documents— including powers to prevent travel by seizing passports at the border.

⁵⁷³ Madrid Guiding Principles, S/2015/939 (23 December 2015), p. 12.

⁵⁷⁴ Madrid Guiding Principles, S/2015/939 (23 December 2015), p. 12-13.

⁵⁷⁵ Madrid Guiding Principles, S/2015/939 (23 December 2015), p. 13.

⁵⁷⁶ Madrid Guiding Principles, S/2015/939 (23 December 2015), p. 14.

⁵⁷⁷ Madrid Guiding Principles, S/2015/939 (23 December 2015), p. 14.

⁵⁷⁸ Global Counterterrorism Forum, The Hague –Marrakech Memorandum on Good Practices for a More Effective Response to the FTF Phenomenon, (14 September 2019), p. 6-7.

For example, in the United Kingdom, a police officer at the border can seize the passport of someone suspected to be travelling for the purposes of terrorism. Following orders from the court, the suspect can be retained for up to 30 days while the Home Secretary decides whether there is sufficient information to justify revoking the passport.⁵⁷⁹

Administrative measures are invoked on the authorization of government officials, usually at the ministerial level (the executive), and can be applied on the basis of secret intelligence, which is not disclosed to the suspect. Judicial or other effective oversight mechanisms are therefore required to ensure human rights are adequately protected and that any imposition of such measures is justified by reliable and credible information.⁵⁸⁰

2. Practical measures to strengthen the overall security of borders

- Coordinated border management

In order to strengthen coordination among competent authorities at border locations and thereby enhance the overall security of their borders and stem the flow of foreign terrorist fighters, Madrid Guiding Principle 20 recommends that States consider incorporating coordinated border management principles to enhance the effectiveness of border controls and implementing a coordinated border management approach by establishing appropriate legal and regulatory frameworks and institutional structures, developing the required procedures and acquiring the necessary human resources, training, infrastructure and equipment.⁵⁸¹

- Addressing spaces between official border crossings

States should improve their capacity to prevent FTFs from crossing land borders. In addition to high-technology measures, such as networked cameras and aerial surveillance, States can apply many effective, low-technology approaches, such as varying border patrol times; using all sources of information available, including from local communities, to determine the usual routes and timing of travel by FTFs and other illicit actors. Finally, the ability to interdict FTFs is greatly facilitated by the timely sharing of information about FTF travel by origin and transit states.⁵⁸²

Spaces between official border crossings are difficult to control because they often include long and porous borders, open spaces and difficult terrain. They, therefore, present risks and vulnerabilities for the potential crossing by foreign terrorist fighters.⁵⁸³ Madrid Guiding Principle 21 suggests various low and high tech measures and mechanisms to counter this threat, including identifying the most vulnerable stretches of the border, implementing mitigating measures, establishing border controls in vulnerable locations, and extending areas of control adjacent to official border checkpoints.⁵⁸⁴ The Hague-Marrakech Memorandum similarly recommends:

GCTF Good Practice #14 -- Increase the capacity of States to prevent FTF travel across land borders and, more broadly, take appropriate measures to prevent FTFs within their territory from planning or preparing for terrorist acts to be carried out at home or abroad.

Criminalization, prosecution, including prosecution strategies for returnees, international cooperation and the rehabilitation and reintegration of returnees

1. Criminalization of acts aimed at stemming the flow of foreign terrorist fighters

Security Council resolution 2178 (2014) requires Member States to “ensure that their domestic laws and regulations establish serious criminal offences sufficient to provide the ability to prosecute and to penalize in a manner duly reflecting the seriousness of the offence.”⁵⁸⁵ However, there remain critical gaps in the application of legislation to address FTFs in most countries. Rather, States tend to rely on existing legislation, such as laws dealing with organized crime, immigration, national security or financial crimes to prosecute FTFs.⁵⁸⁶ Reliance on laws that do not deal directly with terrorist offences has enabled many States to mount an immediate solution to the threat of foreign terrorist fighters. In Turkey, for example, there has been heavy reliance on legislation dealing with organized crime. In Indonesia, prosecutors have used criminal code offences prohibiting the change of the constitutional system by non-democratic means. Indonesian law also criminalizes any unauthorized military training, and prosecutors have used such offences to

579 United Kingdom Counter-Terrorism and Security Act 2015. At <http://www.legislation.gov.uk/ukpga/2015/6/notes/division/5>.

580 UNODC - Investigation, Prosecution and Adjudication of Foreign Terrorist Fighter Cases for South and South-East Asia, 2018, https://www.unodc.org/documents/terrorism/Publications/FTF%20SSEA/Foreign_Terrorist_Fighters_Asia_Ebook.pdf.

581 Madrid Guiding Principles, S/2015/939 (23 December 2015), p. 15.

582 Global Counterterrorism Forum, The Hague – Marrakech Memorandum on Good Practices for a More Effective Response to the FTF Phenomenon, (14 September 2019), p. 7.

583 Madrid Guiding Principles, S/2015/939 (23 December 2015), p. 15.

584 Madrid Guiding Principles, S/2015/939 (23 December 2015), p. 15.

585 United Nations Security Council Resolution 2178 (2014), ¶16.

586 United Nations Security Council, Bringing terrorists to justice: challenges in prosecutions related to foreign terrorist fighters, S/2015/123 Annex (February 2015), ¶18.

deal with foreign terrorist fighters. In China, prosecutors have used a broad range of immigration law offences to prevent individuals from travelling.⁵⁸⁷

At the same time, reliance on non-terrorism offences can create its own risks and challenges.⁵⁸⁸ Issues may arise because courts are unwilling to accept prosecutors' innovation interpretations of legislation or because such provisions included different acts and intentions as the basis for conviction. The reliance on non-terrorism offences may also pose challenges for international cooperation, either because States differ substantially on which kind of participation in foreign conflict is criminalized, thus raising issues relating to dual criminality, or because such acts outside the terrorism context may fall under exclusion clauses in extradition treaties, such as political offences. Relying on non-terrorism offences also runs the risk that the courts will not be able to address the full severity of the case and punishments may be very light, as is often the case when it comes to violations of immigration laws or petty crimes, such as fraud or theft, committed prior to departure for the conflict zone.⁵⁸⁹

Madrid Guiding Principles 22 through 24 advise States to actively review the compliance of their existing legislation with UNSCR 2178 (2014) and update their national legal frameworks, as needed, in order to criminalize the full range of conduct related to foreign terrorist fighters, as well as to share their legislative reform experiences with other Member States.⁵⁹⁰ The Hague-Marrakech Memorandum similarly advises States to revise their legislative and regulatory frameworks to address the threats posed by FTFs:

GCTF Good Practice #11—Develop and implement appropriate legal regimes and administrative procedures to effectively prosecute and mitigate the risk posed by FTFs.

GCTF Good Practice #17—Strengthen investigations and prosecutions of FTFs, when appropriate, through improved information sharing and evidence gathering.

While many States have used non-terrorism legislation to prosecute foreign terrorist fighters, other countries directly criminalize FTF activities. The United States legal regime allows for the prosecution of the full range of FTF actions, from planning to preparation to travel. Pursuant to United States legislation, when a person plans to travel across borders to join a terrorist group, he or she can be intercepted after passing security at an airport, which is considered the threshold act, and charged under the material support offence. If a person supports an organization that has been publicly designated a terrorist group, intent can be inferred.⁵⁹¹

Certain States have made it a crime for their citizens to fight in overseas conflicts. Australia, for example, enacted the Counter-Terrorism (Temporary Exclusion Orders) Bill, 2019, empowering the Home Affairs Ministry to block a citizen over 14 years of age with suspected terrorism links from returning to Australia for two years.⁵⁹² Australia also criminalized travel to areas such as Mosul in Iraq without valid reason.⁵⁹³ As per Section 119.2 of the Australian Criminal Code Act, 1995, intentional entry into a conflict zone of a foreign country is an offence liable to punishment for up to 10 years. This has also been replicated by New Zealand through its Terrorism Suppression (Control Orders) Bill.⁵⁹⁴ Bosnia and Herzegovina enacted a law in June 2014 banning leaving the country to take part in any paramilitary activity or battles abroad. To prove the offence, it was not necessary to prove intention to commit certain acts, only participation on a battlefield abroad. A conviction of that offence carried the potential of 5 to 20 years' imprisonment.⁵⁹⁵

When framing charges, the whole range of available legislation needs to be considered. For example, FTFs who upload material or appear in videos in support of terrorist groups (disseminated either at home or when they are abroad), might not simply be guilty of supporting terrorism and membership of a proscribed terrorist entity, but also of more serious offences including incitement to murder. The proven swearing of an oath of allegiance and other declarations of assistance to a terrorist group can lead to charges of membership or support of a proscribed organization. At the same time, returning FTFs who have been involved in fighting or executions abroad can be considered for war crimes, such as the killing of civilians.

587 United Nations Security Council, Bringing terrorists to justice: challenges in prosecutions related to foreign terrorist fighters, S/2015/123 Annex (February 2015), ¶18, 21.

588 Madrid Guiding Principles, S/2015/939 (23 December 2015), p. 16.

589 United Nations Security Council, Bringing terrorists to justice: challenges in prosecutions related to foreign terrorist fighters, S/2015/123 Annex (February 2015), ¶19.

590 Madrid Guiding Principles, S/2015/939 (23 December 2015), p. 16.

591 United Nations Security Council, Bringing terrorists to justice: challenges in prosecutions related to foreign terrorist fighters, S/2015/123 Annex (February 2015), ¶16.

592 Dealing with FTFs, Dawn, 2020, <https://www.dawn.com/news/1526759>.

593 Ibid.

594 Ibid.

595 United Nations Security Council, Bringing terrorists to justice: challenges in prosecutions related to foreign terrorist fighters, S/2015/123 Annex (February 2015), ¶18.

2. Investigation and prosecution of criminal offences to stem the flow of foreign terrorist fighters

Generating admissible evidence and converting intelligence into admissible evidence against foreign terrorist fighters are complex and multifaceted tasks. It is incredibly difficult to collect evidence in a foreign war zone, and investigators are not usually able to travel there. Even where battlefield evidence is collected by armed forces or local police, there are issues in producing witnesses in court and ensuring reliable testimonies. Moreover, evidence suspected to have been obtained through the use of torture or duress may be ruled inadmissible.

Specific challenges in the investigation and prosecution of cases involving foreign terrorist fighters include:

- (a) Collecting evidence from countries of destination or areas where the military may play a role;
- (b) Using intelligence or the products of special investigative techniques in court without exposing sources or methods;
- (c) Generating admissible evidence from or converting intelligence into admissible evidence information obtained through ICT, including social media;
- (d) Handling cases involving incitement to commit terrorist acts and terrorist recruitment, especially when those offences are committed through the Internet; and
- (e) Proving the purpose of travel and the intent behind preparatory acts committed prior to travel.

Close cooperation and coordination between intelligence, law enforcement and prosecution agencies is necessary to generate admissible evidence against FTFs. Involving the prosecutor in investigations from the outset can enhance decision-making processes and ensure a successful intervention and/or prosecution.⁵⁹⁶

Madrid Guiding Principles 25 through 29 provide guidance to States on investigating and collecting evidence of FTF activities with a view to prosecution. The Hague-Marrakech Memorandum offers a similar recommendation in Good Practice 17, discussed above.

Where evidence from an FTF's destination country is unavailable, investigators can talk to witnesses in their own country. These may include the FTF's family and friends, who can provide evidence such as witness statements, messages from the FTF, or social media identifiers and telephone numbers. Investigators can also obtain "evidence from airlines, immigration records, CCTV from airports, financial transactions, telephone cell siting, Internet IP addresses, location data in photographic images and social media posts. Other evidence, such as traces of explosives on clothing or evidence of recent wounds, may also assist to prove the presence of a returning FTF."⁵⁹⁷

Becoming an FTF requires a high level of logistical planning and financial transactions, which may include buying a plane ticket to travel, specialist clothing and equipment for use in the conflict zone, or a wider network of recruiting, training and facilitating these activities. These transactions, when made to willfully provide support to an FTF, may amount to a terrorism financing offence. This financial information can aid an investigation and may be used for arrest and prosecution for a terrorism-related offence.⁵⁹⁸

3. Prosecution and rehabilitation strategies aimed at stemming the flow of foreign terrorist fighters

The employment of rigid prosecution policies and practices against FTFs can be counterproductive to the implementation of comprehensive strategies to combat such fighters and violent extremism. Member States should also consider alternatives to incarceration, as well as the reintegration and possible rehabilitation of returnees, prisoners and detainees. The adoption of a comprehensive, multidisciplinary approach that involves all branches of Government, as well as community and civil society stakeholders, can be a more effective way to bring terrorists to justice and provide a long-term response to the risks posed by foreign terrorist fighters.⁵⁹⁹

In combating the threat of foreign terrorist fighters, it is important to address the full range of serious crimes committed during travel, in particular war crimes, crimes against humanity and gender-related crimes. It is important to conduct an initial assessment of each returning FTF to determine their individual levels of culpability and thus how they should be handled.⁶⁰⁰ Robust risk assessments based on a variety of factors, including an individual's motivation for traveling to fight, behavior while traveling and in a certain area—which may be obtained from interviews with family and friends—enables authorities to build tailored responses. Such responses could range from prosecution to monitoring to referral to violence prevention and/or reintegration programs. Risk assessments can also help authorities ensure

⁵⁹⁶ United Nations Security Council, Bringing terrorists to justice: challenges in prosecutions related to foreign terrorist fighters, S/2015/123 Annex (February 2015), ¶123.

⁵⁹⁷ UNODC - Investigation, Prosecution and Adjudication of Foreign Terrorist Fighter Cases for South and South-East Asia, 2018

https://www.unodc.org/documents/terrorism/Publications/FTF%20SSEA/Foreign_Terrorist_Fighters_Asia_Ebook.pdf.

⁵⁹⁸ UNODC, Foreign Terrorist Fighters Manual for Judicial Training Institutes South-Eastern Europe, 2017, available at:

https://www.unodc.org/documents/terrorism/Publications/FTF%20manual/000_Final_Manual_English_Printed_Version_-_no_foreword.pdf.

⁵⁹⁹ Madrid Guiding Principles, S/2015/939 (23 December 2015), p. 18.

⁶⁰⁰ Madrid Guiding Principles, S/2015/939 (23 December 2015), p. 18-19.

responses are commensurate with the threat and do not further radicalize returnees or members of their communities.⁶⁰¹

Madrid Guiding Principles 30 through 32 deal with prosecution, rehabilitation and reintegration of returning FTFs, including guidance on assessing the risk posed by individual returnees. The Hague-Marrakech Memorandum also includes Good Practices related to prosecution, rehabilitation and reintegration of returning FTFs, including:

GCTF Good Practice #15–Use as wide as possible range of information sources to anticipate and detect returnees.

GCTF Good Practice #16–Build and use evidence-based, individual-level risk assessment frameworks for returnees, evaluate their condition and establish appropriate engagement approaches accordingly.

GCTF Good Practice #18–Prepare and exercise responses to the kinds of terrorist acts for which FTFs may have special skills.

GCTF Good Practice #19–Develop comprehensive reintegration programs for returning FTFs.

CASE STUDY

Laura Hansen, 22 years old, left the Netherlands in September 2015, together with her husband and two young children, to live under Daesh in the Syrian Arab Republic, where her husband joined the group as a fighter. They went via Turkey where they had booked a family holiday to disguise their travel. Ten months later, Hansen crossed the border into Iraq with her children, claiming that she had escaped after becoming disillusioned with life under Daesh. Helped by her father, she returned to the Netherlands, where she was arrested and charged with terrorism offences. At trial, the Court concluded that Hansen had assisted her husband by providing a cover for his travel, and then supporting him as his wife while he was training and fighting for Daesh. In November 2017, she was convicted of “preparation or facilitation of a terrorist offence” and sentenced to a term of 24 months imprisonment, with 13 months of the sentence suspended for a period of 3 years.

Taken from: UNODC - Investigation, Prosecution and Adjudication of Foreign Terrorist Fighter Cases for South and South-East Asia, 2018

Apart from prosecution, the following measures may be used to safely rehabilitate and reintegrate FTFs returning from conflict zones to their countries of origin:

- **Monitoring—surveillance:** employing conventional and technical covert surveillance of the suspect, both to prevent any risk to the public and to gather evidence to prosecute.
- **Monitoring—control/restriction orders:** a temporary administrative measure limiting the freedom of movement of individuals in an attempt to prevent their involvement in terrorism, normally only applied in the most serious cases due to restrictions on human rights. Possible conditions may include a curfew and electronic monitoring, together with restrictions on where a suspect may live or work, who they may associate with, their access to the Internet or phones, financial transactions and travel.
- **De-brief:** in addition to interviews to determine an individual's criminal involvement, attempts should be made to debrief all of those returning from conflict zones, irrespective of their level of participation. Valuable intelligence can be obtained to give a picture of the situation on the ground, together with more specific intelligence on individuals and planning.
- **Rehabilitation:** disengagement and reintegration programmes can be used where prosecution is neither possible nor appropriate.⁶⁰²

Malaysia and Singapore have developed ongoing government programmes to rehabilitate and reintegrate terrorist inmates into society through preventive/administrative detention, working in cooperation with various civil society organizations. Indonesia has begun a programme whereby all those returning from the Syrian Arab Republic are required to undergo a one-month de-radicalization programme run by the Social Affairs Ministry.

⁶⁰¹ Global Counterterrorism Forum, The Hague – Marrakech Memorandum on Good Practices for a More Effective Response to the FTF Phenomenon, (14 September 2019), p. 8.

⁶⁰² UNODC - Investigation, Prosecution and Adjudication of Foreign Terrorist Fighter Cases for South and South-East Asia, 2018, https://www.unodc.org/documents/terrorism/Publications/FTF%20SSEA/Foreign_Terrorist_Fighters_Asia_Ebook.pdf.

4. International judicial cooperation in stemming the flow of foreign terrorist fighters

The evidence needed to prosecute FTFs for their criminal acts may reside in more than one country, necessitating recourse to mutual legal assistance (MLA), which can be greatly enhanced through informal cooperation among investigators and prosecutors—for instance, by giving another country advance notice that an MLA request is forthcoming so that time-sensitive evidence can be preserved.⁶⁰³ There are, however, numerous challenges associated with effective international cooperation in stemming the flow of foreign terrorist fighters, including delays in the provision of mutual legal assistance, the rigidity of procedures and lack of capacity.⁶⁰⁴ Challenges also stem from the facts that States rely on different offences to prosecute FTFs and many States apply legislation that does not deal directly with terrorist offences.⁶⁰⁵ It can also be difficult, if not impossible, to directly collect evidence on the ground, where conflict and terrorist activity may be taking place.⁶⁰⁶ Many States face significant backlogs of MLA requests, making some form of direct contact between investigators or prosecutors advisable if evidence in serious cases is to be obtained within time limits. Liaison can often take place in advance of an official letter of request, assisting in the preservation of evidence. Where criminal contacts are discovered in the other jurisdiction, a parallel terrorism investigation could be opened.

CASE STUDY

In February 2016, intelligence was received that five males were leaving Maldives with the intention of travelling to fight in the Syrian Arab Republic and partake in “jihad”. An investigation began into the activities of those involved, who by that time had already left the country, telling their families that they were going on holiday to Sri Lanka. International partner agencies were contacted, leading to the suspects being intercepted and detained in Turkey and three being deported back to Maldives. Investigators, however, did not have any physical evidence of the suspects’ planned activities. Nor were statements or other official documentation received concerning events in Turkey; none had been received even at the time the matter went to court. In the absence of this material, the trial judge noted that the officer responsible for the intelligence report could neither prove the route taken by the suspects to Turkey, nor their detention there. The trial ended with the court stating that there was insufficient evidence to support the charges of travelling abroad with the intent of joining a terrorist group.

Taken from: UNODC - Investigation, Prosecution and Adjudication of Foreign Terrorist Fighter Cases for South and South-East Asia, 2018

To address these concerns, Madrid Guiding Principles 33 through 35 offer guidance to Member States on the use of mutual legal assistance and effective mechanisms for police-to-police cooperation, as well as creative solutions to specific international cooperation challenges arising from the investigation and prosecution of crimes committed by foreign terrorist fighters. The Hague-Marrakech Memorandum offers related guidance on mutual legal assistance under Good Practice 17, discussed above.

Some States have successfully used international cooperation to investigate and prosecute cases involving foreign terrorist fighters. A joint operation between Bangladeshi and Spanish anti-terrorism investigators led to successful arrests in both countries. The investigation focused on a Bangladeshi male living in Spain, the owner of a telecommunications software company originally set up by his brother who had been killed in an airstrike in 2015 while providing technical assistance to Daesh in the Syrian Arab Republic. The company, with branches in nine countries, is alleged to have been a front for terrorist activity, including supplying military-grade equipment to Daesh and sending funds to Bangladesh for the purchase of weapons by terrorist groups. To progress the enquiry, Spanish investigators were invited to a meeting in Bangladesh, at which intelligence was shared and an official channel established for exchanging information. In September 2017, simultaneous raids were conducted in both countries, resulting in the arrest and charging of the company’s CEO in Spain and of 11 employees in Bangladesh.⁶⁰⁷

603 Global Counterterrorism Forum, The Hague –Marrakech Memorandum on Good Practices for a More Effective Response to the FTF Phenomenon, (14 September 2019), p. 8.

604 Madrid Guiding Principles, S/2015/939 (23 December 2015), p. 19.

605 United Nations Security Council, Bringing terrorists to justice: challenges in prosecutions related to foreign terrorist fighters, S/2015/123 Annex (February 2015), ¶136.

606 United Nations Security Council, Bringing terrorists to justice: challenges in prosecutions related to foreign terrorist fighters, S/2015/123 Annex (February 2015), ¶137.

607 “Cardiff man held in Spain over ISIL (Da’esh) link”, The Times (24 September 2017). At <https://www.thetimes.co.uk/article/cardiff-man-held-in-spain-over-isis-link-hchnq7dzt>.

11.3. PAKISTANI LAWS APPLICABLE TO FOREIGN TERRORIST FIGHTERS

Pakistan, like many States, does not have any laws dealing directly with foreign terrorist fighters. On the other hand, it does have a robust counterterrorism regime, which can be used to investigate, prosecute and prevent activities by FTFs. For example, although the Anti-Terrorism Act, 1997 does not explicitly outlaw recruitment and travel in the furtherance of terrorism, the broad language of the Act provides several mechanisms by which Pakistan can implement UNSCR 2178 (2014) on addressing FTFs. For example,

Anti-Terrorism Act, 1997

- Section 11D Observation Order

Section 11D of the ATA applies to organizations that give the Federal Government “reasonable grounds” to believe that they are involved in terrorist activity, which could be interpreted to include the funding, facilitation and recruitment of FTFs (as proscribed under UNSCR 2178 Clause 6 (a), (b) and ©)).

Note: The provision only applies to organizations and individuals within the organization and does not provide for independent individuals (individuals not affiliated with any such organization).

The Anti-Terrorism Amendment Act, passed in 2020, expands the legal regime established by the ATA, including by penalizing violations of UNSCR 1267. The UNSCR 1267 Guidelines, issued by Pakistan's Ministry of Foreign Affairs, moreover, stipulate that listed individuals be placed on the visa watch lists and national watch lists. 'The travel ban requires the Pakistani national authorities to:

- (i) Prevent the entry into their territories of the listed individuals, (if they are foreigners)
- (ii) Prevent the transit through their territories of the listed individuals'

There are two types of exceptions to the travel ban, and they are described in paragraph 1 (b) of Resolution 2161 (2014):

- (i) Entry of Member States' own nationals,
- (ii) Where entry or transit is necessary for the fulfillment of a judicial process.

Passport Embargo: The list of UNSC designated individuals and the 4th Schedulers is shared with the Directorate General of Immigration and Passports (IMPASS) to keep a check on issuance and renewal of their passports, if they are locals. If they are foreigners, the IMPASS along with the FIA, ensure that the entry or transit of the proscribed individuals is denied.

The names of the proscribed individuals (local) may also be placed on the ECL (Exit Control List) under the Exit from Pakistan (Control) Ordinance, 1981, read with the Exit from Pakistan (Control) Rules, 2010, disallowing them to exit or enter the country. They also require the proscribed person to execute a surety bond (three years) with the District Police Officer as a preventive measure for engagement in any terrorist activity. If the proscribed individual refuses or fails to execute a bond, the enforcement agency has the authority to take action under Section 11 EEE of the ATA. They can also place travel restrictions on the proscribed person's movement, disallowing him from moving from his permanent place of residence for the required period of time.

Sections 125 and 126 of the Pakistan Penal Code, 1860 penalize “offenses against the state,” which include waging war against any power in alliance or at peace with Pakistan and “committing depredation on territories of Power at peace with Pakistan.” This, however, does not go far enough to cover all actions or individuals as required by Security Council Resolutions.

In addition to its counterterrorism regime, Pakistan may use other domestic legislation to prevent and suppress the recruiting, organizing, transporting, equipping or travel of FTFs. For example:

The Passport Act, 1974

- Section 8: Power to Cancel, Impound or Confiscate Passport

Section 8(3): If the Federal Government has reason to believe that the person in respect of whose passport it is proposed to make an order under subsection (1) is; or has been engaged in subversive or in activities which are prejudicial to the interest of Pakistan or Pakistan's relations with any foreign power, it shall not be necessary to give such person the notice provided for in sub-section (2) or to afford him an opportunity of being heard

Note: Section 8(3) empowers the government to confiscate, impound, cancel or otherwise revoke the passport of any person (without notice in writing) who is involved or suspected to be involved in acts “subversive” or “prejudicial to the interests of Pakistan” or “[it's] relations with any foreign power”. This can be extended to the passports of foreign terrorist fighters of Pakistani nationality.

Extradition Act, 1972 (May be applicable as fugitive offenders can be labelled as FTFs. Also, offences under the Schedule of the Extradition Act can constitute as predicate offences to terrorism.).

- Section 2: Definition

Section 2 (a) defines an “extradition offence” as an offence the act or omission constituting which falls within any of the descriptions set out in the Schedule and, if it took place within, or within the jurisdiction of, Pakistan would constitute an offence against the law of Pakistan and also (i) in the case of a treaty State, an offence a person accused of which is, under the extradition treaty with that State, to be returned to or from that State; and (ii) in the case of a foreign State not being a treaty State, an offence specified in a direction issued under section 4.

Section 2(d) defines “fugitive offender” and means the person who, being accused or convicted of an extradition offence is, or is suspected to be, in any part of Pakistan.

- Section 5: Surrender of Fugitive Offenders

Section 5 (1): Every fugitive offender shall be liable to be apprehended and surrendered in the manner provided in this Act, whether the offence in respect of which his surrender is sought was committed before or after the commencement of this Act and whether or not a court in Pakistan has jurisdiction to try that offence [with exceptions mentioned in sub-section (2)].

Note: The offences listed under the Schedule can apply to situations that can be extended to constitute predicate offences or components of a terrorism offence. However, they do not cover provisions in the case of FTF. As a recommendation, there can be a clause pertaining to FTF and other offences under the ATA added to the Schedule of the Extradition Act. Or alternatively, an extradition clause can be included within the ATA (in accordance with the Extradition Act) that makes special reference to FTFs.

The Pakistan Citizenship Act, 1951 (PCA)

- Section 2: Definitions

PCA defines “alien” as “a person who is not a citizen of Pakistan”.

- Section 4: Citizenship by Birth

Persons who or any of their parents or grandparents were born in the territories now included in Pakistan before the commencement of the Citizenship Act, 1951 are citizens of Pakistan.

Any person born in Pakistan after the commencement of Pakistan Citizenship Act, 1951 is citizen of Pakistan. Children of foreign diplomats and children of enemy alien born in Pakistan are not included in this category. Persons, who migrated from territories of Pakistan to other areas of Indo-Pakistan sub-continent for permanent stay after March 1947 shall also be not considered citizens of Pakistan.

- Section 5 Citizen by Descent

Children of Pakistanis who are born outside of Pakistan are citizens by descent. If the parent of such child is a citizen by descent himself/herself (as born outside of Pakistan), the child is required to be registered in the nearest consulate or Pakistani mission.

[Prior to the passing of Ordinance No. XIII dated 18-04-2000, citizenship by descent was not applicable to children born to Pakistani mother and foreign national father. This is no longer the case and citizenship by descent applies for either parent now.]

- Section 6: Citizen by Migration

The Federal Government may register as a citizen of Pakistan by migration any person who [after the commencement of this Act and before the first day of January, 1952] has migrated to the territories now included in Pakistan from any territory in the Indo-Pakistan sub-continent outside those territories, with the intention of residing permanently in those territories.

- Section 9: Citizenship by Naturalization

The Federal Government may, upon an application made to it on behalf by any person who has been granted a certificate of naturalization under the Naturalization Act, 1926, register that person as a citizen of Pakistan by naturalization.

The Exit from Pakistan (Control) Amendment Bill, 2018 and Mutual Legal Assistance Bill, 2020 identify measures such as intelligence sharing and border control that can assist in investigations pertaining to Foreign Terrorist Fighters.

The Exit from Pakistan (Control) Amendment Bill, 2018, Exit from Pakistan (Control) Ordinance, 1981

Proposed Section [to be incorporated in the Exit from Pakistan (Control) Ordinance, 1981]: "All references against the accused involved in espionage, terrorism, or any other anti-state activities reported by the law enforcement agencies (LEAs) should be placed on ECL (Exit Control List) with immediate effect."

Note: Section 2 (1) of the Exit from Pakistan (Control) Ordinance, 1981 empowers the Federal Government via an order to prohibit any person or class of persons from proceeding from Pakistan to a destination outside Pakistan, notwithstanding the fact that such person is in possession of valid travel documents.

The Mutual Legal Assistance Act, 2020⁶⁰⁸ lays down the framework for entertaining requests by foreign governments in investigating criminal conduct. Section 3 of the Act states that the manner of MLA may be provided on the basis of a reciprocal agreement or other arrangements, and if both do not exist, then the provisions of the MLA Act will prevail. After an MLA request has been sought by Pakistan, the central authority may authorize temporary detention in Pakistan of the offender, if he has been in detention in the sending State. If found to jeopardize national security interests, or be in contrary to existing laws, on-going proceedings or human rights broadly, such requests can also be rejected (Section 17). While this can be used to target FTFs, it must be noted that the legislation does not mention FTFs directly.

Mutual Legal Assistance (Criminal Matters) (MLA) Bill, 2020⁶⁰⁹

- Section 2: Definitions

Section 2 (l) of the Act defines "criminal offence" as anything punishable "under the Pakistan Penal Code, 1860 or under any law of Islamic Republic of Pakistan." This can include legislations such as the Anti-Terrorism Act, 1997, etc.

- Section 4: Functions of Central Authority

Section 4 of the MLA Act details the functions of a newly created central authority that will serve as the epicenter for the dissemination and receipt of mutual legal assistance requests and is empowered to:

Section 4(a):

Make a request on behalf of Islamic Republic of Pakistan to the appropriate authority of a country for mutual legal assistance in any investigation commenced, or proceedings instituted in Islamic Republic of Pakistan relating to a criminal offence committed, or suspected on reasonable ground; to have been committed within or outside Islamic Republic of Pakistan;

Section 4(b):

Receive and deal with requests received from the appropriate authority of a country for mutual legal assistance in any investigation commenced, or proceedings instituted in that country relating to an offence committed, or suspected on reasonable grounds to have been committed within or outside that country.

⁶⁰⁸ Mutual Legal Assistance Act, 2020 (XXII of 2020).

⁶⁰⁹ It has been passed by the National Assembly (NA) and the Senate with amendments which are pending discussion at the NA.

- Section 5: Transmission of Information

Section 5 (a): Where the central authority considers it expedient, it may initiate transmitting of any information relating to criminal matters confidentially to the appropriate authority in a country concerned with such criminal matters, without prior request by that country.

11.4. CHALLENGES AND SPECIAL CONSIDERATIONS

a. Definitional Concerns

The fundamental principle of legality and certainty in the law is put under strain by terms that are vague and uncertain in scope. Although enshrined in UNSCR 2178 (2014), the definition and scope of the term “foreign terrorist fighters” remains controversial, in part due the vagueness of its constituent terms (“foreign”, “terrorist”, and “fighter”) as well as the terms “terrorist acts” and “terrorist training” used in the definition of FTFs in UNSCR 2178 (2014).

First, UNSCR 2178 (2014) associates the term “foreigner” with individuals who “travel to a State other than their States of residence or nationality”. In line with basic principles of international law, however, dual nationals or persons with important personal, social, cultural and family links to States, beyond formal residence or nationality, should not be considered “foreigners” for this purpose when they travel to a State with which they have relevant links.⁶¹⁰ For example, a British citizen who was born in the United Kingdom to Pakistani parents, who lives in the UK and has never taken steps to register or benefit from Pakistani citizenship but who travels with her family to Pakistan every year, should arguably not be considered a “foreigner” in Pakistan for purposes of UNSCR 2178 (2014).

Second, there is no internationally agreed definition of the term “terrorist” or “terrorism”. Provisions on “foreign terrorist fighters” commonly cover travel to support “terrorist organizations” and entities but does not address how that qualification is made and by whom. It does not, however, appear to be limited to travelling to join or support groups specifically designated or listed as “terrorist” by the UN or regional groupings such as the EU. Absent an international definition of terrorism, it is crucial that the definitions of terrorism used by national authorities be clear and confined to conduct that might, in the words of the UN Special Rapporteur on counterterrorism, be of a “genuinely terrorist nature”. Several international actors have therefore recommended that the FTF label be confined to those who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in acts that meet the core elements of “terrorism” set forth in UNSCR 1566 (2004). Based on UNSCR 1566 (2004), the UN Special Rapporteur recommends that terrorist offences be confined to:

- (1) Acts committed with the intention of causing death or serious bodily injury, or the taking of hostages;
- (2) For the purpose of provoking a state of terror, intimidating a population, or compelling a government or international organization to do or abstain from a specific act; and that
- (3) Constitute offences under the international conventions and protocols related to terrorism.⁶¹¹

The designation of individuals as FTFs should also be based on what individuals themselves have done, or intended to do, and not on the deemed nature, or designation, of a group or a cause which they are deemed to support.⁶¹²

Finally, while FTF-related provisions refer to “fighters”, the FTF definition in UNSCR 2178 includes, but is not confined, to armed conflicts, and its provisions reach travelers who engage in non-combat roles abroad, as well as a much broader web of individuals deemed to support, facilitate or encourage such travel. It also conveys the intention to address participation in armed conflict, while covering civilians who do not engage in “direct participation in hostilities” and therefore enjoy general protection under humanitarian law.⁶¹³

b. Intersection with International Humanitarian Law

States must interpret their FTF obligations under UNSCRs 2178 (2014) and 2396 (2017) consistently with international humanitarian law (IHL), and not undermine the operation or effectiveness of IHL.⁶¹⁴ This, however, is made complicated by the express terms of the Resolution. Whereas many Terrorism Suppression Conventions include

610 OSCE Office for Democratic Institutions and Human Rights (ODIHR), Guidelines for Addressing the Threats and Challenges of “Foreign Terrorist Fighters” within a Human Rights Framework (2018), p. 22.

611 OSCE Office for Democratic Institutions and Human Rights (ODIHR), Guidelines for Addressing the Threats and Challenges of “Foreign Terrorist Fighters” within a Human Rights Framework (2018), p. 22-23.

612 OSCE Office for Democratic Institutions and Human Rights (ODIHR), Guidelines for Addressing the Threats and Challenges of “Foreign Terrorist Fighters” within a Human Rights Framework (2018), p. 24.

613 OSCE Office for Democratic Institutions and Human Rights (ODIHR), Guidelines for Addressing the Threats and Challenges of “Foreign Terrorist Fighters” within a Human Rights Framework (2018), p. 24.

614 OSCE Office for Democratic Institutions and Human Rights (ODIHR), Guidelines for Addressing the Threats and Challenges of “Foreign Terrorist Fighters” within a Human Rights Framework (2018), p. 24.

clauses that expressly exclude acts governed by international humanitarian law,⁶¹⁵ UNSCR 2178 (2014) defines “foreign terrorist fighters” to include those who travel for the purpose of perpetrating, planning, or preparing, or participating in, terrorist acts or providing or receiving terrorist training, in connection with an armed conflict.

This has raised concerns regarding the conflation of terrorism with armed conflicts covered by international humanitarian law. According to the Geneva Academy, for example,

“The effect of the resolution is to criminalize the travel, or attempted travel, by foreign fighters to ‘terrorist groups’ that are also parties to an armed conflict. Although it must be incorporated in domestic law, this obligation is based in international law, namely a Security Council resolution; but it is inconsistent with IHL. As a result, IHL and the international legal framework that governs the prevention and suppression of terrorist acts are in collision. IHL does not criminalize participation in hostilities by individuals without combatant immunity; now, in the absence of a definition of terrorism, joining an armed group and acquiring the skills to use explosives and weapons during an armed conflict may be considered to amount to participating in terrorist acts or receiving terrorist training.”⁶¹⁶

The International Committee of the Red Cross (ICRC) condemns acts of terrorism regardless of their perpetrators and, whether or not they are committed in the context of an armed conflict, but it has also expressed concern about the humanitarian consequences of certain counterterrorism operations. In many contexts, especially in Africa, the Middle East and Asia, counterterrorism operations have been conducted in the context of armed conflicts. The ICRC has expressed concern regarding the frequently held misperception that IHL does not apply, or applies in a modified manner, to groups or persons designated as terrorists and their families.⁶¹⁷

The ICRC and others have underscored the importance of clarifying the distinction between the international counterterrorism and humanitarian law regimes to preserve the proper functioning of IHL.⁶¹⁸ A basic principle of IHL is that those engaged in an armed conflict must at all times distinguish between civilians and combatants and between civilian objects and military objectives. IHL thus prohibits deliberate or direct, as well as indiscriminate attacks on civilians or civilian structures. The use of human shields or hostage taking are similarly proscribed.

“Terrorism” committed during an armed conflict constitutes a war crime under the Fourth Geneva Convention and the Additional Protocols. IHL proscribes acts of terrorism against civilians in the hands of the adversary, as well as spreading terror among the civilian population by parties to an armed conflict in the conduct of hostilities.⁶¹⁹ Article 33 of the 1949 Geneva Convention IV prohibits ‘[c]ollective penalties and likewise all measures of intimidation or terrorism’ against protected persons by combatants in an international armed conflict. Article 4(2)(d) of Additional Protocol II, applicable to non-international armed conflicts, also prohibits ‘acts of terrorism’, which ‘covers not only acts directed against people, but also acts directed against installations which would cause victims as a side-effect’. This protects members of the armed forces or armed groups who are no longer participating in hostilities. The two Additional Protocols also prohibit ‘acts or threats of violence the primary purpose of which is to spread terror among the civilian population’.⁶²⁰ This prohibition enjoys customary status in both international and non-international armed conflicts.⁶²¹ The International Criminal Tribunal for the Former Yugoslavia convicted Stanislav Galić for unlawfully inflicting terror on the civilian population by conducting a shelling and sniping campaign in the city which was indiscriminate and disproportionate.⁶²² These prohibitions, which refer to acts the sole purpose of which is to intimidate civilians, are additional to the IHL rules aimed at protecting civilian life and property more generally.⁶²³

A crucial difference between IHL and the legal regime governing terrorism is that IHL is based on premise that certain acts of violence in war – against military objectives and personnel – are not prohibited, even if they would be considered “terrorism” during peacetime.⁶²⁴ Under the principle of distinction, the parties to the conflict must at all times distinguish between civilians and civilian objects and combatants and military objectives. Attacks may only be directed

615 Article 19(2) of the Terrorist Bombing Convention states that “The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law, are not governed by this Convention...” The use of the term armed forces here is understood to refer to both state and non-state forces. The combination of Articles 2(1)(a) and 21 of the Terrorist Financing Convention has the same effect. Furthermore, the Framework Decision of the EU on terrorism, and a text supported by the Western group for inclusion in the Comprehensive Convention on Terrorism, both state that, in an armed conflict, IHL regulates conduct of armed forces and not these agreements.

616 Geneva Academy of International Humanitarian Law and Human Rights, Foreign Fighters under International Law, Academy Briefing No. 7 (October 2014)

617 International Committee of the Red Cross, International Humanitarian Law and the Challenges of Contemporary Armed Conflicts: Recommitting to Protection in Armed Conflict on the 70th Anniversary of the Geneva Conventions (2019), p. 58.

618 OSCE Office for Democratic Institutions and Human Rights (ODIHR), Guidelines for Addressing the Threats and Challenges of “Foreign Terrorist Fighters” within a Human Rights Framework (2018), p. 24.

619 International Committee of the Red Cross, Challenges for IHL – terrorism: overview (29 October 2010), available at: <https://www.icrc.org/en/document/challenges-ihl-terrorism>.

620 Art. 51(2), Additional Protocol I and Art. 13(2), Additional Protocol II

621 ICRC Customary IHL, Rule 2

622 Prosecutor v Galić, Appeals Chamber Judgment, Case. No. IT-98-29-A, 30 November 2006

623 International Committee of the Red Cross, Challenges for IHL – terrorism: overview (29 October 2010), available at: <https://www.icrc.org/en/document/challenges-ihl-terrorism>.

624 International Committee of the Red Cross, Challenges for IHL – terrorism: overview (29 October 2010), available at: <https://www.icrc.org/en/document/challenges-ihl-terrorism>.

against combatants and military objectives and must not be directed against civilians or civilian objects. Any direct and deliberate targeting of civilians or civilian objects are criminalized as war crimes under the law of armed conflict, regardless of the person's status. The two legal regimes should not be blurred given the different logic and rules that apply. This is particularly important in situations of non-international armed conflict, where a "terrorist" designation may act as an additional disincentive for organized armed groups to respect IHL (they are already subject to criminal prosecution under domestic law).⁶²⁵

IHL distinguishes between international armed conflicts (IACs) and non-international armed conflicts (NIACs). An international armed conflict occurs when there is:

- A resort to force between States;
- A partial or total occupation of one state's territory by another State, even if the occupation meets with no armed resistance; or
- A conflict between people fighting against colonial domination and alien occupation against racist regimes in exercise of their right to self-determination.

Non-international armed conflicts occur within the territory of a single State, between its armed forces and dissident armed forces or other organized armed groups. It does not, however, include internal disturbances and tensions such as riots or isolated and sporadic acts of violence. The existence of a NIAC is determined by there being protracted armed violence by an armed group which is sufficiently organized to conduct hostilities.⁶²⁶

A person's primary status under IHL is based on the distinction between combatants and civilians. The status of individuals in IHL determines their right to participate in hostilities, the applicable criminal law framework and their secondary status upon capture by the adversary.

- A combatant is an individual belonging to the armed forces who has the right to participate in hostilities.⁶²⁷ Combatants enjoy immunity against prosecution for crimes that would otherwise be common criminal offences in times of peace (such as murder), unless they amount to war crimes, and are also permitted special treatment (Prisoner of War status) if they fall into the hands of the adversary.⁶²⁸
- A civilian is defined in the negative as a person who does not qualify as a combatant.⁶²⁹ A civilian enjoys special protection under IHL. It is prohibited to make civilians the direct object of attacks "unless and for such a time as they take direct part in hostilities".⁶³⁰ Civilians who fall into the hands of a party to a conflict are protected persons, provided they are not nationals of that party.⁶³¹ Moreover, nationals of a neutral or co-belligerent State are excluded from enjoying protected person status provided their country enjoys diplomatic relations with the State that holds them.

While combatants in an IAC have the right to directly participate in hostilities, members of a State's armed forces fighting in a NIAC and fighters, whether from organized armed groups of non-state actors or civilians taking part in hostilities, do not have this privilege. The IHL law applicable to NIACs is contained in Common Article 3 of the Geneva Conventions and Additional Protocol II to the Geneva Conventions. Neither contain provisions rendering combatancy lawful in a NIAC. Common Article 3 provides that "each Party to the conflict" must afford protection to "persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat".

There is no entitlement to POW or protected person status on capture in a NIAC. Fighters are also subject to domestic criminal law, although Additional Protocol II (which is also customary) contains a provision advising State authorities to endeavour to grant the broadest possible amnesty to persons who have participated in a NIAC.⁶³² This does not include persons suspected of, accused of, or sentenced for war crimes.

According to the Geneva Academy of International Humanitarian Law and Human Rights, "A foreign fighter is an individual who leaves his or her country of origin or habitual residence to join a non-State armed group in an armed conflict abroad and who is primarily motivated by ideology, religion, and/or kinship."⁶³³ "Foreign fighter", however, is not

625 International Committee of the Red Cross, Challenges for IHL – terrorism: overview (29 October 2010), available at: <https://www.icrc.org/en/document/challenges-ihl-terrorism>.

626 Prosecutor vs. Dusko Tadic (Appeal Judgement), IT-94-1-A, (ICTY), 15 July 1999.

627 As defined in Article 4, Third Geneva Convention and Article 43 Additional Protocol I.

628 Pursuant to Article 4, Third Geneva Convention and Articles 43-44 Additional Protocol I.

629 Article 50, Additional Protocol I.

630 Article 51(3) and 52 Additional Protocol I and Customary International Humanitarian Law Rule 6, ICRC.

631 Article 4, Fourth Geneva Convention.

632 Article 6(5), Additional Protocol II and Customary Rule 159, ICRC.

633 Geneva Academy of International Humanitarian Law and Human Rights, "Foreign Fighters under International Law", Academy Briefing No. 7 (October 2014). At

a term of art in IHL. There are no rules under IHL dealing explicitly with foreign fighters or their families. IHL deals with these individuals as it does with any other person involved in or affected by armed conflict. It governs the actions of foreign fighters and their families, as well as any measures taken by States in relation to them, when these actions and measures are taken in the context of an ongoing armed conflict. Therefore, the applicability of IHL to a situation of violence in which foreign fighters and their families are present depends on whether the criteria for the existence of an armed conflict, in particular those set out in Articles 2 and 3 common to the 1949 Geneva Conventions, are met.⁶³⁴

When foreign fighters are engaged in military operations, relevant IHL rules on the conduct of hostilities govern their conduct. They are thus subject to the same IHL principles and rules that bind any other belligerent in the conduct of their military operations. When foreign fighters and their families are in the power of a belligerent, notably when deprived of their liberty, they must benefit from the same protection provided by IHL rules as any other person in such a situation. Accordingly, in non-international armed conflicts, common Article 3 and customary IHL – as well as Additional Protocol II as applicable – will govern their treatment.⁶³⁵

The designation of foreign fighters and their families as “terrorists”, as well as any perception that they pose an exceptional security threat, have no bearing on the applicability and application of the relevant IHL rules, including those containing the protection to which these individuals are entitled. At the same time, IHL in no way prevents States from prosecuting foreign fighters for violations of law that they may have committed in relation to an armed conflict, including terrorism as a war crime.⁶³⁶

The fact that IHL applies to foreign fighters and their families during armed conflict does not mean that IHL applies to all security measures taken by States against these persons. Only States that are parties to the armed conflict in which foreign fighters and their families are involved are bound by IHL. IHL rules in relation to foreign fighters and their families apply first of all in the territory in which armed conflict is taking place. In addition, the ICRC submits that IHL also applies throughout the territories of all the States involved in a non-international armed conflict extraterritorially, even if hostilities related to that conflict are not taking place in their territory. In the ICRC's view, foreign fighters and their families who are in the territory of these intervening States (notably through transfer or repatriation) benefit from the protection afforded by the applicable IHL rules – including those governing detention, family contact, and the special protection of children – in addition to applicable domestic and human rights law. In other words, FTFs from countries that participated militarily in the U.S.-led coalition against Daesh in Iraq and Syria who return to those countries from the conflict zones should benefit from IHL upon their return. In any other situation, measures against foreign fighters and their families taken by States that are not party to an armed conflict are governed by other bodies of law, notably human rights law. All States must ensure that their counterterrorism activities and security measures against persons designated as foreign fighters and their next of kin – including prosecution and deprivation of liberty – comply with the relevant international laws and standards.⁶³⁷

c. Implications for Humanitarian Actors

Counterterrorism measures adopted by States and international organizations should not contradict the humanitarian principles that States have supported politically or endorsed through IHL treaties, nor hinder impartial humanitarian organizations from carrying out their activities in a principled manner.⁶³⁸ Unfortunately, measures to counter the threat from FTFs have been shown to impact negatively on humanitarian actors, by impeding their engagement with certain groups, and thereby their ability to gain access to civilian populations in some areas; subjecting humanitarian personnel to new or heightened restrictions on travel that make their work practically impossible; or increasing intelligence-gathering activities in affected regions, which can undermine humanitarian actors' relationships with local communities and partner organizations.⁶³⁹ This is particularly true in areas where armed groups designated as “terrorists” are active and principled humanitarian action is most needed. Indeed, in some contexts, counterterrorism measures have prevented humanitarian relief and protection from reaching those most in need.⁶⁴⁰

https://www.geneva-academy.ch/joomlatools-les/docman-les/Publications/Academy%20Briefings/Foreign%20Fighters_2015_WEB.pdf

634 International Committee of the Red Cross, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts: Recommitting to Protection in Armed Conflict on the 70th Anniversary of the Geneva Conventions* (2019), p. 61-62.

635 International Committee of the Red Cross, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts: Recommitting to Protection in Armed Conflict on the 70th Anniversary of the Geneva Conventions* (2019), p. 62.

636 International Committee of the Red Cross, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts: Recommitting to Protection in Armed Conflict on the 70th Anniversary of the Geneva Conventions* (2019), p. 62.

637 International Committee of the Red Cross, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts: Recommitting to Protection in Armed Conflict on the 70th Anniversary of the Geneva Conventions* (2019), p. 62.

638 International Committee of the Red Cross, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts: Recommitting to Protection in Armed Conflict on the 70th Anniversary of the Geneva Conventions* (2019), p. 60.

639 OSCE Office for Democratic Institutions and Human Rights (ODIHR), *Guidelines for Addressing the Threats and Challenges of “Foreign Terrorist Fighters” within a Human Rights Framework* (2018), p. 26-27.

640 International Committee of the Red Cross, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts: Recommitting to Protection in Armed Conflict on the 70th Anniversary of the Geneva Conventions* (2019), p. 59.

In legal terms, counterterrorism measures that impede principled humanitarian action are incompatible with the letter and spirit of IHL. This includes measures that criminalize engagement with non-State armed groups designated as “terrorist”; presence in areas where these groups are active; or delivery of medical services to wounded or sick members of such groups. Such prohibitions are incompatible with three areas of IHL: the rules governing humanitarian activities, including the entitlement of impartial humanitarian organizations to offer their services and the obligation to allow and facilitate the relief activities undertaken by such organizations; the rules protecting the wounded and the sick as well as those providing medical assistance, notably the prohibition against punishing a person for performing medical duties in line with medical ethics; and the rules protecting humanitarian personnel.⁶⁴¹ The ICRC has expressed public concern regarding penal laws that criminalize any form of support to individuals or groups designated as “terrorists”, which can have the effect of criminalizing humanitarian assistance, as well as sanctions regimes aimed at ensuring that no resources benefit designated “terrorist” individuals and groups and ever stricter and more cumbersome counterterrorism clauses in funding agreements between donors and humanitarian organizations.⁶⁴²

Recent instruments, such as UNSCR 2462 (2019), include “humanitarian exemptions”, which exclude exclusively humanitarian activities undertaken by impartial humanitarian organizations, such as the ICRC, from the scope of counterterrorism measures. These exemptions have proved effective in preserving humanitarian activities in line with the letter and spirit of IHL. They also demonstrate that fighting terrorism and preserving IHL and humanitarian activities are perfectly compatible.⁶⁴³

d. Human Rights Considerations

UNSCRs 2178 (2014) and 2396 (2017) require UN Member States to implement the provisions of the resolutions consistent with their obligations under international human rights law. The resolutions, however, provide little to no guidance on how to do so, and notwithstanding the terms of the resolutions, in practice, far greater emphasis seems to be placed on repressive and punitive approaches than on preventive or rehabilitative ones.⁶⁴⁴

Measures to prevent radicalization to terrorism and recruitment of foreign terrorist fighters; prevent foreign terrorist fighters from crossing State borders; disrupt and prevent financial support to FTFs; and develop and implement prosecution, rehabilitation and reintegration strategies for returning FTFs can infringe on a number of fundamental human rights, including but not limited to freedom of expression; freedom of association; freedom of movement; freedom of thought, conscience, religion and belief; fair trial standards, including the presumption of innocence and the right to legality and certainty in criminal law; freedom from torture and cruel, inhuman and degrading treatment or punishment; non-refoulement; the right to liberty; the rights to work and to pursue an education; and the right to equality and non-discrimination. Other issues arise in cases involving women and children. For example, the UN Convention on the Rights of the Child (CRC) is the most widely ratified human rights convention in the world, with almost universal ratification by 196 States Parties. The CRC rests on the cardinal principle that actions and decisions affecting children should reflect the “best interest of the child”. In counterterrorism, however, the focus appears to have shifted towards children being potential threats. This approach risks neglecting the “best interest of the child”.⁶⁴⁵

To ensure that measures to prevent and suppress recruiting, organizing, transporting or equipping FTFs or financing their travel are consistent with international human rights law, the Organization for Security and Cooperation in Europe recommends the following:

- No circumstances can justify interference with absolute rights. Measures that impinge on absolute rights are not permissible under any circumstances. Such rights include that no-one shall be held guilty for a criminal offence on account of an act or omission not constituting a criminal offence at the time when it was committed (no punishment without law), the presumption of innocence and other core aspects of the right to a fair trial, as well as core aspects of the right to liberty, the right to have or adopt a religion or belief and the right to hold opinions without interference, the right to equality and non-discrimination and the prohibition of torture and other ill-treatment.

641 International Committee of the Red Cross, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts: Recommitting to Protection in Armed Conflict on the 70th Anniversary of the Geneva Conventions* (2019), p. 60.

642 International Committee of the Red Cross, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts: Recommitting to Protection in Armed Conflict on the 70th Anniversary of the Geneva Conventions* (2019), p. 60.

643 International Committee of the Red Cross, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts: Recommitting to Protection in Armed Conflict on the 70th Anniversary of the Geneva Conventions* (2019), p. 60.

644 OSCE Office for Democratic Institutions and Human Rights (ODIHR), *Guidelines for Addressing the Threats and Challenges of “Foreign Terrorist Fighters” within a Human Rights Framework* (2018), p. 29.

645 OSCE Office for Democratic Institutions and Human Rights (ODIHR), *Guidelines for Addressing the Threats and Challenges of “Foreign Terrorist Fighters” within a Human Rights Framework* (2018), p. 69.

- Emergency measures must be exceptional, time-limited in their operation and effect, and justified by the stringent test laid down in international human rights law. States can only derogate from their obligations under international human rights standards where there is an “emergency threatening the life of the nation”. The measures adopted pursuant to an emergency must be strictly limited to what is necessary pursuant to the exigencies of the particular situation and can never be discriminatory in their application. Moreover, while the duration of emergencies may vary, they are, by definition, temporary and exceptional. The exceptional measures invoked pursuant to them must also be temporary and subject to review.
- Restrictions of those rights that allow for limitations must be prescribed in law, be necessary and proportionate as well as non-discriminatory. They must be provided for by law, must not exceed necessary limitations, and must be minimized wherever possible and be proportionate to a legitimate aim. Limitations to rights must be justified by the necessity and proportionality of the particular measure, based on a specific risk assessment of the individual case and context.
- Targeted case-by-case approach: The human rights law framework requires a targeted approach, and rejects “one size fits all” solutions.
- Violations must be met with suitable remedies and accountability: Legal remedies for those alleging violations, as well as full and effective reparation for those whose rights have been violated, make an essential contribution to learning from mistakes and shaping lawful responses for the future.⁶⁴⁶

e. Challenges in Proving Intent

The definition of “foreign terrorist fighters” contained in UNSCR 2178 (2014) includes an element of intent – FTFs are defined as individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, including in connection with armed conflict. It's not always easy to prove intent, however – particularly before a person actually joins a terrorist organization in a conflict zone. Many individuals claim that the purpose of their travel is to provide humanitarian aid in destination countries. Another complicating factor is the diffuse structure of terrorist networks, which often makes the link between the individual planning to travel and the organization very tenuous.⁶⁴⁷ The international guidance available to States can further confuse the issue. The Hague-Marrakech Memorandum, for example, states that “while some FTFs are radicalized to violent extremism prior to departure from their countries, others become radicalized to violent extremism while fighting or upon their return.”⁶⁴⁸ Radicalization while fighting or upon return seems at odds, however, with the plain language of UNSCR 2178 (2014), which requires an FTF to have the intent to prepare, plan, prepare, or participate in terrorist acts or terrorist training at the time of travel.

Establishing intent is particularly important for prosecution. While evidence of intent may be available from an FTF's communications with family or friends or online activity,⁶⁴⁹ in other cases prosecutors may need to use circumstantial evidence to prove intent. For example, authorities may have information that a whole family is illegally relocating abroad, having sold their various properties, and have deliberately not applied for visas. While that information would not be a sufficient basis for a prosecution, it could supplement other evidence to show the real intentions of the accused.⁶⁵⁰ At the same time, prosecutors can and have exposed the falsehood of suspects' stated purpose to travel for tourism by proving that they have sold all family property before attempting to leave the country. The sudden sales of property for lower than the market value of those assets in such cases could provide corroborating evidence of the intent to travel abroad for a different purpose, such as to join a terrorist organization.⁶⁵¹ In other cases, investigative authorities have been able to use irregular trip plans as the basis for further inquiry into the real reasons for travel.⁶⁵² Similarly, financial investigations, including the investigation of financial crimes, can assist in exposing individuals' intentions. For example, in some cases, the cost of travel may be equivalent to a few months' salary and many would-be FTFs do not have the money to travel themselves. Vulnerable persons of low income and without a steady job may obtain money from others, and that money may originate from financiers abroad. Such funding can be tracked. In some cases, prosecutors have been able to identify the sources of such monies. In other cases, individuals commit crimes such as fraud, theft, tax evasion and money-laundering as they prepare to travel.⁶⁵³

646 OSCE Office for Democratic Institutions and Human Rights (ODIHR), Guidelines for Addressing the Threats and Challenges of “Foreign Terrorist Fighters” within a Human Rights Framework (2018), p. 32-33.

647 United Nations Security Council, Bringing terrorists to justice: challenges in prosecutions related to foreign terrorist fighters, S/2015/123 Annex (February 2015), ¶125.

648 Global Counterterrorism Forum, The Hague – Marrakech Memorandum on Good Practices for a More Effective Response to the FTF Phenomenon, (14 September 2019), p. 2.

649 United Nations Security Council, Bringing terrorists to justice: challenges in prosecutions related to foreign terrorist fighters, S/2015/123 Annex (February 2015), ¶126.

650 United Nations Security Council, Bringing terrorists to justice: challenges in prosecutions related to foreign terrorist fighters, S/2015/123 Annex (February 2015), ¶128.

651 United Nations Security Council, Bringing terrorists to justice: challenges in prosecutions related to foreign terrorist fighters, S/2015/123 Annex (February 2015), ¶131.

652 United Nations Security Council, Bringing terrorists to justice: challenges in prosecutions related to foreign terrorist fighters, S/2015/123 Annex (February 2015), ¶128.

653 United Nations Security Council, Bringing terrorists to justice: challenges in prosecutions related to foreign terrorist fighters, S/2015/123 Annex (February 2015), ¶131.

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APPENDIX A – MODEL MUTUAL LEGAL ASSISTANCE REQUESTS

MLAR for Witness Evidence

MLAR for Suspect Questioning

MLAR for Telephone Evidence

MLAR for Electronic Evidence

MLAR for Interception of Telecommunications

MLAR for Recording Device

MLAR for Tracking Device

MLAR for Undercover Officer

MLAR for Controlled Delivery

MLAR for Fingerprints and/or DNA

MLAR for a Search Warrant or Production Order

MLAR for an Account Monitoring Order

MLAR for Banking Evidence

MLAR for Certified Conviction and/or Judgement

MLAR for Service of Documents

MLAR for Urgent Freeze Order

MLAR for Freeze Order in Requested State Before Issuance of Requested State's Freeze Order

MLAR for Registration of Freeze Order

MLAR for Registration of Pre-Charge Freeze Order

MLAR to Enforce an Attachment Order

MLAR FOR WITNESS EVIDENCE

Date

Reference

Dear Sir or Madam

Operation X

Insert Name of Defendant/s or Suspect/s

I am [insert name and job title] from [insert agency] and I am designated to transmit this letter by the [insert designating authority and any relevant enabling legislation]

Urgent

If it is an urgent request, include details of why (e.g. destruction of evidence) and any dates when the evidence is required by.

Basis of the Request

I make this request pursuant to [Insert Treaty, convention etc - i.e. UNTOC example that follows is for UNTOC] The United Nations Convention against Transnational Organized Crime, and the Protocols thereto done at Palermo in 2000 and ratified by [Insert Requested State] on [insert date]. This Request recognises the principles of reciprocity and mutuality between [Insert Requested State] and [Insert Requested State]

Purpose of the Request

This is a request for evidence to be used in the prosecution (including any related freeze, attachment or forfeiture and enforcement proceedings and any related ancillary proceedings) of the following

[List All]

SUBJECT	DATE OF BIRTH	PLACE OF BIRTH	NATIONALITY	ADDRESS

The above is/are the subject of a criminal investigation being conducted by [insert name of investigating Law Enforcement Agency] and a criminal prosecution being conducted by the [insert name of prosecuting agency] for offences of [insert offences, relevant statute and maximum sentences].

Relevant Law

Please find appended this mutual legal assistance request an annex of the applicable [insert Requested State] Law at Annex A.

[insert if required]

Confidentiality

In order not to prejudice the investigation, I request that no person (including any of the above subjects) is notified by the competent authorities in your country of the existence and contents of this mutual legal assistance request, and any action taken in response to it. I further request that action is taken to ensure that any person from whom evidence is sought does not so notify any other person.

The reasons for requesting confidentiality is because it is feared that, if the above subjects or an associated party became aware of the existence of this request or of action taken in response to it, it could potentially compromise the investigation or parties involved in it. **[Insert how this is justified – e.g. any supporting information of destruction of evidence?]**

[If it is not possible to preserve confidentiality in the above manner, please notify me prior to executing this mutual legal assistance request.]

Summary of Facts and History of Proceedings

[Insert the following:

1. A brief chronology of the investigation/proceedings to date [include when charged and when any trial date is fixed].
2. A summary of the evidence in support of the investigation/charges.
3. Outline for what evidence each witness will provide that is relevant to the offence alleged.]

Assistance Requested and Preferred Form of Evidence

1. To obtain a written statement from [insert name]. The statement should address the matters set out below. If the maker of the statement includes in the statement information that is obtained from others, the source of the information should be stated. Please, could the witness sign and date the statement and state that the contents of the statement are true to the best of the maker's knowledge and belief. If the person making the statement is under 18 that person should state their age.
2. Please, would the maker of the statement produce the following documents as exhibits to their statement [insert list]

Form which it is Requested Evidence is Taken

Confirm format of evidence and attach a blank copy of format in an annex

Compelling a Witness

Following paragraph can be used as a Model

It is requested that a subpoena or other court order necessary is obtained and served on the witness at [insert last known address] to compel attendance to give testimony under oath or affirmation on [insert date and location]

General Considerations the drafter may want to include

1. To provide contact details for each witness and ask each witness whether they would be willing to give evidence in the [x Country], or via video link from their country, including any dates in which they would be unavailable.
2. To advise whether it is possible to arrange for the evidence of the witness(es) to be given via video link and details of the appropriate person to contact to make arrangements
3. To invite [xxx] to attend a voluntary interview in order to establish whether [xxx]. A list of the questions to be asked, which is not intended to be exhaustive, is attached at Annex B

Make it clear to the Requested State if the person is a suspect or whether unsure as to their status even if no intention to bring proceedings against them.

If there is a possibility of prosecuting the interviewee at a later stage, consider the following:

Suspects

1. It is requested that [insert name] be interviewed as a suspect. Include any specific requests that will ensure the procedure is compliant with the Requested States process for example: Please ensure that the interview should be tape recorded and copies of the tapes provided to me.
2. Include a paragraph or annex listing the questions to be asked of the suspect
3. Include a request for all officers of Requested State attending the interview to provide a witness statement confirming their role and producing any written or recorded copies of the interview

Reciprocity

I confirm that the assistance requested above may be obtained under current **[insert Requested State]** law if in a like case a request for such assistance were made to the authorities in **[insert Requested State]**

Transmission of Documents

It is requested that any documents or other correspondence are sent to me at the above address and that you notify me as to any need to return any documents at the conclusion of the proceedings in the **[insert Requested State]**.

When you send the evidence, please also email **[insert email address]** to confirm that the evidence has been sent. This will enable me to make enquiries to locate the evidence if it is not received within a few days.

Contacts

The appropriate person to contact in the event of any query about this request is the case lawyer

Name	[insert name of Prosecutor]
Address	[insert]
Email	[insert]
Direct telephone number	[insert]
Fax number	[insert]
Languages spoken	[insert]

or the Investigator, on telephone number: **[insert]** or by e-mail at **[insert]**.

I would be grateful if you would keep the case lawyer and Investigator generally informed as to the progress of this request.

Should you consider that the presence of the Investigator in your country would be helpful in the execution of this mutual legal assistance request, I would be grateful if you could inform the case lawyer.

I extend my thanks in anticipation of your valued co-operation and assistance in this matter.

Yours faithfully

MLAR FOR SUSPECT QUESTIONING

Date

Reference

Dear Sir or Madam

Operation XInsert Name of Defendant/s or Suspect/s

I am [insert name and job title] from [insert agency] and I am designated to transmit this letter by the [insert designating authority and any relevant enabling legislation]

Urgent

If it is an urgent request, include details of why (e.g. destruction of evidence) and any dates when the evidence is required by.

Basis of the Request

I make this request pursuant to [Insert Treaty, convention etc - i.e. UNTOC example that follows is for UNTOC] The United Nations Convention against Transnational Organized Crime, and the Protocols thereto done at Palermo in 2000 and ratified by [Insert Requested State] on [insert date]. This Request recognises the principles of reciprocity and mutuality between [Insert Requested State] and [Insert Requested State]

Purpose of the Request

This is a request for evidence to be used in the prosecution (including any related freeze, attachment or forfeiture and enforcement proceedings and any related ancillary proceedings) of the following

[List All]

SUBJECT	DATE OF BIRTH	PLACE OF BIRTH	NATIONALITY	ADDRESS

The above is/are the subject of a criminal investigation being conducted by [insert name of investigating Law Enforcement Agency] and a criminal prosecution being conducted by the [insert name of prosecuting agency] for offences of [insert offences, relevant statute and maximum sentences].

Relevant Law

Please find appended this mutual legal assistance request an annex of the applicable [insert Requested State] Law at Annex A.

[insert if required]

Confidentiality

In order not to prejudice the investigation, I request that no person (including any of the above subjects) is notified by the competent authorities in your country of the existence and contents of this mutual legal assistance request and any action taken in response to it. I further request that action is taken to ensure that any person from whom evidence is sought does not so notify any other person.

The reasons for requesting confidentiality is because it is feared that, if the above subjects or an associated party became aware of the existence of this request or of action taken in response to it, it could potentially compromise the investigation or parties involved in it. **[Insert how this is justified – e.g. any supporting information of destruction of evidence?]**

If it is not possible to preserve confidentiality in the above manner, please notify me prior to executing this mutual legal assistance request.]

Summary of Facts and History of Proceedings

[Insert the following:

1. A brief chronology of the investigation/proceedings to date [include when charged, and when any trial date is fixed].
2. A summary of the evidence in support of the investigation.
3. Confirm why the suspect will have knowledge of matters relevant to determining whether an offence was committed by him or her.

Assistance Requested and Preferred Form of Evidence

1. It is requested that [insert name] be interviewed as a suspect. **Include any specific requests that will ensure the procedure is compliant with the Requested States process and a format so admissible - for example:** Please ensure that the interview should be tape recorded and copies of the tapes provided to me.
2. **Include a paragraph or annex listing the questions to be asked of the suspect**
3. **Include a request for all officers of Requested State attending the interview to provide a witness statement confirming their role and producing any written or recorded copies of the interview**

Reciprocity

I confirm that the assistance requested above may be obtained under current [insert Requested State] law if in a like case a request for such assistance were made to the authorities in [insert Requested State]

Transmission of Documents

It is requested that any documents or other correspondence are sent to me at the above address and that you notify me as to any need to return any documents at the conclusion of the proceedings in the [insert Requested State].

When you send the evidence, please also email [insert email address] to confirm that the evidence has been sent. This will enable me to make enquiries to locate the evidence if it is not received within a few days.

Contacts

The appropriate person to contact in the event of any query about this request is the case lawyer

Name	[insert name of Prosecutor]
Address	[insert]
Email	[insert]
Direct telephone number	[insert]
Fax number	[insert]
Languages spoken	[insert]

or the Investigator, on telephone number: [insert] or by e-mail at [insert].

I would be grateful if you would keep the case lawyer and Investigator generally informed as to the progress of this request.

Should you consider that the presence of the Investigator in your country would be helpful in the execution of this mutual legal assistance request, I would be grateful if you could inform the case lawyer.

I extend my thanks in anticipation of your valued co-operation and assistance in this matter.

Yours faithfully

MLAR FOR TELEPHONE EVIDENCE

Date

Reference

Dear Sir or Madam

Operation XInsert Name of Defendant/s or Suspect/s

I am [insert name and job title] from [insert agency] and I am designated to transmit this letter by the [insert designating authority and any relevant enabling legislation]

Urgent

If it is an urgent request, include details of why (e.g. destruction of evidence) and any dates when the evidence is required by.

Basis of the Request

I make this request pursuant to [Insert Treaty, convention etc - i.e. UNTOC example that follows is for UNTOC] The United Nations Convention against Transnational Organized Crime, and the Protocols thereto done at Palermo in 2000 and ratified by [Insert Requested State] on [insert date]. This Request recognises the principles of reciprocity and mutuality between [Insert Requested State] and [Insert Requested State]

Purpose of the Request

This is a request for evidence to be used in the prosecution (including any related freeze, attachment or forfeiture and enforcement proceedings and any related ancillary proceedings) of the following

[List All]

SUBJECT	DATE OF BIRTH	PLACE OF BIRTH	NATIONALITY	ADDRESS

The above is/are the subject of a criminal investigation being conducted by [insert name of investigating Law Enforcement Agency] and a criminal prosecution being conducted by the [insert name of prosecuting agency] for offences of [insert offences, relevant statute and maximum sentences].

Relevant Law

Please find appended this mutual legal assistance request an annex of the applicable [insert Requested State] Law at Annex A.

[insert if required]

Confidentiality

In order not to prejudice the investigation, I request that no person (including any of the above subjects) is notified by the competent authorities in your country of the existence and contents of this mutual legal assistance request and any action taken in response to it. I further request that action is taken to ensure that any person from whom evidence is sought does not so notify any other person.

The reasons for requesting confidentiality is because it is feared that, if the above subjects or an associated party became aware of the existence of this request or of action taken in response to it, it could potentially compromise the

investigation or parties involved in it. **[Insert how this is justified – e.g. any supporting information of destruction of evidence?]**

If it is not possible to preserve confidentiality in the above manner, please notify me prior to executing this mutual legal assistance request.]

Summary of Facts and History of Proceedings

[Insert the following:

1. A brief chronology of the investigation/proceedings to date [include when charged, and when any trial date is fixed].
2. A summary of the evidence in support of the investigation
3. Demonstrate what evidence the telephone provider has that is relevant and material to the offence alleged.

Assistance Requested and Preferred Form of Evidence

It is requested that a subpoena or other court order necessary is obtained and served on **[insert name of telephone provider and address]** to produce the following evidence: **[Include as much detail about telephone e.g. number, subscriber details if known, integrated circuit card identifier (ICCID) mobile station international subscriber directory number (MSISDN), international mobile station equipment number (IMEI), international mobile subscriber identity (IMSI) and SIM Card number]** covering the following points **[delete if not relevant]:**

- a. The date of purchase
- b. Any customer information provided at purchase
- c. Activation details
- d. Subscriber details
- e. Payment details
- f. Service provider
- g. PIN and PUK codes
- h. Top up history
- i. Copies of any customer notes held
- j. Download of any SMS or other instant messaging **[insert dates that are relevant and material to the offence alleged]**
- k. Incoming and outgoing call data with geo-locations/cell site data for **[insert dates that are relevant and material to the offence alleged]**

Form which it is Requested Evidence is Taken **confirm format of evidence and any statement required from the telephone provider – include a blank copy in an annex**

Reciprocity

I confirm that the assistance requested above may be obtained under current **[insert Requested State]** law if in a like case a request for such assistance were made to the authorities in **[insert Requested State]**

Transmission of Documents

It is requested that any documents or other correspondence are sent to me at the above address and that you notify me as to any need to return any documents at the conclusion of the proceedings in the **[insert Requested State]**.

When you send the evidence, please also email **[insert email address]** to confirm that the evidence has been sent. This will enable me to make enquiries to locate the evidence if it is not received within a few days.

Contacts

The appropriate person to contact in the event of any query about this request is the case lawyer

Name	[insert name of Prosecutor]
Address	[insert]
Email	[insert]
Direct telephone number	[insert]
Fax number	[insert]
Languages spoken	[insert]
or the Investigator, on telephone number [insert]	
or by e-mail at [insert]	

I would be grateful if you would keep the case lawyer and Investigator generally informed as to the progress of this request.

Should you consider that the presence of the Investigator in your country would be helpful in the execution of this mutual legal assistance request, I would be grateful if you could inform the case lawyer.

I extend my thanks in anticipation of your valued co-operation and assistance in this matter.

Yours faithfully

MODEL MLAR FOR STORED ELECTRONIC EVIDENCE

[Insert Address of Central Authority of Requested State]

[Insert Reference]

Dear Sir or Madam

Mutual Legal Assistance Request: [insert Operation name]

[insert Name of Accused/s or Suspect/s]

Urgency

[Please consider if the request is truly urgent – over use can cause difficulties and delays other cases – if so confirm reasons e.g. threat to life or serious physical harm]

I am [insert name] a [insert title] of the [insert name of Agency] and I am empowered to make this request for evidence pursuant to [insert relevant domestic law]

Basis of the Request

I have the honour to request your assistance under the provisions of [insert relevant Treaty of Mutual Legal Assistance in Criminal Matters]

Confidentiality

In order not to prejudice the investigation, I request that no person (including any of the subjects) is notified by the competent authorities in your country of the existence and contents of this Mutual Legal Assistance Request and any action taken in response to it. I further request that action is taken to ensure that any person from whom evidence is sought does not so notify any other person.

If the above subjects or an associated party became aware of the existence of this request [or] sensitive material, namely [identify the sensitive material – either the entire request or confirm the relevant part] [or] of action taken in response to it, it is reasonably justifiable to believe that disclosure of the fact of an investigation to the subjects will result in [insert as appropriate for example destruction of evidence] as supported by [describe conduct in support i.e. deletion of accounts]

If it is not possible to preserve confidentiality in the above manner, please notify me prior to executing this Mutual Legal Assistance Request.

Purpose of the Request

This is a request for evidence [insert type of evidence e.g. content of emails – and the service provider. Be explicit if required for real-time collection of non-content] to be used in the prosecution (including any related freeze, attachment or forfeiture and enforcement proceedings and any related ancillary proceedings) of the following [Insert if suspects/accused known]

SUBJECT	DATE OF BIRTH	PLACE OF BIRTH	NATIONALITY	ADDRESS

The above is the subject of a criminal investigation being conducted by [insert name of investigating Law Enforcement Agency] and a criminal prosecution being conducted by the [Insert relevant Agency] for offences of [insert offences, relevant statute and maximum sentences].

[Insert if only IP address of a server known]

This is a request for the competent authorities in [insert Requested State] to provide a forensic image of the servers listed below for use in Court Proceedings within the jurisdiction of [insert Requested State]

IP ADDRESS	HOSTING COMPANY (name and address)

OR

The [insert name of investigating Law Enforcement Agency] is attempting to identify individuals involved in [insert criminality]. This evidence will be used in any subsequent prosecution of these individuals (including freeze, attachment or forfeiture and enforcement proceedings and any related ancillary proceedings) who are committing offences associated with the [insert name of software] and its variants namely: [insert offences, relevant statute and maximum sentences]

[Insert if only email address or social media username known]

This is a request for the competent authorities in the [insert Requested State] to provide evidence related to the email address listed below for use in Court Proceedings within the jurisdiction of [insert Requested State]

USERNAME	SERVICE PROVIDER (name and address)

The [insert name of investigating Law Enforcement Agency] is attempting to identify the user of the [insert Service Provider] and obtain the material more particularly detailed in the Assistance Required paragraph below. This evidence will be used in any subsequent prosecution of the individual/s (including freeze, attachment or forfeiture and enforcement proceedings and any related Ancillary proceedings) who are committing offences associated with the [insert email address]: [insert offences, relevant statute and maximum sentences]

The Relevant Law

Please find appended to this Mutual Legal Assistance Request the applicable Law at Annex A.

Summary of Facts and History of Proceedings

Include a chronology of the investigation/prosecution and a brief summary of the offences investigated /prosecuted against each subject and Provide nexus between the offences investigated and the e-evidence requested

Preservation

A preservation request in relation to the relevant account was made by the [insert relevant Law Enforcement Agency] and was granted on [insert date] and will expire on [insert date] and has reference number [insert reference number]

Confirm preservation information for each account preserved

Assistance Requested and Required Format of Evidence

APPLE

After obtaining any appropriate subpoena, search warrant, court order or other order, to obtain from an administrator at:

Apple Inc.

Attention: Privacy and Law Enforcement Compliance
1 Infinite Loop, Cupertino,
CA 95014

All of the [insert if BSI, Traffic Data and/or Content Data] held by them relating to the email addresses [insert email address] for the period commencing [insert date] to [insert date]

Confirm the format of the e-evidence – for example: It is requested that these records be produced as exhibits in a statement together with an explanation of the technical terms used in the records. A blank statement is attached in Annex B

ASK.FM

After obtaining any appropriate subpoena, search warrant, court order or other order, to obtain from an administrator at:

ASKfm

All of the [insert if BSI, Traffic Data and/or Content Data] held by them relating to the email addresses [insert account identifier] for the period commencing [insert date] to [insert date]

Confirm the format of the e-evidence – for example: It is requested that these records be produced as exhibits in a statement together with an explanation of the technical terms used in the records. A blank statement is attached in Annex B

ATLASSIAN

After obtaining any appropriate subpoena, search warrant, court order or other order, to obtain from an administrator at:

Atlassian Inc.

Attn: Legal Department
1098 Harrison Street
San Francisco, CA, 94103
USA

All of the [insert if BSI, Traffic Data and/or Content Data] held by them relating to the email addresses [insert email address] for the period commencing [insert date] to [insert date]

Confirm the format of the e-evidence – for example: It is requested that these records be produced as exhibits in a statement together with an explanation of the technical terms used in the records. A blank statement is attached in Annex B

DROPBOX

After obtaining any appropriate subpoena, search warrant, court order or other order, to obtain from an administrator at:

Dropbox, Inc.
Attn: Legal Department
185 Berry Street,
4th Floor
San Francisco, CA 94107

All of the [insert if BSI, Traffic Data and/or Content Data] held by them relating to [insert email address associated with a Dropbox account or a Dropbox user ID] for the period commencing [insert date] to [insert date]

Confirm the format of the e-evidence – for example: It is requested that these records be produced as exhibits in a statement together with an explanation of the technical terms used in the records. A blank statement is attached in Annex B

FACEBOOK

After obtaining any appropriate subpoena, search warrant, court order or other order, to obtain from an administrator at:

Facebook Inc.

1601 California Avenue
Palo Alto, CA 94304

All of the [insert if BSI, Traffic Data and/or Content Data] held by them relating to the account [insert account identifier] for the period commencing [insert date] to [insert date]

Confirm the format of the e-evidence – for example: It is requested that these records be produced as exhibits in a statement together with an explanation of the technical terms used in the records. A blank statement is attached in Annex B

GODADDY

After obtaining any appropriate subpoena, search warrant, court order or other order, to obtain from an administrator at:

Compliance Department GoDaddy.com

LLC 14455
North Hayden Rd.,
Suite 219 Scottsdale,
AZ 85260

All of the [insert if BSI, Traffic Data and/or Content Data] held by them relating to the [insert URLs where the hosted content is located] for the period commencing [insert date] to [insert date]

Confirm the format of the e-evidence – for example: It is requested that these records be produced as exhibits in a statement together with an explanation of the technical terms used in the records. A blank statement is attached in Annex B

GOOGLE

After obtaining any appropriate subpoena, search warrant, court order or other order, to obtain from an administrator at:

Google

1600 Amphitheatre Parkway,
Mountain View,
CA 94043, USA

All of the [insert if BSI, Traffic Data and/or Content Data] held by them relating to the email addresses [insert email address] for the period commencing [insert date] to [insert date]

Confirm the format of the e-evidence – for example: It is requested that these records be produced as exhibits in a statement together with an explanation of the technical terms used in the records. A blank statement is attached in Annex B

GRINDR

After obtaining any appropriate subpoena, search warrant, court order or other order, to obtain from an administrator at:

Grindr, LLC

6725 Sunset Blvd,
Suite 110 Los Angeles
CA 90028-7163
facsimile: 1-310-919-1228
email: legal@grindr.com

All of the [insert if BSI or Traffic Data and/or Content Data] held by them relating to the email addresses [insert email address registered to Grindr account] for the period commencing [insert date] to [insert date]

Confirm the format of the e-evidence – for example: It is requested that these records be produced as exhibits in a statement together with an explanation of the technical terms used in the records. A blank statement is attached in Annex B

INSTAGRAM

After obtaining any appropriate subpoena, search warrant, court order or other order, to obtain from an administrator at:

Attn: Instagram Law Enforcement Response Team
1601 Willow Road
Menlo Park, CA 94025

All of the [insert if BSI, Traffic Data and/or Content Data] held by them relating to the email addresses [insert account identifier] for the period commencing [insert date] to [insert date]

Confirm the format of the e-evidence – for example: It is requested that these records be produced as exhibits in a statement together with an explanation of the technical terms used in the records. A blank statement is attached in Annex B

LINKEDIN

After obtaining any appropriate subpoena, search warrant, court order or other order, to obtain from an administrator at:

For all non-U.S. requests:

LinkedIn Ireland U.C.

ATTN: Legal Department
Wilton Plaza
Wilton Place
Dublin 2
Ireland

All of the [insert if BSI, Traffic Data and/or Content Data] held by them relating to the account [insert LinkedIn public profile URL] for the period commencing [insert date] to [insert date]

Confirm the format of the e-evidence – for example: It is requested that these records be produced as exhibits in a statement together with an explanation of the technical terms used in the records. A blank statement is attached in Annex B

MICROSOFT

After obtaining any appropriate subpoena, search warrant, court order or other order, to obtain from an administrator at:

Microsoft Corporation

1065 La Avenida, Mountain View,
CALIFORNIA 09043

All of the [insert if BSI, Traffic Data and/or Content Data] held by them relating to the email addresses [insert identifier: Email Address/Microsoft Account (MSA) Phone Number ,CID or PUID, Credit Card Number, XBOX Gamertag or Serial Number] for the period commencing [insert date] to [insert date]

Confirm the format of the e-evidence – for example: It is requested that these records be produced as exhibits in a statement together with an explanation of the technical terms used in the records. A blank statement is attached in Annex B

PINTEREST

After obtaining any appropriate subpoena, search warrant, court order or other order, to obtain from an administrator at:

Pinterest

All of the [insert if BSI, Traffic Data and/or Content Data] held by them relating to the account [insert Pin URL] for the period commencing [insert date] to [insert date]

Confirm the format of the e-evidence – for example: It is requested that these records be produced as exhibits in a statement together with an explanation of the technical terms used in the records. A blank statement is attached in Annex B

SKYPE

After obtaining any appropriate subpoena, search warrant, court order or other order, to obtain from an administrator at:

Skype Communications SARL

23-29 Rives de Clausen
L-2165 Luxembourg

All of the [insert if BSI, Traffic Data and/or Content Data] held by them relating to the account [insert identifier: Skype username/ID Skype Number, Dialed PSTN Number, 16-digit credit card number, Skype Order Number] for the period commencing [insert date] to [insert date]

Confirm the format of the e-evidence – for example: It is requested that these records be produced as exhibits in a statement together with an explanation of the technical terms used in the records. A blank statement is attached in Annex B

SNAPCHAT

After obtaining any appropriate subpoena, search warrant, court order or other order, to obtain from an administrator at:

Snapchat Inc.

Custodian of Records
Snapchat Inc.
PO BOX 1784
Pacific Palisades,
CA 90272, USA

All of the [insert if BSI, Traffic Data and/or Content Data] held by them relating to the account [insert account] for the period commencing [insert date] to [insert date]

Confirm the format of the e-evidence – for example: It is requested that these records be produced as exhibits in a statement together with an explanation of the technical terms used in the records. A blank statement is attached in Annex B

SURESPOT

After obtaining any appropriate subpoena, search warrant, court order or other order, to obtain from an administrator at:

Surespot, llc.

2995 55th Street #18034
Boulder
CO 80308

All of the [insert if BSI, Traffic Data and/or Content Data] held by them relating to the account [insert associated email account, account name or URL] for the period commencing [insert date] to [insert date]

Confirm the format of the e-evidence – for example: It is requested that these records be produced as exhibits in a statement together with an explanation of the technical terms used in the records. A blank statement is attached in Annex B

TUMBLR

After obtaining any appropriate subpoena, search warrant, court order or other order, to obtain from an administrator at:

Tumblr, Inc.

Attn: Trust & Safety
35 East 21st Street, Ground Floor
New York, NY 10010

All of the [insert if BSI, Traffic Data and/or Content Data] held by them relating to the account [insert associated email account, account name or URL] for the period commencing [insert date] to [insert date]

Confirm the format of the e-evidence – for example: It is requested that these records be produced as exhibits in a statement together with an explanation of the technical terms used in the records. A blank statement is attached in Annex B

TWITTER

After obtaining any appropriate subpoena, search warrant, court order or other order, to obtain from an administrator at:

Twitter, Inc.

c/o Trust & Safety - Legal Policy
1355 Market Street,
Suite 900 San Francisco,
CA 94103
(attn: Trust & Safety - Legal Policy)

All of the [insert if BSI, Traffic Data and/or Content Data] held by them relating to the account [insert username and URL] for the period commencing [insert date] to [insert date]

Confirm the format of the e-evidence – for example: It is requested that these records be produced as exhibits in a statement together with an explanation of the technical terms used in the records. A blank statement is attached in Annex B

WHATSAPP

After obtaining any appropriate subpoena, search warrant, court order or other order, to obtain from an administrator at:

WhatsApp Inc.

1601 Willow Road
Menlo Park, California 94025 United States of America
Attention: WhatsApp Inc., Law Enforcement Response Team

All of the [insert if BSI, Traffic Data and/or Content Data] held by them relating to [insert WhatsApp identifier] for the period commencing [insert date] to [insert date]

Confirm the format of the e-evidence – for example: It is requested that these records be produced as exhibits in a statement together with an explanation of the technical terms used in the records. A blank statement is attached in Annex B

WIKR

After obtaining any appropriate subpoena, search warrant, court order or other order, to obtain from an administrator at:

Wickr Inc.

Attn: Legal Department
20 California street
#250 San Francisco,
CA 94111

All of the [insert if BSI, Traffic Data and/or Content Data] held by them relating to the email addresses [insert Wikr identifier] for the period commencing [insert date] to [insert date]

Confirm the format of the e-evidence – for example: It is requested that these records be produced as exhibits in a statement together with an explanation of the technical terms used in the records. A blank statement is attached in Annex B

WORDPRESS

After obtaining any appropriate subpoena, search warrant, court order or other order, to obtain from an administrator at:

Automattic Inc.

132 Hawthorn St
San Francisco,
CA 94107
Attn: General Counsel

All of the [insert if BSI, Traffic Data and/or Content Data] held by them relating to the article [insert article name and URL]

Confirm the format of the e-evidence – for example: It is requested that these records be produced as exhibits in a statement together with an explanation of the technical terms used in the records. A blank statement is attached in Annex B

YAHOO

After obtaining any appropriate subpoena, search warrant, court order or other order, to obtain from an administrator at:

Yahoo Inc.! Compliance Team

01 First Avenue Sunnyvale,
Mountain View,
CALIFORNIA 94089

All of the [insert if BSI, Traffic Data and/or Content Data] held by them relating to the email addresses [insert Yahoo identifier] for the period commencing [insert date] to [insert date]

Confirm the format of the e-evidence – for example: It is requested that these records be produced as exhibits in a statement together with an explanation of the technical terms used in the records. A blank statement is attached in Annex B

Zello

After obtaining any appropriate subpoena, search warrant, court order or other order, to obtain from an administrator at:

Zello Inc.

1317 W. 6th St Austin
TX 78703, USA

All of the [insert if BSI, Traffic Data and/or Content Data] held by them relating to the account [insert Zello identifier] for the period commencing [insert date] to [insert date]

Confirm the format of the e-evidence – for example: It is requested that these records be produced as exhibits in a statement together with an explanation of the technical terms used in the records. A blank statement is attached in Annex B

IF Service Provider NOT LISTED ABOVE

After obtaining any appropriate subpoena, search warrant, court order or other order, to obtain from an administrator at: [insert SP address for service]

All of the [insert if BSI, Traffic Data and/or Content Data] held by them relating to the account [insert SP identifier] for the period commencing [insert date] to [insert date]

Confirm the format of the e-evidence – for example: It is requested that these records be produced as exhibits in a statement together with an explanation of the technical terms used in the records. A blank statement is attached in Annex B

Reciprocal Procedural Laws (only include if there are reciprocal laws)

I **confirm** that the assistance requested above may be obtained under current [Insert Requested State] law if in a similar case a request for such assistance were made to the authorities in [Insert Requested State]

Transmission of Electronic Evidence

It is requested that any electronic evidence or other correspondence are sent to me at the above address and that you notify me as to any need to return any documents at the conclusion of the proceedings in [Insert Requested State]

Contacts

The appropriate person to contact in the event of any query about this request is the [insert case lawyer /investigative/examining judge as appropriate]

Name	[insert name]
Address	[insert]
Email	[insert]
Direct telephone number	[insert]
Fax number	[insert]
or the Investigator	[insert name]
or the Investigator	+ [insert]
or by e-mail at	[insert]

I would be grateful if you would keep the [Insert prosecutor/investigating or examining magistrate name] and Investigator generally informed as to the progress of this request.

I extend my thanks in anticipation of your valued co-operation and assistance in this matter.
Yours faithfully,

MLAR FOR INTERCEPTION OF TELECOMMUNICATIONS

Date

Reference

Dear Sir or Madam

Operation XInsert Name of Defendant/s or Suspect/s

I am [insert name and job title] from [insert agency] and I am designated to transmit this letter by the [insert designating authority and any relevant enabling legislation]

Urgent

If it is an urgent request, include details of why (e.g. destruction of evidence) and any dates when the evidence is required by.

Basis of the Request

I make this request pursuant to [Insert Treaty, convention etc - i.e. UNTOC example that follows is for UNTOC] The United Nations Convention against Transnational Organized Crime, and the Protocols thereto done at Palermo in 2000 and ratified by [Insert Requested State] on [insert date]. This Request recognises the principles of reciprocity and mutuality between [Insert Requested State] and [Insert Requested State]

Purpose of the Request

This is a request for evidence to be used in the prosecution (including any related freeze, attachment or forfeiture and enforcement proceedings and any related ancillary proceedings) of the following

[List All]

SUBJECT	DATE OF BIRTH	PLACE OF BIRTH	NATIONALITY	ADDRESS

The above is/are the subject of a criminal investigation being conducted by [insert name of investigating Law Enforcement Agency] and a criminal prosecution being conducted by the [insert name of prosecuting agency] for offences of [insert offences, relevant statute and maximum sentences].

Relevant Law

Please find appended this mutual legal assistance request an annex of the applicable [insert Requested State] Law at Annex A.

[insert if required]

Confidentiality

In order not to prejudice the investigation, I request that no person (including any of the above subjects) is notified by the competent authorities in your country of the existence and contents of this mutual legal assistance request and any action taken in response to it. I further request that action is taken to ensure that any person from whom evidence is sought does not so notify any other person.

The reasons for requesting confidentiality is because it is feared that, if the above subjects or an associated party became aware of the existence of this request or of action taken in response to it, it could potentially compromise the investigation or parties involved in it. **[Insert how this is justified – e.g. any supporting information of destruction of evidence?]**

[If it is not possible to preserve confidentiality in the above manner, please notify me prior to executing this mutual legal assistance request.]

Summary of Facts and History of Proceedings

Include the following:

1. Justify why the interception of telecommunications, based on the supporting information, is proportional and reasonable to secure evidence for the investigation
2. A brief chronology of the investigation/proceedings to date
3. A summary of the evidence in support of the investigation/charges ^[SEP]
4. Outline:
 - a. Supporting information that the interception of telecommunications will show evidence of a crime
 - b. If source of information has a criminal record or is anonymous – further information to show credibility (i.e. proximity to criminality (if this will not disclose the source) or previous information)

Assistance Requested and Preferred Form of Evidence

Include the following:

1. confirm that a lawful interception order or warrant has been issued domestically in connection with a criminal investigation, if such an order or warrant is required by law
2. Information for the purpose of identifying the subject of the requested interception
3. The desired duration of the interception
4. If possible, the provision of sufficient technical data, in particular the relevant network connection number, communications address or service identifier to ensure that the request can be met
5. confirm if a live feed required or recordings provided with supporting statements
6. Format of any statements include a blank copy in an annex

Reciprocity

I confirm that the assistance requested above may be obtained under current **[insert Requested State]** law if in a like case a request for such assistance were made to the authorities in **[insert Requested State]**

Transmission of Documents

It is requested that any documents or other correspondence are sent to me at the above address and that you notify me as to any need to return any documents at the conclusion of the proceedings in the **[insert Requested State]**.

When you send the evidence, please also email **[insert email address]** to confirm that the evidence has been sent. This will enable me to make enquiries to locate the evidence if it is not received within a few days.

Contacts

The appropriate person to contact in the event of any query about this request is the case lawyer:

Name	[insert name of Prosecutor]
Address	[insert]
Email	[insert]
Direct telephone number	[insert]
Fax number	[insert]
Languages spoken	[insert]
or the Investigator, on telephone number	[insert]
or by e-mail at	[insert]

I would be grateful if you would keep the case lawyer and Investigator generally informed as to the progress of this request.

Should you consider that the presence of the Investigator in your country would be helpful in the execution of this mutual legal assistance request, I would be grateful if you could inform the case lawyer.

I extend my thanks in anticipation of your valued co-operation and assistance in this matter.

Yours faithfully

MLAR FOR RECORDING DEVICE

Date

Reference

Dear Sir or Madam

Operation X**Insert Name of Defendant/s or Suspect/s**

I am [insert name and job title] from [insert agency] and I am designated to transmit this letter by the [insert designating authority and any relevant enabling legislation]

Urgent

If it is an urgent request, include details of why (e.g. destruction of evidence) and any dates when the evidence is required by.

Basis of the Request

I make this request pursuant to [Insert Treaty, convention etc - i.e. UNTOC example that follows is for UNTOC] The United Nations Convention against Transnational Organized Crime, and the Protocols thereto done at Palermo in 2000 and ratified by [Insert Requested State] on [insert date]. This Request recognises the principles of reciprocity and mutuality between [Insert Requested State] and [Insert Requested State]

Purpose of the Request

This is a request for evidence to be used in the prosecution (including any related freeze, attachment or forfeiture and enforcement proceedings and any related ancillary proceedings) of the following

[List All]

SUBJECT	DATE OF BIRTH	PLACE OF BIRTH	NATIONALITY	ADDRESS

The above is/are the subject of a criminal investigation being conducted by [insert name of investigating Law Enforcement Agency] and a criminal prosecution being conducted by the [insert name of prosecuting agency] for offences of [insert offences, relevant statute and maximum sentences].

Relevant Law

Please find appended this mutual legal assistance request an annex of the applicable [insert Requested State] Law at Annex A.

[insert if required]

Confidentiality

In order not to prejudice the investigation, I request that no person (including any of the above subjects) is notified by the competent authorities in your country of the existence and contents of this mutual legal assistance request and any action taken in response to it. I further request that action is taken to ensure that any person from whom evidence is sought does not so notify any other person.

The reasons for requesting confidentiality is because it is feared that, if the above subjects or an associated party became aware of the existence of this request or of action taken in response to it, it could potentially compromise the investigation or parties involved in it. **[Insert how this is justified – e.g. any supporting information of destruction of evidence?]**

If it is not possible to preserve confidentiality in the above manner, please notify me prior to executing this mutual legal assistance request.]

Summary of Facts and History of Proceedings

Include the following:

1. Justify why the covert recording device (audio and/or visual), based on the supporting information, is proportional and reasonable to secure evidence for the investigation
2. A brief chronology of the investigation/proceedings to date
3. A summary of the evidence in support of the investigation/charges
4. Outline:
 - a. Supporting information that the covert recording device (audio and/or visual) will show evidence of a crime
 - b. If source of information has a criminal record or is anonymous – further information to show credibility (i.e. proximity to criminality (if this will not disclose the source) or previous information)

Assistance Requested and Preferred Form of Evidence

Include the following:

1. Confirm that a lawful order or warrant has been issued domestically in connection with a criminal investigation, if such an order or warrant is required by law for a covert recording device (audio and/or visual)
2. Information for the purpose of identifying the property where the covert recording device (audio and/or visual) should be inserted
3. Requested for a search warrant or other court order necessary is obtained to insert the covert recording device (audio and/or visual)
4. The desired duration of the monitoring and/or recording
5. Confirmation if a live feed required or recordings provided with supporting statements

Reciprocity

I confirm that the assistance requested above may be obtained under current **[insert Requested State]** law if in a like case a request for such assistance were made to the authorities in **[insert Requested State]**

Transmission of Documents

It is requested that any documents or other correspondence are sent to me at the above address and that you notify me as to any need to return any documents at the conclusion of the proceedings in the **[insert Requested State]**.

When you send the evidence, please also email **[insert email address]** to confirm that the evidence has been sent. This will enable me to make enquiries to locate the evidence if it is not received within a few days.

Contacts

The appropriate person to contact in the event of any query about this request is the case lawyer:

Name	[insert name of Prosecutor]
Address	[insert]
Email	[insert]
Direct telephone number	[insert]
Fax number	[insert]
Languages spoken	[insert]
or the Investigator, on telephone number [insert]	
or by e-mail at [insert]	

I would be grateful if you would keep the case lawyer and Investigator generally informed as to the progress of this request.

Should you consider that the presence of the Investigator in your country would be helpful in the execution of this mutual legal assistance request, I would be grateful if you could inform the case lawyer.

I extend my thanks in anticipation of your valued co-operation and assistance in this matter.

Yours faithfully

MLAR FOR TRACKING DEVICE

Date

Reference

Dear Sir or Madam

Operation X

Insert Name of Defendant/s or Suspect/s

I am [insert name and job title] from [insert agency] and I am designated to transmit this letter by the [insert designating authority and any relevant enabling legislation]

Urgent

If it is an urgent request, include details of why (e.g. destruction of evidence) and any dates when the evidence is required by.

Basis of the Request

I make this request pursuant to [Insert Treaty, convention etc - i.e. UNTOC example that follows is for UNTOC] The United Nations Convention against Transnational Organized Crime, and the Protocols thereto done at Palermo in 2000 and ratified by [Insert Requested State] on [insert date]. This Request recognises the principles of reciprocity and mutuality between [Insert Requested State] and [Insert Requested State]

Purpose of the Request

This is a request for evidence to be used in the prosecution (including any related freeze, attachment or forfeiture and enforcement proceedings and any related ancillary proceedings) of the following

[List All]

SUBJECT	DATE OF BIRTH	PLACE OF BIRTH	NATIONALITY	ADDRESS

The above is/are the subject of a criminal investigation being conducted by [insert name of investigating Law Enforcement Agency] and a criminal prosecution being conducted by the [insert name of prosecuting agency] for offences of [insert offences, relevant statute and maximum sentences].

Relevant Law

Please find appended this mutual legal assistance request an annex of the applicable [insert Requested State] Law at Annex A.

[Insert if required]

Confidentiality

In order not to prejudice the investigation, I request that no person (including any of the above subjects) is notified by the competent authorities in your country of the existence and contents of this mutual legal assistance request and any action taken in response to it. I further request that action is taken to ensure that any person from whom evidence is sought does not so notify any other person.

The reasons for requesting confidentiality is because it is feared that, if the above subjects or an associated party became aware of the existence of this request or of action taken in response to it, it could potentially compromise the investigation or parties involved in it. **[Insert how this is justified – e.g. any supporting information of destruction of evidence?]**

[If it is not possible to preserve confidentiality in the above manner, please notify me prior to executing this mutual legal assistance request.]

Summary of Facts and History of Proceedings

Include the following:

1. Justify why the tracking device, based on the supporting information, is proportional and reasonable to secure evidence for the investigation
2. A brief chronology of the investigation/proceedings to date
3. A summary of the evidence in support of the investigation/charges ^[SEP]
4. Outline:
 - a. Supporting information that the tracking device will show evidence of a crime ^[SEP]
 - b. If source of information has a criminal record or is anonymous – further information to show credibility (i.e. proximity to criminality (if this will not disclose the source) or previous information)

Assistance Requested and Preferred Form of Evidence

Include the following:

1. Confirmation that a lawful order or warrant has been issued domestically in connection with a criminal investigation, if such an order or warrant is required by law for a tracking device
2. Information for the purpose of identifying the property where the tracking device should be inserted
3. Requested for a search warrant or other court order necessary is obtained to insert the tracking device
4. The desired duration of the monitoring
5. Confirmation if a live feed required

Reciprocity

I confirm that the assistance requested above may be obtained under current **[insert Requested State]** law if in a like case a request for such assistance were made to the authorities in **[insert Requested State]**

Transmission of Documents

It is requested that any documents or other correspondence are sent to me at the above address and that you notify me as to any need to return any documents at the conclusion of the proceedings in the **[insert Requested State]**.

When you send the evidence, please also email **[insert email address]** to confirm that the evidence has been sent. This will enable me to make enquiries to locate the evidence if it is not received within a few days.

Contacts

The appropriate person to contact in the event of any query about this request is the case lawyer:

Name	[insert name of Prosecutor]
Address	[insert]
Email	[insert]
Direct telephone number	[insert]
Fax number	[insert]
Languages spoken	[insert]
or the Investigator, on telephone number [insert]	
or by e-mail at [insert]	

I would be grateful if you would keep the case lawyer and Investigator generally informed as to the progress of this request.

Should you consider that the presence of the Investigator in your country would be helpful in the execution of this mutual legal assistance request, I would be grateful if you could inform the case lawyer.

I extend my thanks in anticipation of your valued co-operation and assistance in this matter.

Yours faithfully

MLAR FOR UNDERCOVER OFFICER

Date

Reference

Dear Sir or Madam

Operation XInsert Name of Defendant/s or Suspect/s

I am [insert name and job title] from [insert agency] and I am designated to transmit this letter by the [insert designating authority and any relevant enabling legislation]

Urgent

If it is an urgent request, include details of why (e.g. destruction of evidence) and any dates when the evidence is required by.

Basis of the Request

I make this request pursuant to [Insert Treaty, convention etc - i.e. UNTOC example that follows is for UNTOC] The United Nations Convention against Transnational Organized Crime, and the Protocols thereto done at Palermo in 2000 and ratified by [Insert Requested State] on [insert date]. This Request recognises the principles of reciprocity and mutuality between [Insert Requested State] and [Insert Requested State]

Purpose of the Request

This is a request for evidence to be used in the prosecution (including any related freeze, attachment or forfeiture and enforcement proceedings and any related ancillary proceedings) of the following

[List All]

SUBJECT	DATE OF BIRTH	PLACE OF BIRTH	NATIONALITY	ADDRESS

The above is/are the subject of a criminal investigation being conducted by [insert name of investigating Law Enforcement Agency] and a criminal prosecution being conducted by the [insert name of prosecuting agency] for offences of [insert offences, relevant statute and maximum sentences].

Relevant Law

Please find appended this mutual legal assistance request an annex of the applicable [insert Requested State] Law at Annex A.

[Insert if required]

Confidentiality

In order not to prejudice the investigation, I request that no person (including any of the above subjects) is notified by the competent authorities in your country of the existence and contents of this mutual legal assistance request and any action taken in response to it. I further request that action is taken to ensure that any person from whom evidence is sought does not so notify any other person.

The reasons for requesting confidentiality is because it is feared that, if the above subjects or an associated party became aware of the existence of this request or of action taken in response to it, it could potentially compromise the investigation or parties involved in it. **[Insert how this is justified – e.g. any supporting information of destruction of evidence?]**

[If it is not possible to preserve confidentiality in the above manner, please notify me prior to executing this mutual legal assistance request.]

Summary of Facts and History of Proceedings

Include the following:

1. Justify why the undercover officer (UCO), based on the supporting information, is proportional and reasonable to secure evidence for the investigation
2. A brief chronology of the investigation/proceedings to date
3. A summary of the evidence in support of the investigation/charges ^[1]_{SEP}
4. Outline:
 - a. Supporting information that the UCO will produce evidence of a crime ^[1]_{SEP}
 - b. If source of information has a criminal record or is anonymous – further information to show credibility (i.e. proximity to criminality (if this will not disclose the source) or previous information)

Assistance Requested and Preferred Form of Evidence

Include the following:

1. Confirmation that a lawful order or warrant has been issued domestically in connection with a criminal investigation, if such an order or warrant is required by law for a UCO
2. Confirmation of any arrangements to allow the UCO to operate in the Requested State – e.g. do they have to be a Police Officer in the Requested State
3. Arrangements to protect the identity of the UCO
4. Confirmation of arrangements to task the UCO and ensure actions are lawful
5. Confirmation of how evidence should be recorded – is a recording device recorded – should this be a live feed?

Reciprocity

I confirm that the assistance requested above may be obtained under current **[insert Requested State]** law if in a like case a request for such assistance were made to the authorities in **[insert Requested State]**

Transmission of Documents

It is requested that any documents or other correspondence are sent to me at the above address and that you notify me as to any need to return any documents at the conclusion of the proceedings in the **[insert Requested State]**.

When you send the evidence, please also email **[insert email address]** to confirm that the evidence has been sent. This will enable me to make enquiries to locate the evidence if it is not received within a few days.

Contacts

The appropriate person to contact in the event of any query about this request is the case lawyer:

Name	[insert name of Prosecutor]
Address	[insert]
Email	[insert]
Direct telephone number	[insert]
Fax number	[insert]
Languages spoken	[insert]
or the Investigator, on telephone number [insert]	
or by e-mail at [insert]	

I would be grateful if you would keep the case lawyer and Investigator generally informed as to the progress of this request.

Should you consider that the presence of the Investigator in your country would be helpful in the execution of this mutual legal assistance request, I would be grateful if you could inform the case lawyer.

I extend my thanks in anticipation of your valued co-operation and assistance in this matter.

Yours faithfully

MLAR FOR SURVEILLANCE

Date

Reference

Dear Sir or Madam

Operation X

Insert Name of Defendant/s or Suspect/s

I am [insert name and job title] from [insert agency] and I am designated to transmit this letter by the [insert designating authority and any relevant enabling legislation]

Urgent

If it is an urgent request, include details of why (e.g. destruction of evidence) and any dates when the evidence is required by.

Basis of the Request

I make this request pursuant to [Insert Treaty, convention etc - i.e. UNTOC example that follows is for UNTOC] The United Nations Convention against Transnational Organized Crime, and the Protocols thereto done at Palermo in 2000 and ratified by [Insert Requested State] on [insert date]. This Request recognises the principles of reciprocity and mutuality between [Insert Requested State] and [Insert Requested State]

Purpose of the Request

This is a request for evidence to be used in the prosecution (including any related freeze, attachment or forfeiture and enforcement proceedings and any related ancillary proceedings) of the following

[List All]

SUBJECT	DATE OF BIRTH	PLACE OF BIRTH	NATIONALITY	ADDRESS

The above is/are the subject of a criminal investigation being conducted by [insert name of investigating Law Enforcement Agency] and a criminal prosecution being conducted by the [insert name of prosecuting agency] for offences of [insert offences, relevant statute and maximum sentences].

Relevant Law

Please find appended this mutual legal assistance request an annex of the applicable [insert Requested State] Law at Annex A.

[Insert if required]

Confidentiality

In order not to prejudice the investigation, I request that no person (including any of the above subjects) is notified by the competent authorities in your country of the existence and contents of this mutual legal assistance request and any action taken in response to it. I further request that action is taken to ensure that any person from whom evidence is sought does not so notify any other person.

The reasons for requesting confidentiality is because it is feared that, if the above subjects or an associated party became aware of the existence of this request or of action taken in response to it, it could potentially compromise the investigation or parties involved in it. **[Insert how this is justified – e.g. any supporting information of destruction of evidence?]**

[If it is not possible to preserve confidentiality in the above manner, please notify me prior to executing this mutual legal assistance request.]

Summary of Facts and History of Proceedings

Include the following:

1. Justify why the observation/surveillance, based on the supporting information, is proportional and reasonable to secure evidence for the investigation
2. A brief chronology of the investigation/proceedings to date
3. A summary of the evidence in support of the investigation/charges ^[SEP]
4. Outline:
 - a. Supporting information that the observation/surveillance will produce evidence of a crime ^[SEP]
 - b. If source of information has a criminal record or is anonymous – further information to show credibility (i.e. proximity to criminality (if this will not disclose the source) or previous information)

Assistance Requested and Preferred Form of Evidence

Include the following:

1. Confirmation that a lawful order or warrant has been issued domestically in connection with a criminal investigation, if such an order or warrant is required by law for observation/surveillance
2. Information for the purpose of identifying the subject of the observation
3. The desired duration of the observation
4. Transmission of statements of officers making observations, any logs of live observations and any media recordings of observations ^[SEP]
5. Confirmation of the format of this evidence so admissible – attach a blank copy of format in an annex

Reciprocity

I confirm that the assistance requested above may be obtained under current **[insert Requested State]** law if in a like case a request for such assistance were made to the authorities in **[insert Requested State]**

Transmission of Documents

It is requested that any documents or other correspondence are sent to me at the above address and that you notify me as to any need to return any documents at the conclusion of the proceedings in the **[insert Requested State]**.

When you send the evidence, please also email **[insert email address]** to confirm that the evidence has been sent. This will enable me to make enquiries to locate the evidence if it is not received within a few days.

Contacts

The appropriate person to contact in the event of any query about this request is the case lawyer:

Name	[insert name of Prosecutor]
Address	[insert]
Email	[insert]
Direct telephone number	[insert]
Fax number	[insert]
Languages spoken	[insert]
or the Investigator, on telephone number [insert]	
or by e-mail at [insert]	

I would be grateful if you would keep the case lawyer and Investigator generally informed as to the progress of this request.

Should you consider that the presence of the Investigator in your country would be helpful in the execution of this mutual legal assistance request, I would be grateful if you could inform the case lawyer.

I extend my thanks in anticipation of your valued co-operation and assistance in this matter.

Yours faithfully

MLAR FOR CONTROLLED DELIVERY

Date

Reference

Dear Sir or Madam

Operation XInsert Name of Defendant/s or Suspect/s

I am [insert name and job title] from [insert agency] and I am designated to transmit this letter by the [insert designating authority and any relevant enabling legislation]

Urgent

If it is an urgent request, include details of why (e.g. destruction of evidence) and any dates when the evidence is required by.

Basis of the Request

I make this request pursuant to [Insert Treaty, convention etc - i.e. UNTOC example that follows is for UNTOC] The United Nations Convention against Transnational Organized Crime, and the Protocols thereto done at Palermo in 2000 and ratified by [Insert Requested State] on [insert date]. This Request recognises the principles of reciprocity and mutuality between [Insert Requested State] and [Insert Requested State]

Purpose of the Request

This is a request for evidence to be used in the prosecution (including any related freeze, attachment or forfeiture and enforcement proceedings and any related ancillary proceedings) of the following

[List All]

SUBJECT	DATE OF BIRTH	PLACE OF BIRTH	NATIONALITY	ADDRESS

The above is/are the subject of a criminal investigation being conducted by [insert name of investigating Law Enforcement Agency] and a criminal prosecution being conducted by the [insert name of prosecuting agency] for offences of [insert offences, relevant statute and maximum sentences].

Relevant Law

Please find appended this mutual legal assistance request an annex of the applicable [insert Requested State] Law at Annex A.

[Insert if required]

Confidentiality

In order not to prejudice the investigation, I request that no person (including any of the above subjects) is notified by the competent authorities in your country of the existence and contents of this mutual legal assistance request and any action taken in response to it. I further request that action is taken to ensure that any person from whom evidence is sought does not so notify any other person.

The reasons for requesting confidentiality is because it is feared that, if the above subjects or an associated party became aware of the existence of this request or of action taken in response to it, it could potentially compromise the investigation or parties involved in it. **[Insert how this is justified – e.g. any supporting information of destruction of evidence?]**

[If it is not possible to preserve confidentiality in the above manner, please notify me prior to executing this mutual legal assistance request.]

Summary of Facts and History of Proceedings

Include the following:

1. Justify why the controlled delivery, based on the supporting information, is proportional and reasonable to secure evidence for the investigation
2. A brief chronology of the investigation/proceedings to date
3. A summary of the evidence in support of the investigation/charges ^[SEP]
4. Outline:
 - a. Supporting information that the controlled delivery will produce evidence of a crime ^[SEP]
 - b. If source of information has a criminal record or is anonymous – further information to show credibility (i.e. proximity to criminality (if this will not disclose the source) or previous information)

Assistance Requested and Preferred Form of Evidence

Include the following:

1. Confirmation of requirement for replacement of contraband
2. Any court orders required to search, seize and replace contraband
3. Request for controlled delivery to pass the border
4. Consideration of any special investigation techniques needed such as Undercover Officer (UCO), observation/surveillance, covert recording device probe or tracker (see the MLARs above for specific requirements to add for any of these special investigation techniques)

Reciprocity

I confirm that the assistance requested above may be obtained under current **[insert Requested State]** law if in a like case a request for such assistance were made to the authorities in **[insert Requested State]**

Transmission of Documents

It is requested that any documents or other correspondence are sent to me at the above address and that you notify me as to any need to return any documents at the conclusion of the proceedings in the **[insert Requested State]**.

When you send the evidence, please also email **[insert email address]** to confirm that the evidence has been sent. This will enable me to make enquiries to locate the evidence if it is not received within a few days.

Contacts

The appropriate person to contact in the event of any query about this request is the case lawyer:

Name	[insert name of Prosecutor]
Address	[insert]
Email	[insert]
Direct telephone number	[insert]
Fax number	[insert]
Languages spoken	[insert]
or the Investigator, on telephone number [insert]	
or by e-mail at [insert]	

I would be grateful if you would keep the case lawyer and Investigator generally informed as to the progress of this request.

Should you consider that the presence of the Investigator in your country would be helpful in the execution of this mutual legal assistance request, I would be grateful if you could inform the case lawyer.

I extend my thanks in anticipation of your valued co-operation and assistance in this matter.

Yours faithfully

MLAR FOR FINGERPRINTS AND/OR DNA

Date

Reference

Dear Sir or Madam

Operation X

Insert Name of Defendant/s or Suspect/s

I am [insert name and job title] from [insert agency] and I am designated to transmit this letter by the [insert designating authority and any relevant enabling legislation]

Urgent

If it is an urgent request, include details of why (e.g. destruction of evidence) and any dates when the evidence is required by.

Basis of the Request

I make this request pursuant to [Insert Treaty, convention etc - i.e. UNTOC example that follows is for UNTOC] The United Nations Convention against Transnational Organized Crime, and the Protocols thereto done at Palermo in 2000 and ratified by [Insert Requested State] on [insert date]. This Request recognizes the principles of reciprocity and mutuality between [Insert Requested State] and [Insert Requested State]

Purpose of the Request

This is a request for evidence to be used in the prosecution (including any related freeze, attachment or forfeiture and enforcement proceedings and any related ancillary proceedings) of the following

[List All]

SUBJECT	DATE OF BIRTH	PLACE OF BIRTH	NATIONALITY	ADDRESS

The above is/are the subject of a criminal investigation being conducted by [insert name of investigating Law Enforcement Agency] and a criminal prosecution being conducted by the [insert name of prosecuting agency] for offences of [insert offences, relevant statute and maximum sentences].

Relevant Law

Please find appended this mutual legal assistance request an annex of the applicable [insert Requested State] Law at Annex A.

[Insert if required]

Confidentiality

In order not to prejudice the investigation, I request that no person (including any of the above subjects) is notified by the competent authorities in your country of the existence and contents of this mutual legal assistance request and any action taken in response to it. I further request that action is taken to ensure that any person from whom evidence is sought does not so notify any other person.

The reasons for requesting confidentiality is because it is feared that, if the above subjects or an associated party became aware of the existence of this request or of action taken in response to it, it could potentially compromise the investigation or parties involved in it. **[Insert how this is justified – e.g. any supporting information of destruction of evidence?]**

[If it is not possible to preserve confidentiality in the above manner, please notify me prior to executing this mutual legal assistance request.]

Summary of Facts and History of Proceedings

Include the following:

1. A brief chronology of the investigation/proceedings to date [include when charged and when any trial date is fixed].
2. A summary of the evidence in support of the investigation/charges
3. Outline:
 - a. Supporting information that samples [confirm type i.e. DNA or fingerprint] will show evidence of a crime
 - b. If source of information has a criminal record or is anonymous – further information to show credibility (i.e. proximity to criminality (if this will not disclose the source) or previous information)
 - c. Justify that taking a sample is a proportional way to secure the evidence (particularly if an intimate body sample - explain why this evidence is necessary and cannot be obtained through a less intrusive method such as a DNA sample) ^[1]_{SEP}
 - d. Justify why this evidence, based on the supporting information, will be obtained through taking the sample

Assistance Requested and Preferred Form of Evidence

Following paragraph can be used as a Model

1. It is requested that a warrant or other order as is necessary is obtained to take a [insert type of sample] from [insert name, address and date of birth of person]
2. The making of statements by all persons who seize any item pursuant to paragraph 1 above, referring to the items so seized as exhibits [insert format of statements in an annex] ^[1]_{SEP}
3. The making of statements by any person receiving the custody of the items seized stating to whom he or she transferred them [insert format of statements in an annex]

Reciprocity

I confirm that the assistance requested above may be obtained under current [insert Requested State] law if in a like case a request for such assistance were made to the authorities in [insert Requested State]

Transmission of Documents

It is requested that any documents or other correspondence are sent to me at the above address and that you notify me as to any need to return any documents at the conclusion of the proceedings in the [insert Requested State].

When you send the evidence, please also email [insert email address] to confirm that the evidence has been sent. This will enable me to make enquiries to locate the evidence if it is not received within a few days.

Contacts

The appropriate person to contact in the event of any query about this request is the case lawyer:

Name	[insert name of Prosecutor]
Address	[insert]
Email	[insert]
Direct telephone number	[insert]
Fax number	[insert]
Languages spoken	[insert]
or the Investigator, on telephone number [insert]	
or by e-mail at [insert]	

I would be grateful if you would keep the case lawyer and Investigator generally informed as to the progress of this request.

Should you consider that the presence of the Investigator in your country would be helpful in the execution of this mutual legal assistance request, I would be grateful if you could inform the case lawyer.

I extend my thanks in anticipation of your valued co-operation and assistance in this matter.

Yours faithfully

MLAR FOR SEARCH WARRANT

Date

Dear Sir or Madam

Operation X

Insert Name of Defendant/s or Suspect/s

I am [insert name and job title] from [insert agency] and I am designated to transmit this letter by the [insert designating authority i.e. Attorney General and any relevant enabling legislation]

Urgent

If it is an urgent request, include details of why (e.g. destruction of evidence or to prevent dissipation of assets) and any dates when the evidence is required by.

Basis of the Request

I make this request pursuant to [Insert Treaty, convention etc - i.e. Revised Harare Scheme 2011 or UNTOC example that follows is for UNTOC] The United Nations Convention against Transnational Organized Crime, and the Protocols thereto done at Palermo in 2000 and ratified by [Insert Requested State] on [insert date]. This Request recognises the principles of reciprocity and mutuality between [Insert Requested State] and [Insert Requested State]

Purpose of the Request

This is a request for evidence to be used in the prosecution (including any related freeze, forfeiture and enforcement proceedings and any related ancillary proceedings) of the following

SUBJECT	DATE OF BIRTH	PLACE OF BIRTH	NATIONALITY	ADDRESS

The above is/are the subject of a criminal investigation being conducted by [insert name of investigating Law Enforcement Agency] and a criminal prosecution being conducted by the [insert name of prosecuting agency] for offences of [insert offences, relevant statute and maximum sentences].

If a Financial Investigation Insert:

The above is/are the subject of a financial investigation being conducted by [insert name of investigating Law Enforcement Agency] and forfeiture proceedings being conducted by the [insert name of prosecuting agency] for offences of [insert offences, relevant statute and maximum sentences – and if convicted include a certificate of conviction].

Relevant Law

Please find appended this mutual legal assistance request an annex of the applicable [insert Requested State] Law at Annex A.

Include text of relevant law for the production order or search warrant in the Requested State and for any criminal offences investigated and or convicted.

[Insert if required]

Confidentiality

In order not to prejudice the investigation, I request that no person (including any of the above subjects) is notified by the competent authorities in your country of the existence and contents of this mutual legal assistance request and any action taken in response to it. I further request that action is taken to ensure that any person from whom evidence is sought does not so notify any other person.

The reasons for requesting confidentiality is because it is feared that, if the above subjects or an associated party became aware of the existence of this request or of action taken in response to it, it could potentially compromise the investigation or parties involved in it. [Insert how this is justified – e.g. any supporting information of destruction of evidence?]

[If it is not possible to preserve confidentiality in the above manner, please notify me prior to executing this mutual legal assistance request.]

Summary of Facts and History of Proceedings

Insert the following:

1. A brief chronology of the proceedings to date [insert when charged and when any trial date is fixed]. A summary of the evidence in support of the investigation/charges
2. How the Request Arises:
 - i. Supporting information that item/s to be seized will show evidence of a crime
 - ii. If source of information has a criminal record or is anonymous – further information to show credibility (i.e. proximity to criminality (if this will not disclose the source) or previous information)
 - iii. Justify why you believe this evidence, based on the supporting information is located in the location to be searched

Assistance Requested and Preferred Form of Evidence

1. It is requested that a search warrant, production order or other court order necessary is obtained to search [insert address] and to seize the following:
 - a. List items
2. Confirm any special requirements to prevent contamination if forensic examinations required
3. The making of statements by all persons who seize any item pursuant to paragraph 1 above, referring to the items so seized as exhibits.
4. The transmission of the items seized pursuant to the request made in paragraph 1 above [insert who evidence will be sent to]
5. The making of statements by any person receiving the custody of the items seized stating to whom he or she transferred them.
6. That such other enquiries be made, evidence secured and statements taken as appears to be necessary in the course of rendering the assistance requested.

Any material provided to me pursuant to this request may be used in any criminal prosecution or other judicial proceedings connected with this matter, including any other freeze or forfeiture proceedings and ancillary proceedings relating thereto including proceedings relating to any breaches of, variation of, reassessment of, or enforcement of [insert Requested State] court orders.

Form which it is Requested Evidence is Taken

Confirm Format of evidence – this is an example only

1. It is requested that the witness statements be taken in writing, dated and headed by the following declaration “This statement consisting of ___ pages is true to the best of my knowledge and belief”. The number of pages should be filled in the space once the statement has been written and the witness

should sign the statement beside the declaration, on every page and at the end of the statement. Please date the statements. It is requested that the witness' address, telephone and fax numbers and date of birth, together with their availability to attend court in **[insert Requested State]**, be written on the back of the first page of each statement.

2. If documentation is obtained from a witness, the witness should produce each document and give it an exhibit number. The exhibit number should consist of the witness' initials and a consecutive number. For example, the first document produced by John Andrew Smith will have the exhibit number JAS1, the second will be JAS2 and so on.
3. If documentation is obtained from a witness, the witness should produce each document and give it an exhibit number. The exhibit number should consist of the witness' initials and a consecutive number.
4. The statement should then continue : -
 - I occupy the position of *(job title e.g. Custodian of Records)*
 - In the employment of *(full name of company)*
 - located at *(business address)*

In the ordinary course of business *(name of company)* maintains electronic records of certain data related to subscriber accounts. By virtue of my position I have access to these records and I am authorized and qualified to make this statement.

(name of company) on or about *(date of service)* received a *(type of process e.g. search warrant)* from *(authority issuing process)* for certain records relating to *(e.g. account name)*

I produce these records as my exhibit(s) _____ and explain them as follows:

I can further state that:

- i. The records were created or received by a person in the course of a trade, business, profession or other occupation, or as the holder of a paid or unpaid office;
- ii. The person who originally supplied the information contained in the records had or may reasonably be supposed to have had personal knowledge of the matters dealt with; and
- iii. Each person through whom the information was supplied received the information in the course of a trade, business, profession or other occupation, or as the holder of a paid or unpaid office.

Signature:

Date :

Reciprocity

I confirm that the assistance requested above may be obtained under current **[insert Requested State]** law if in a like case a request for such assistance were made to the authorities in **[insert Requested State]**

Transmission of Documents

It is requested that any documents or other correspondence are sent to me at the above address and that you notify me as to any need to return any documents at the conclusion of the proceedings in the **[insert Requested State]**.

When you send the evidence, please also email **[insert email address]** to confirm that the evidence has been sent. This will enable me to make enquiries to locate the evidence if it is not received within a few days.

Contacts

The appropriate person to contact in the event of any query about this request is the case lawyer:

Name	[insert name of Prosecutor]
Address	[insert]
Email	[insert]
Direct telephone number	[insert]
Fax number	[insert]
or the Investigator, on telephone number [insert]	
or by e-mail at [insert]	

I would be grateful if you would keep the case lawyer and Investigator generally informed as to the progress of this request.

Should you consider that the presence of the Investigator in your country would be helpful in the execution of this mutual legal assistance request, I would be grateful if you could inform the case lawyer.

I extend my thanks in anticipation of your valued co-operation and assistance in this matter.

Yours faithfully

MLAR FOR BANKING EVIDENCE

Date

Dear Sir or Madam

Operation X

Insert Name of Defendant/s or Suspect/s

I am [insert name and job title] from [insert agency] and I am designated to transmit this letter by the [insert designating authority i.e. Attorney General and any relevant enabling legislation]

Urgent

If it is an urgent request, include details of why (e.g. destruction of evidence or to prevent dissipation of assets) and any dates when the evidence is required by.

Basis of the Request

I make this request pursuant to [Insert Treaty, convention etc - i.e. Revised Harare Scheme 2011 or UNTOC example that follows is for UNTOC] The United Nations Convention against Transnational Organized Crime, and the Protocols thereto done at Palermo in 2000 and ratified by [Insert Requested State] on [insert date]. This Request recognises the principles of reciprocity and mutuality between [Insert Requested State] and [Insert Requested State]

Purpose of the Request

This is a request for banking evidence to be used in the prosecution (including any related freeze, forfeiture and enforcement proceedings and any related ancillary proceedings) of the following

[List All]

SUBJECT	DATE OF BIRTH	PLACE OF BIRTH	NATIONALITY	ADDRESS

I confirm that the investigation is on-going and proceedings have not concluded in this matter and there is reasonable cause to believe that the above have benefited from their criminal conduct.

The above is/are the subject of a criminal investigation being conducted by [insert name of investigating Law Enforcement Agency] and a criminal prosecution being conducted by the [insert name of prosecuting agency] for offences of [insert offences, relevant statute and maximum sentences].

If a Financial Investigation Insert:

The above is/are the subject of a financial investigation being conducted by [insert name of investigating Law Enforcement Agency] and forfeiture proceedings being conducted by the [insert name of prosecuting agency] for offences of [insert offences, relevant statute and maximum sentences – and if convicted include a certificate of conviction].

Relevant Law

Please find appended to this mutual legal assistance request an annex of the applicable [insert Requested State] Law at Annex A.

Include relevant law in the Requested State for any criminal offences investigated and or convicted and any relevant forfeiture law (if for a financial investigation)

[Insert if required]

Confidentiality

In order not to prejudice the investigation, I request that no person (including any of the above subjects) is notified by the competent authorities in your country of the existence and contents of this mutual legal assistance request and any action taken in response to it. I further request that action is taken to ensure that any person from whom evidence is sought does not so notify any other person.

The reasons for requesting confidentiality is because it is feared that, if the above subjects or an associated party became aware of the existence of this request or of action taken in response to it, it could potentially compromise the investigation or parties involved in it [Insert how this is justified – e.g. any supporting information of destruction of evidence?]

[If it is not possible to preserve confidentiality in the above manner, please notify me prior to executing this mutual legal assistance request.]

Summary of Facts and History of Proceedings

Insert the following:

1. A brief chronology of the proceedings to date [insert when charged and when any trial date is fixed or forfeiture proceedings].
2. A summary of the evidence in support of the investigation/charges or any financial investigation
3. Confirm what evidence is requested in EACH bank account
4. Provide supporting information to confirm the evidence requested in EACH bank account is relevant to determine whether an offence listed in the MLAR was committed

IF EVIDENCE REQUIRED FOR FORFEITURE/ATTACHMENT PROCEEDINGS or INVESTIGATION:

Identify specific bank accounts that are controlled by a subject or provide supporting facts to demonstrate that the subject is concealing his/her assets in someone else's account

1. If any supporting information is intelligence confirm why it is reliable and credible.
2. If a date range is requested confirm the relevance to the investigation/prosecution of the offence/s/financial investigation in the MLAR.

Assistance Requested and Preferred Form of Evidence

It is requested that any requisite court order or other order necessary to enable the provision of the following evidence be sought:

1. For the [insert name of Bank] Account [insert Bank Account number]; [insert Branch/address]
 - a. Details and copies of signatories to the Account (including those given a power of attorney)
 - b. Any information or copy identification documents held relating to the Bank Account holder/s or signatories as part of the "Know your customer" requirements
 - c. Account statements [insert dates remembering to ensure they are relevant to your request and you can justify that the evidence you require will be obtained during this time frame]
 - d. The amounts of and dates of withdrawals and deposits during [insert dates remembering to ensure they are relevant to your request and you can justify that the evidence you require will be obtained

- during this time frame] together with identification of the receiving or sending financial institution/individual
- e. The current balance on the Account
 - f. Details of any correspondence to and from the Account holder to the Bank [insert dates remembering to ensure they are relevant to your request and you can justify that the evidence you require will be obtained during this time frame]
 - g. Information about the conduct of the Account [insert dates remembering to ensure they are relevant to your request and you can justify that the evidence you require will be obtained during this time frame – inserting transactions above a certain limit and within a relevant time-period will ensure the request is more focused and likely to be executed] including any:
 - i. Direct debits
 - ii. Standing orders
 - iii. Inter account transfers
 - iv. Fed Wires
 - v. SWIFT
 - vi. CHAPS
 - vii. Paid cheques
 - viii. Returned cheques
 - ix. Foreign drafts
 - x. Vouchers (both credit and debit)
 - xi. Signature cards
 - xii. Application forms
 - xiii. References
 - xiv. Internal memoranda
 - xv. Head Office or Manager Notes
 - h. Details of any documents, files, accounts or other records used in ordinary business, including bonds, securities or deeds, held by the Bank on behalf of [insert name of subject]
 - i. Confirmation if any safety deposit box(es) or other material are held by the Bank in the name of [insert name of subject] and any inventory of the contents [Please note if you want to search a safety deposit box there must be sufficient supporting information to satisfy the legal standard for the Requested State for a search warrant]
 - j. Evidence of any linked Bank Accounts by name, signatory, or contact details

I request that the documents are provided in a format where they can be clearly and easily examined, whether those documents are in written form, kept on microfilm, magnetic tape, computer disc or any form of mechanical or electronic data retrieval mechanism.

2. That such other enquiries be made, persons interviewed and evidence secured as appears to you to be necessary in the course of executing this request.
3. Any records are produced as exhibits in any statements together with an explanation of the technical terms used in the records.
4. Any information held on computer in any form be preserved and secured from unauthorized interference and made available to the investigating officers for use at any subsequent trial.

Any material provided to me pursuant to this request may be used in any criminal prosecution or other judicial proceedings connected with this matter, including any other freeze or forfeiture proceedings and ancillary proceedings relating thereto including proceedings relating to any breaches of, variation of, reassessment of, or enforcement of [insert Requested State] court orders.

Form which it is Requested Evidence is Taken

Confirm Format of evidence – this is an example only

1. It is requested that the witness statements be taken in writing, dated and headed by the following declaration "This statement consisting of ____ pages is true to the best of my knowledge and belief". The number of pages should be filled in the space once the statement has been written and the witness should sign the statement beside the declaration, on every page and at the end of the statement. Please date the statements. It is requested that the witness' address, telephone and fax numbers and date of birth, together with their availability to attend court in [insert Requested State], be written on the back of the first page of each statement.

2. If documentation is obtained from a witness, the witness should produce each document and give it an exhibit number. The exhibit number should consist of the witness' initials and a consecutive number. For example, the first document produced by John Andrew Smith will have the exhibit number JAS1, the second will be JAS2 and so on.
3. If documentation is obtained from a witness, the witness should produce each document and give it an exhibit number. The exhibit number should consist of the witness' initials and a consecutive number.
4. The statement should then continue : -

I occupy the position of *(job title e.g. Custodian of Records)*

In the employment of *(full name of company)*

Located at *(business address)*

In the ordinary course of business *(name of company)* maintains electronic records of certain data related to subscriber accounts. By virtue of my position I have access to these records and I am authorized and qualified to make this statement.

(Name of company) on or about *(date of service)* received a *(type of process e.g. search warrant)* from *(authority issuing process)* for certain records relating to *(e.g. account name)*

I produce these records as my exhibit(s) _____ and explain them as follows:

I can further state that:

- i. The records were created or received by a person in the course of a trade, business, profession or other occupation, or as the holder of a paid or unpaid office;
- ii. The person who originally supplied the information contained in the records had or may reasonably be supposed to have had personal knowledge of the matters dealt with; and
- iii. Each person through whom the information was supplied received the information in the course of a trade, business, profession or other occupation, or as the holder of a paid or unpaid office.

Signature:

Date:

Reciprocity

I confirm that the assistance requested above may be obtained under current **[insert Requested State]** law if in a like case a request for such assistance were made to the authorities in **[insert Requested State]**

Transmission of Documents

It is requested that any documents or other correspondence are sent to me at the above address and that you notify me as to any need to return any documents at the conclusion of the proceedings in the **[insert State]**.

When you send the evidence, please also email **[insert email address]** to confirm that the evidence has been sent. This will enable me to make enquiries to locate the evidence if it is not received within a few days.

Contacts

The appropriate person to contact in the event of any query about this request is the case lawyer:

Name	[insert name of Prosecutor]
Address	[insert]
Email	[insert]
Direct telephone number	[insert]
Fax number	[insert]
or the Investigator, on telephone number [insert]	
or by e-mail at [insert]	

I would be grateful if you would keep the case lawyer and Investigator generally informed as to the progress of this request.

Should you consider that the presence of the Investigator in your country would be helpful in the execution of this mutual legal assistance request, I would be grateful if you could inform the case lawyer.

I extend my thanks in anticipation of your valued co-operation and assistance in this matter.

Yours faithfully

MLAR FOR CERTIFICATE OF CONVICTION/JUDGEMENT

Date

Dear Sir or Madam

Operation X

Insert Name of Defendant/s or Suspect/s

I am [insert name and job title] from [insert agency] and I am designated to transmit this letter by the [insert designating authority i.e. Attorney General and any relevant enabling legislation]

Urgent

If it is an urgent request, include details of why (e.g. destruction of evidence or to prevent dissipation of assets) and any dates when the evidence is required by.

Basis of the Request

I make this request pursuant to [Insert Treaty, convention etc - i.e. Revised Harare Scheme 2011 or UNTOC example that follows is for UNTOC] The United Nations Convention against Transnational Organized Crime, and the Protocols thereto done at Palermo in 2000 and ratified by [Insert Requested State] on [insert date]. This Request recognises the principles of reciprocity and mutuality between [Insert Requested State] and [Insert Requested State]

Purpose of the Request

This is a request for evidence to be used in the prosecution (including any related freeze, forfeiture and enforcement proceedings and any related ancillary proceedings) of the following

[List All]

SUBJECT (include any aliases and other identifying features e.g. fingerprints)	DATE OF BIRTH	PLACE OF BIRTH	NATIONALITY	ADDRESS

The above is/are the subject of a criminal investigation being conducted by [insert name of investigating Law Enforcement Agency] and a criminal prosecution being conducted by the [insert name of prosecuting agency] for offences of [insert offences, relevant statute and maximum sentences].

If a Financial Investigation Insert:

The above is/are the subject of a financial investigation being conducted by [insert name of investigating Law Enforcement Agency] and forfeiture proceedings being conducted by the [insert name of prosecuting agency] for offences of [insert offences, relevant statute and maximum sentences – and if convicted include a certificate of conviction].

Relevant Law

Please find appended to this mutual legal assistance request an annex of the applicable [insert Requested State] Law at Annex A. **Include relevant law for any criminal offences investigated and or convicted and any relevant forfeiture law (if for a financial investigation)**

[Insert if required]

Confidentiality

In order not to prejudice the investigation, I request that no person (including any of the above subjects) is notified by the competent authorities in your country of the existence and contents of this mutual legal assistance request and any action taken in response to it. I further request that action is taken to ensure that any person from whom evidence is sought does not so notify any other person.

The reasons for requesting confidentiality is because it is feared that, if the above subjects or an associated party became aware of the existence of this request or of action taken in response to it, it could potentially compromise the investigation or parties involved in it. **[Insert how this is justified – e.g. any supporting information of destruction of evidence?]**

[If it is not possible to preserve confidentiality in the above manner, please notify me prior to executing this mutual legal assistance request.]

Summary of Facts and History of Proceedings

1. **Insert the following:**
2. **A brief chronology of the proceedings to date [insert when charged and when any trial date is fixed].**
3. **A summary of the evidence in support of the investigation/charges**
4. **How the Request Arises:**
 - i. **Details of the relevant convictions and or Judgement i.e. Date, offence/s, Sentence and Court/Judge**
 - ii. **Supporting information that the certificate of conviction and/or judgement are relevant to the investigation/prosecution in the Requested State**

Assistance Requested and Preferred Form of Evidence

1. It is requested that a certified copy of the record of conviction for the following offence/s is provided:
 - i. **Date**
 - ii. **Offence**
 - iii. **Sentence for each offence**
 - iv. **Court**
 - v. **Judge**

AND/OR

2. It is requested that a certified copy of the judgment/sentencing remarks for the following offence/s is provided:
 - i. **Date**
 - ii. **Offence**
 - iii. **Sentence for each offence**
 - iv. **Court**
 - v. **Judge**
3. That such other enquiries be made, evidence secured and statements taken as appears to be necessary in the course of rendering the assistance requested.

Any material provided to me pursuant to this request may be used in any criminal prosecution or other judicial proceedings connected with this matter, including any other freeze or forfeiture proceedings and ancillary proceedings relating thereto including proceedings relating to any breaches of, variation of, reassessment of, or enforcement of [insert State] court orders.

Reciprocity

I confirm that the assistance requested above may be obtained under current **[insert Requested State]** law if in a like case a request for such assistance were made to the authorities in **[insert Requested State]**

Transmission of Documents

It is requested that any documents or other correspondence are sent to me at the above address and that you notify me as to any need to return any documents at the conclusion of the proceedings in the **[insert State]**.

When you send the evidence, please also email **[insert email address]** to confirm that the evidence has been sent. This will enable me to make enquiries to locate the evidence if it is not received within a few days.

Contacts

The appropriate person to contact in the event of any query about this request is the case lawyer:

Name	[insert name of Prosecutor]
Address	[insert]
Email	[insert]
Direct telephone number	[insert]
Fax number	[insert]
or the Investigator, on telephone number [insert]	
or by e-mail at [insert]	

I would be grateful if you would keep the case lawyer and Investigator generally informed as to the progress of this request.

Should you consider that the presence in your country of the Investigator would be helpful in the execution of this mutual legal assistance request, I would be grateful if you could inform the case lawyer.

I extend my thanks in anticipation of your co-operation and assistance in this matter.

Yours faithfully

MLAR FOR SERVICE OF DOCUMENTS

Date

Dear Sir or Madam

Operation X

Insert Name of Defendant/s or Suspect/s

I am [insert name and job title] from [insert agency] and I am designated to transmit this letter by the [insert designating authority i.e. Attorney General and any relevant enabling legislation]

Urgent

If it is an urgent request, include details of why (e.g. destruction of evidence or to prevent dissipation of assets) and any dates when the evidence is required by.

Basis of the Request

I make this request pursuant to [Insert Treaty, convention etc - i.e. Revised Harare Scheme 2011 or UNTOC example that follows is for UNTOC] The United Nations Convention against Transnational Organized Crime, and the Protocols thereto done at Palermo in 2000 and ratified by [Insert Requested State] on [insert date]. This Request recognises the principles of reciprocity and mutuality between [Insert Requested State] and [Insert Requested State]

Purpose of the Request

This is a request for assistance in the service of documents relevant to a criminal matter arising in the Requested State in relation to proceedings related to the following: 

[List All]

SUBJECT (and any aliases)	DATE OF BIRTH	PLACE OF BIRTH	NATIONALITY	ADDRESS

The above is the subject of a criminal investigation being conducted by [insert name of investigating Law Enforcement Agency] and a criminal prosecution being conducted by the [insert name of prosecuting agency] for offences of [insert offences, relevant statute and maximum sentences].

If a Financial Investigation Insert:

The above is the subject of a financial investigation being conducted by [insert name of investigating Law Enforcement Agency] and forfeiture proceedings being conducted by the [insert name of prosecuting agency] for offences of [insert offences, relevant statute and maximum sentences – and if convicted include a certificate of conviction].

Summary of Facts and History of Proceedings

Insert a brief chronology of the proceedings to date

Assistance Requested

1. Confirm the documents to be served and annex originals to the MLAR
2. Provide as much information on where the documents are to be served and upon whom
3. Confirm any certification and the format to prove service- attach any specific format requested as an annex

Reciprocity

I confirm that the assistance requested above may be obtained under current [insert Requested State] law if in a like case a request for such assistance were made to the authorities in [insert Requested State]

Transmission of Documents

It is requested that any documents or other correspondence are sent to me at the above address and that you notify me as to any need to return any documents at the conclusion of the proceedings in the [insert State].

Please also email [insert email address] to confirm that the documents have been served.

Contacts

The appropriate person to contact in the event of any query about this request is the case lawyer:

Name	[insert name of Prosecutor]
Address	[insert]
Email	[insert]
Direct telephone number	[insert]
Fax number	[insert]
or the Investigator, on telephone number [insert]	
or by e-mail at [insert]	

I would be grateful if you would keep the case lawyer and Investigator generally informed as to the progress of this request.

Should you consider that the presence of the Investigator in your country would be helpful in the execution of this mutual legal assistance request, I would be grateful if you could inform the case lawyer.

I extend my thanks in anticipation of your co-operation and assistance in this matter.

Yours faithfully

MLAR FOR URGENT FREEZE ORDER

Date

Dear Sir or Madam

Operation X

Insert Name of Defendant/s or Suspect/s

I am [insert name and job title] from [insert agency] and I am designated to transmit this letter by the [insert designating authority i.e. Attorney General and any relevant enabling legislation]

Urgent

If it is an urgent request, include details of why (e.g. destruction of evidence or to prevent dissipation of assets)

Basis of the Request

I make this request pursuant to [Insert Treaty, convention etc - i.e. Revised Harare Scheme 2011 or UNTOC example that follows is for UNTOC] The United Nations Convention against Transnational Organized Crime, and the Protocols thereto done at Palermo in 2000 and ratified by [Insert Requested State] on [insert date]. This Request recognises the principles of reciprocity and mutuality between [Insert Requested State] and [Insert Requested State]

Purpose of the Request

This is a request in relation to an investigation into the recovery of the assets of the below named, to urgently freeze [insert description of asset and location]

[List All]

SUBJECT	DATE OF BIRTH	PLACE OF BIRTH	NATIONALITY	ADDRESS

The above is/are the subject of a criminal investigation being conducted by [insert name of investigating Law Enforcement Agency] [if applicable insert 'and a criminal prosecution being conducted by [insert relevant agency]'] for offences of [insert offences, relevant statute and maximum sentences].

I confirm that the investigation is on-going and proceedings have not concluded in this matter and there is reasonable cause to believe that property linked to a money laundering [or terrorist funding offence] committed by the above.

[If an application before issuance of a freeze/attachment order in the Requested State or pre-charge freeze an affidavit may need to be drafted explaining the proceedings, law and evidence linking the property to money laundering or terrorist funding]

[Insert if oral application was made for freeze pursuant to any MLAT and this is the subsequent MLAR]

Relevant Law

Please find appended to this request extracts of relevant [insert Requested State] Law applicable to freeze and forfeiture proceedings at Annex A and to the charges at Annex B.

Summary of Facts and History of Proceedings

A brief chronology of the investigation to date [insert when arrested, and if charged and if any freeze proceedings to date] and:

- i. The nature and circumstances of the arrest and/or charge/s – showing supporting information that money laundering or terrorist financing was committed and the connection between that crime and the asset/s to be frozen/attached
- ii. The basis for the belief that the person arrested or charged has property in the Requested State that would be subject to forfeiture under the Requested State's law – this means
- iii. Demonstrating dual criminality and
- iv. Reliable intelligence/evidence of the location of the asset in the Requested State
- v. A freeze/attachment order is needed in the Requested State to preserve the availability of property
- vi. Why an urgent request for freeze is needed (i.e. risk of dissipation – include any relevant reliable intelligence to support this)
- vii. If an application should be ex parte

Assistance Requested

It is requested that

1. All such steps be taken in accordance with the law of [insert Requested State] as are necessary to prevent [insert name] from disposing of or otherwise dealing with [insert description and location of asset]. I confirm that a request will be submitted for registration of any [insert Requested State] freeze/attachment order in the [insert Requested State] order as soon as practicable after the order has been made.
2. To the extent that any third parties assert an interest in any proceedings brought in [insert Requested State] as a result of this request, the case lawyer is informed that they are doing so, to see copies of the evidence on which they rely and to be given the opportunity (either directly or through you) to contest their claims.
3. Provide as much information on where the order is to be served and upon whom
4. Confirm any certification and the format to prove service - attach any specific format requested as an annex

Any material provided pursuant to this request may be used in any criminal prosecution or other judicial proceedings connected with this matter, including any other freeze or forfeiture proceedings and ancillary proceedings relating thereto including proceedings relating to any breaches of, variation of, reassessment of, or enforcement of [insert Requested State] court orders.

Reciprocity

I confirm that the assistance requested above may be obtained under current [insert Requested State] law if in a like case a request for such assistance were made to the authorities in insert Requested State].

Transmission of Documents

It is requested that any documents or other correspondence are sent to me at the above address and that you notify me as to any need to return any documents at the conclusion of the proceedings in the [insert State].

Please also email [insert email address] to confirm that the order has been granted and served.

Contacts

The appropriate person to contact in the event of any query about this request is the case lawyer:

Name	[insert name of Prosecutor]
Address	[insert]
Email	[insert]
Direct telephone number	[insert]
Fax number	[insert]
or the Investigator, on telephone number [insert]	
or by e-mail at [insert]	

I would be grateful if you would keep the case lawyer and Investigator generally informed as to the progress of this request.

Should you consider that the presence in your country of the Investigator would be helpful in the execution of this mutual legal assistance request, I would be grateful if you could inform the case lawyer.

I extend my thanks in anticipation of your co-operation and assistance in this matter.

Yours faithfully

MLAR FOR FREEZE IN REQUESTED STATE BEFORE ISSUANCE OF REQUESTED STATE'S FREEZE ORDER

Date

Dear Sir or Madam

Operation X

Insert Name of Defendant/s or Suspect/s

I am [insert name and job title] from [insert agency] and I am designated to transmit this letter by the [insert designating authority i.e. Attorney General and any relevant enabling legislation]

Urgent

If an urgent request include details of why (e.g. destruction of evidence or to prevent dissipation of assets)

Basis of the Request

I make this request pursuant to [Insert Treaty, convention etc - i.e. Revised Harare Scheme 2011 or UNTOC example that follows is for UNTOC] The United Nations Convention against Transnational Organized Crime, and the Protocols thereto done at Palermo in 2000 and ratified by [Insert Requested State] on [insert date]. This Request recognises the principles of reciprocity and mutuality between [Insert Requested State] and [Insert Requested State]

Purpose of the Request

This is a request in relation to an investigation into the recovery of the assets of the below named, to urgently freeze/attach [insert description of asset and location]

[List All]

SUBJECT	DATE OF BIRTH	PLACE OF BIRTH	NATIONALITY	ADDRESS

The above is/are the subject of a criminal investigation being conducted by [insert name of investigating Law Enforcement Agency] [if applicable insert 'and a criminal prosecution being conducted by [insert relevant agency]'] for offences of [insert offences, relevant statute and maximum sentences].

I confirm that the investigation is on-going and proceedings have not concluded in this matter and there is reasonable cause to believe that the above have benefited from their criminal conduct.

I have attached an affidavit in support of the application for freeze in the [insert Requested State] at Annex A [complete an affidavit referring to national law and investigation chronology and proceedings to date linking property attached to money laundering or terrorist financing]

Relevant Law

Please find appended to this request extracts of relevant [insert Requested State] Law applicable to freeze and attachment proceedings at Annex B and to the charges at Annex C.

Summary of Facts and History of Proceedings

1. Provide a brief chronology of the proceedings to date.
2. Provide a summary of the evidence in support of the investigation/charges
 - i. The nature of the investigation and identities of entities (i.e. any companies to facilitate crimes);
 - ii. The dates of the offences and the factual basis for the [potential] charges including any supporting evidence, and anything indicating reliability of that evidence;
 - iii. The reasonable basis to believe that charges will be placed and freeze/attachment will be applied for;
 - iv. Explanation of the relationship between the specific assets to be frozen/attached in the Requested State and the criminal conduct of the suspect including:
 - v. Why it is believed that the assets in question constitute, derive from or are traceable to money laundering or terrorist financing. Explanation of any connection between any subjects and any corporate entities in whose name the assets may be held;
 - vi. The due process procedures that have been or will be undertaken in the Requested State (specifically service of notice on interested parties and the right to challenge the order); and
 - vii. Provide supporting information that there is a risk of dissipation or destruction if the assets are not preserved

Assistance Requested

It is requested that

1. All such steps be taken in accordance with the law of [insert Requested State] as are necessary to prevent [insert name] from disposing of or otherwise dealing with realizable property. I confirm that a request will be submitted for registration and enforcement of any forfeiture order as soon as practicable after the forfeiture order has been made
2. That all necessary steps be taken in accordance to freeze/attach any and all money, property, and bank accounts in [insert Requested State] held, whether owned legally or beneficially, by [insert name] with particular reference to the [description of asset] referred to above.
3. To the extent that any third parties assert an interest in any proceedings brought in the [insert Requested State] as a result of this request, the case lawyer is informed that they are doing so, to see copies of the evidence on which they rely and to be given the opportunity (either directly or through you) to contest their claims.
4. **Confirm if an application should be ex parte**
5. The need to preserve the availability of [insert address of property (including any co-owners and mortgages with Bank details) or description of asset e.g. Bank Account number, Branch and Address] through a freeze/attachment order in [insert Requested State] outweighs the hardship on any party against whom the order is to be entered as:
 - a) if relevant [insert name] has been convicted of [insert offences]
 - b) A forfeiture order will be sought [insert date if fixed] [insert benefit figure if known];
 - c) [insert address of property or description of asset e.g. Bank Account number, Branch and Address] will be required to satisfy this order; and
 - d) There is a risk of dissipation or destruction if the property is not preserved
6. Provide as much information on where the order is to be served and upon whom
7. Confirm any certification and the format to prove service - attach any specific format requested as an annex

Any material provided pursuant to this request may be used in any criminal prosecution or other judicial proceedings connected with this matter, including any other freeze/attachment or forfeiture proceedings and ancillary proceedings relating thereto including proceedings relating to any breaches of, variation of, reassessment of, or enforcement of [insert Requested State] court orders.

Reciprocity

I confirm that the assistance requested above may be obtained under current [insert Requested State] law if in a like case a request for such assistance were made to the authorities in [insert Requested State].

Transmission of Documents

It is requested that any documents or other correspondence are sent to me at the above address and that you notify me as to any need to return any documents at the conclusion of the proceedings in the [insert State]. Please also email [insert email address] to confirm that the order has been granted and served.

Contacts

The appropriate person to contact in the event of any query about this request is the case lawyer:

Name	[insert name of Prosecutor]
Address	[insert]
Email	[insert]
Direct telephone number	[insert]
Fax number	[insert]
or the Investigator, on telephone number [insert]	
or by e-mail at [insert]	

I would be grateful if you would keep the case lawyer and Investigator generally informed as to the progress of this request.

Should you consider that the presence in your country of the Investigator would be helpful in the execution of this mutual legal assistance request, I would be grateful if you could inform the case lawyer.

I extend my thanks in anticipation of your co-operation and assistance in this matter.

Yours faithfully

MLAR FOR REGISTRATION OF REQUESTED STATE'S FREEZE/ATTACHMENT ORDER

Date

Dear Sir or Madam

Operation X

Insert Name of Defendant/s or Suspect/s

I am [insert name and job title] from [insert agency] and I am designated to transmit this letter by the [insert designating authority i.e. Attorney General and any relevant enabling legislation]

Urgent

If it is an urgent request, include details of why (e.g. destruction of evidence or to prevent dissipation of assets)

Basis of the Request

I make this request pursuant to [Insert Treaty, convention etc - i.e. Revised Harare Scheme 2011 or UNTOC example that follows is for UNTOC] The United Nations Convention against Transnational Organized Crime, and the Protocols thereto done at Palermo in 2000 and ratified by [Insert Requested State] on [insert date]. This Request recognises the principles of reciprocity and mutuality between [Insert Requested State] and [Insert Requested State]

Purpose of the Request

This is a request in relation to an investigation into the recovery of the assets of the below named, to register and enforce the freeze/attachment order date [insert date] issued by [insert name of Judge and High Court]

SUBJECT	DATE OF BIRTH	PLACE OF BIRTH	NATIONALITY	ADDRESS

The above is the subject of a criminal investigation being conducted by [insert name of investigating Law Enforcement Agency] and a criminal prosecution being conducted by [insert relevant Requested State agency prosecuting] for offences of [insert offence, relevant statute and maximum sentence].

I confirm that the investigation is on-going and proceedings have not concluded in this matter and there is reasonable cause to believe that the above has property linked to money laundering or terrorist financing

Relevant Law

Please find appended to this request extracts of relevant [insert Requested State] Law applicable to freeze /attachment and forfeiture proceedings at Annex B and to the charges at Annex C.

Summary of Facts and History of Proceedings

1. Provide a brief chronology of the proceedings to date insert when charged, freeze/attachment proceedings and when any trial date is fixed if known.
2. Provide a summary of the evidence in support of the investigation/charges

Assistance Requested

It is requested that

1. All such steps be taken in accordance with the law of the **[insert Requested State]** as are necessary to prevent **[insert name]** from disposing of or otherwise dealing with the relevant property and to give full legal effect in your jurisdiction to the annexed freeze/attachment order. I confirm that a request will be submitted for registration and enforcement of any forfeiture order as soon as practicable after the forfeiture order has been made.
2. That all necessary steps be taken in accordance to freeze/attach whether owned legally or beneficially, by **[insert name]** with particular reference to the **[description of asset]** referred to above.
3. To the extent that any third parties assert an interest in any proceedings brought in the **[insert Requested State]** as a result of this request, the case lawyer is informed that they are doing so, to see copies of the evidence on which they rely and to be given the opportunity (either directly or through you) to contest their claims.
4. The need to preserve the availability of **[insert address of property (including any co-owners and mortgages with Bank details) or description of asset e.g. Bank Account number, Branch and Address]** through a freeze/attachment order outweighs the hardship on any party against whom the order is to be entered as:
 - a. [if relevant **[insert name]** has been convicted of **[insert offences]** and benefitted from these offences]
 - b. A forfeiture order will be sought **[insert date if fixed]** **[insert benefit figure if known]**;
 - c. There is a risk of dissipation or destruction if the property is not preserved, **[insert any supporting evidence i.e. by the fact the subject has not disclosed the existence of this property]**
5. Provide as much information on where the order is to be served and upon whom
6. Confirm any certification and the format to prove service - attach any specific format requested as an annex

Any material provided pursuant to this request may be used in any criminal prosecution or other judicial proceedings connected with this matter, including any other freeze/attachment or forfeiture proceedings and ancillary proceedings relating thereto including proceedings relating to any breaches of, variation of, reassessment of, or enforcement of **[insert Requested State]** court orders.

Reciprocity

I confirm that the assistance requested above may be obtained under current **[insert Requested State]** law if in a like case a request for such assistance were made to the authorities in **[insert Requested State]**.

Transmission of Documents

It is requested that any documents or other correspondence are sent to me at the above address and that you notify me as to any need to return any documents at the conclusion of the proceedings in the **[insert State]**.

Please also email **[insert email address]** to confirm that the order has been granted and served.

Contacts

The appropriate person to contact in the event of any query about this request is the case lawyer:

Name	[insert name of Prosecutor]
Address	[insert]
Email	[insert]
Direct telephone number	[insert]
Fax number	[insert]
or the Investigator, on telephone number [insert]	
or by e-mail at [insert]	

I would be grateful if you would keep the case lawyer and Investigator generally informed as to the progress of this request.

Should you consider that the presence in your country of the Investigator would be helpful in the execution of this mutual legal assistance request, I would be grateful if you could inform the case lawyer.

I extend my thanks in anticipation of your co-operation and assistance in this matter.

Yours faithfully

MLAR FOR REGISTRATION OF PRE-CHARGE FREEZE

Date

Dear Sir or Madam

Operation X

Insert Name of Defendant/s or Suspect/s

I am [insert name and job title] from [insert agency] and I am designated to transmit this letter by the [insert designating authority i.e. Attorney General and any relevant enabling legislation]

Urgent

If it is an urgent request, include details of why (e.g. destruction of evidence or to prevent dissipation of assets)

Basis of the Request

I make this request pursuant to [Insert Treaty, convention etc - i.e. Revised Harare Scheme 2011 or UNTOC example that follows is for UNTOC] The United Nations Convention against Transnational Organized Crime, and the Protocols thereto done at Palermo in 2000 and ratified by [Insert Requested State] on [insert date]. This Request recognises the principles of reciprocity and mutuality between [Insert Requested State] and [Insert Requested State]

Purpose of the Request

This is a request in relation to an investigation into the recovery of the assets of the below named, to register and enforce the pre-charge freeze/attachment order date [insert date] issued by [insert name of Judge and Court] attached at Annex A.

SUBJECT	DATE OF BIRTH	PLACE OF BIRTH	NATIONALITY	ADDRESS

The above is/are the subject of a criminal investigation being conducted by [insert name of investigating Law Enforcement Agency] and a criminal prosecution being conducted by the [insert relevant prosecuting agency in Requested State] for offences of [insert offence, relevant statute and maximum sentence].

I confirm that the investigation is on-going and proceedings have not concluded in this matter and there is reasonable cause to believe that the above has benefited from their criminal conduct.

I have attached an affidavit at Annex A [complete an affidavit referring to national law and investigation chronology and proceedings to date linking property attached to money laundering or terrorist financing]

Summary of Facts and History of Proceedings

Include:

1. The nature of the investigation and identities of subjects and entities used (i.e. any companies to facilitate crimes);
2. The dates of the alleged offences and the factual basis for the potential charges including any supporting evidence, and anything indicating reliability of that evidence;
3. The reasonable basis to believe that charges will be placed and basis for freeze/attachment (attach a supporting Affidavit of Investigating Officer as an Annex outlining evidence linking property to money laundering or terrorist financing);

4. A detailed description and location of the property, if known, such as:
 - For Bank Accounts: Branch, Address, account number, account holder's name;
 - For Real Property: Value, details of any mortgages or co-owners
5. Explanation of the relationship between the specific assets to be frozen/attached in the Requested State and Why it is believed that the assets in question derive from money laundering or terrorist financing
6. Explanation of any connection between any subjects and any corporate entities in whose name the assets may be held;
7. Confirm the due process procedures that have been or will be undertaken in the Requested State (specifically service of notice on interested parties and the right to challenge the order)

Relevant Law

Please find appended to this request extracts of relevant [insert Requested State] Law applicable to the charges at Annex B.

Assistance Requested

It is requested that

1. All such steps be taken in accordance with the law of [insert Requested State] as are necessary to prevent [insert name] from disposing of or otherwise dealing with [description of asset] and to give full legal effect in your jurisdiction to the annexed freeze/attachment order. I confirm that a request will be submitted for registration and enforcement of any forfeiture order as soon as practicable after the forfeiture order has been made.
2. That all necessary steps be taken in accordance to freeze/attach any and all money, property and bank accounts in [insert Requested State] held, whether owned legally or beneficially, by [insert name] with particular reference to the [description of asset] referred to above.
3. To the extent that any third parties assert an interest in any proceedings brought in [insert Requested State] as a result of this request, the case lawyer is informed that they are doing so, to see copies of the evidence on which they rely and to be given the opportunity (either directly or through you) to contest their claims.
4. The need to preserve the availability of [insert address of property (including any co-owners and mortgages with Bank details) or description of asset e.g. Bank Account number, Branch and Address] through a freeze/attachment order outweighs the hardship on any party against whom the order is to be entered as:
 - a. A forfeiture order will be sought
 - b. [insert address of property or description of asset e.g. Bank Account number, Branch and Address] will be required to satisfy this order; and
 - c. There is a risk of dissipation or destruction if the property is not preserved, [insert any supporting evidence i.e. by the fact the Accused has not disclosed the existence of this property in advance of his forfeiture hearing]
5. Provide as much information on where the order is to be served and upon whom
6. Confirm any certification and the format to prove service - attach any specific format requested as an annex

Any material provided pursuant to this request may be used in any criminal prosecution or other judicial proceedings connected with this matter, including any other freeze/attachment or forfeiture proceedings and ancillary proceedings relating thereto including proceedings relating to any breaches of, variation of, reassessment of, or enforcement of [insert Requested State] court orders.

Reciprocity

I confirm that the assistance requested above may be obtained under current [insert Requested State] law if in a like case a request for such assistance were made to the authorities in [insert Requested State].

Transmission of Documents

It is requested that any documents or other correspondence are sent to me at the above address and that you notify me as to any need to return any documents at the conclusion of the proceedings in the [insert State].

Please also email [insert email address] to confirm that the order has been granted and served.

Contacts

The appropriate person to contact in the event of any query about this request is the case lawyer:

Name	[insert name of Prosecutor]
Address	[insert]
Email	[insert]
Direct telephone number	[insert]
Fax number	[insert]
or the Investigator, on telephone number [insert]	
or by e-mail at [insert]	

I would be grateful if you would keep the case lawyer and Investigator generally informed as to the progress of this request.

Should you consider that the presence in your country of the Investigator would be helpful in the execution of this mutual legal assistance request, I would be grateful if you could inform the case lawyer.

I extend my thanks in anticipation of your co-operation and assistance in this matter.

Yours faithfully

MLAR TO ENFORCE FORFEITURE ORDER

Date

Dear Sir or Madam

Operation X

Insert Name of Defendant/s or Suspect/s

I am [insert name and job title] from [insert agency] and I am designated to transmit this letter by the [insert designating authority i.e. Attorney General and any relevant enabling legislation]

Urgent

If it is an urgent request, include details of why (e.g. to prevent dissipation of assets)

Basis of the Request

I make this request pursuant to [Insert Treaty, convention etc - i.e. Revised Harare Scheme 2011 or UNTOC example that follows is for UNTOC] The United Nations Convention against Transnational Organized Crime, and the Protocols thereto done at Palermo in 2000 and ratified by [Insert Requested State] on [insert date]. This Request recognises the principles of reciprocity and mutuality between [Insert Requested State] and [Insert Requested State]

Purpose of the Request

This is a request in relation to an investigation into the recovery of the assets of the below named, to register and enforce the forfeiture order date [insert date] issued by [insert name of Judge and Court] or take any other action necessary to recover the assets located in the [Insert Requested State] and Scheduled in the forfeiture order

[List All]

SUBJECT	DATE OF BIRTH	PLACE OF BIRTH	NATIONALITY	ADDRESS

The above was/were convicted of [insert offences] following investigation by [insert name of investigating Law Enforcement Agency] and a criminal prosecution conducted by the [insert prosecuting agency of the Requested State].

Relevant Law

Please find appended to this request extracts of relevant [insert Requested State] Law applicable to freeze /attachment and forfeiture proceedings at Annex A and to the charges at Annex B

Summary of Facts and History of Proceedings

Provide a brief chronology of the proceedings to date [insert when charged, any freeze/attachment proceedings and when any trial date is fixed].

Example of the history of the Forfeiture Proceedings (please ensure consistent with law of Requested State)

On the [insert date] before the [insert name] Court, a Forfeiture Order was made against the [insert name].

I can confirm that [insert description of asset and location in Requested State] form part of a forfeiture order made against [insert name] and are required now to satisfy that order.

I attach to this request the following:

1. A certified copy of the forfeiture order at Annex C;
2. [If available a transfer authority for the [insert description of asset] at Annex D]; and
3. My affidavit at Annex D outlining;
 - a. Summary of the proceedings;
 - b. Evidence relied upon;
 - c. Compliance with due process; and
 - d. Confirmation that the forfeiture order and conviction are not subject to appeal
4. **Summarise the Requested State's law governing freeze/attachment and forfeiture proceedings within the body of the MLAR.**
5. **Provide a summary of the evidence in support of the investigation/charges**
Including:
 - a. All available evidence establishing the connection between the property to be forfeited and criminal activity of the subjects
 - b. Charges/Indictment
 - c. A detailed description and location of the property, such as:
 - For Bank Accounts: Branch, Address, account number, account holder's name
 - For Real Property: Value, details of any mortgages or co-owners
 - d. Explanation of any connection between subject/s and any corporate entities in whose name the property may be held.

Assistance Requested

It is requested that:

1. That all necessary steps be taken in accordance with the law of the [Insert Requested State] to register and enforce the forfeiture order made on [insert date] for [insert description of asset and location in the Requested State] in accordance with the law of the [Insert Requested State].
2. That if property is realised to provide a certificate stating the following:
 - a. The property that has been realised
 - b. The date of the realisation
 - c. The monetary sum obtained by the realisation
3. To the extent that any third parties assert an interest in any proceedings brought in the [Insert Requested State] as a result of this request, the case lawyer is informed that they are doing so, to see copies of the evidence on which they rely and to be given the opportunity (either directly or through you) to contest their claims.
4. I additionally request that any requisite court order or other order necessary to enable the provision of the above requested assistance be sought.
5. Provide as much information on where the order is to be served and upon whom
6. Confirm any certification and the format to prove service - attach any specific format requested as an annex

Any material provided pursuant to this request may be used in any criminal prosecution or other judicial proceedings connected with this matter, including any other freeze/attachment or forfeiture proceedings and ancillary proceedings relating thereto including proceedings relating to any breaches of, variation of, reassessment of, or enforcement of [Insert Requested State] court orders.

Reciprocity

I confirm that the assistance requested above may be obtained under current [Insert Requested State] law if in a like case a request for such assistance were made to the authorities in [Insert Requested State].

Transmission of Documents

It is requested that any documents or other correspondence are sent to me at the above address and that you notify me as to any need to return any documents at the conclusion of the proceedings in the [insert State].

Please also email [insert email address] to confirm that the order has been granted and served.

Contacts

The appropriate person to contact in the event of any query about this request is the case lawyer:

Name	[insert name of Prosecutor]
Address	[insert]
Email	[insert]
Direct telephone number	[insert]
Fax number	[insert]
or the Investigator, on telephone number [insert]	
or by e-mail at [insert]	

I would be grateful if you would keep the case lawyer and Investigator generally informed as to the progress of this request.

Should you consider that the presence in your country of the Investigator would be helpful in the execution of this mutual legal assistance request, I would be grateful if you could inform the case lawyer.

I extend my thanks in anticipation of your co-operation and assistance in this matter.

Yours faithfully

APPENDIX B – INTERNATIONAL CONTACTS AND INFORMATION

CARIN

CARIN is an informal network of law enforcement and judicial practitioners, specialist in the field of asset tracing, freezing, seizure and confiscation. Each member State is represented by a law enforcement officer and a judicial expert (prosecutor, investigating judge, etc. depending on the legal system).

CARIN contacts support the complete asset recovery process, from the starting point of the investigation involving the tracing of assets, to freezing and seizure, management and finally the forfeiture/confiscation, including any necessary asset sharing between jurisdictions. The representatives of the member states are called “*national contact points*”.

CARIN currently has 54 registered member jurisdictions, including 28 EU Member States and nine international organizations. CARIN is also linked to the other five regional asset recovery inter-agency networks (ARINs) across the globe, including in the Caribbean.

EGMONT⁶⁵⁴

The Egmont Group is a united body of 156 Financial Intelligence Units (FIUs) that provides a platform for the secure exchange of expertise and financial intelligence to combat money laundering and terrorist financing (ML/TF). This is especially relevant as FIUs are uniquely positioned to cooperate and support national and international efforts to counter terrorist financing and are the trusted gateway for sharing financial information domestically and internationally in accordance with global Anti-Money Laundering and Counter Financing of Terrorism (AML/CFT) standards.

The Egmont Group continues to support the efforts of its international partners and other stakeholders to give effect to the resolutions and statements by the United Nations Security Council, the G20 Finance Ministers, and FATF. The Egmont Group is able to add value to the work of member FIUs by improving the understanding of ML/TF risks amongst its stakeholders. The organisation is able to draw upon operational experience to inform policy considerations; including AML/CFT implementation and AML/CFT reforms.

The Egmont Group recognizes sharing of financial intelligence is of paramount importance and has become the cornerstone of the international efforts to counter ML/TF. Financial Intelligence Units (FIUs) around the world are obliged by international AML/CFT standards to exchange information and engage in international cooperation. As an international financial intelligence forum, the Egmont Group both facilitates and prompts this amongst its member FIUs.

INTERPOL

Website – <http://www.interpol.int/>

Country weblinks – <http://www.interpol.int/Member-Countries/World>

Interpol's activities are all based on the following three core functions:

Secure global police communication services

Interpol runs a global police communications system called I-24/7, which provides police around the world with a common platform through which they can share crucial information about criminals and criminality.

Operational data services and databases for police

Interpol's databases and services ensure that police worldwide have access to the information and services they need to prevent and investigate crimes. Databases include data on criminals such as names, fingerprints and DNA profiles, and stolen property such as passports, vehicles and works of art.

⁶⁵⁴ See <https://egmontgroup.org/content/about>

Operational police support services

Interpol supports law enforcement officials in the field with emergency support and operational activities, especially in its priority crime areas of fugitives, public safety and terrorism, drugs and organized crime, trafficking in human beings and financial and high-tech crime. A Command and Co-ordination Centre operates 24 hours a day, seven days a week.

EUROPOL

Website – <https://www.europol.europa.eu/>

EUROPEAN JUDICIAL NETWORK, EJN

Website - https://www.ejn-crimjust.europa.eu/ejn/EJN_Home.aspx

Includes full contact details of over 200 EJM contact points throughout the European Union, including languages spoken.

The Compendium provides details of Handbooks from States outside the EU MS.

MLA [Atlas](#) identifies the competent local authority in each Member State to receive and execute a mutual legal assistance request. Enabling by this way the fulfillment of the principle of direct contacts between judicial authorities.

[Fiches Belges](#) provides concise legal and practical information on 43 investigation measures, in every Member State, as well as on their judicial and procedural systems.

Select one of eight topics (telecommunications, agents, examination and experts, documents, assets, places / search warrants, witnesses, cross-border operations).

Choose a country (and can compare between two countries). Results will include the scope of options open to a Requested State, the competent body, alternative measures and practical information.

EUROPEAN UNION

Website - 'Europa, Gateway to the European Union' – http://europa.eu/index_en.htm

COUNCIL OF EUROPE

Website – <http://www.coe.int/DefaultEN.asp> Treaties, treaty office webpage – <http://conventions.coe.int/> Treaties, list of all treaties relating to co-operation in criminal matters, with links to the treaties, reservations and signatories <http://conventions.coe.int/Treaty/Commun/ListeTraites.asp?MA=20&CM=7&CL=ENG>

THE WORLD LAW GUIDE

Country specific information and links to legal texts for approximately 200 States

Legislation – <http://www.lexadin.nl/wlg/legis/nofr/legis.php>

Courts and cases – <http://www.lexadin.nl/wlg/courts/nofr/courts.htm>

WORLD LAW LINKS

Links to legal systems, legislation, case-law of most States. Search page – <http://www.worldlii.org/catalog/270.html>

ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE (OSCE)

Despite its name, the 56 member States include those from Central Asia and North America in addition to Europe. The legislative database contains country specific information, including treaties ratified, legal systems and links to criminal codes.

Homepage – <http://www.osce.org/>

Legislative database

Use the 'Search by country' and 'Search by topic' options – <http://www.legislationline.org/>

INTERNATIONAL CENTRE FOR ASSET RECOVERY, BASEL, SWITZERLAND

Information both on asset recovery and excellent general MLA guides to specific States.

The International Centre for Asset Recovery (ICAR) of the Basel Institute on Governance in Basel, Switzerland specializes in training and assisting developing countries in the practical work of tracing, confiscating and repatriating the proceeds of corruption, money laundering and related crimes.' (ICAR homepage)

Website – <http://www.assetrecovery.org> - Follow topic bar link to 'Country Profiles'.

INTERNATIONAL ASSOCIATION OF PROSECUTORS (IAP)

Website – <http://www.iap-association.org/>

See also the Global Prosecutors E-Crime Network (GPEN), which was developed by the IAP in response to the growing global impact of e-crime, <http://www.iap-association.org/Default.aspx>

WORLD BANK

World Bank Website – <http://www.worldbank.org/en/country>

Camden Asset Recovery Inter-Agency Network, [CARIN](#)

For an information leaflet from Europol's website, google 'europol AND carin'. Direct link – <https://www.europol.europa.eu/content/news/europol-targets-unexplained-wealth-1075>

UNODC

Sherloc database <https://www.unodc.org/cld/en/v3/sherloc/index.html>

For more information on UNODC MLA Request Writer Tool <https://www.unodc.org/mla/en/index.html>

BRITISH AND IRISH LEGAL INFORMATION INSTITUTE (BAILII)

The British and Irish Legal Information Institute (BAILII) provides access to freely available British judicial decisions and links to other international legal databases <http://www.bailii.org>

Other Useful Links:

1. Economist Intelligence Unit <http://www.eiu.com/home.aspx>
2. Institute for Counter-Terrorism [terrorist organization profiles] <http://www.ict.org.il>
3. moneylaundering.com <https://www.moneylaundering.com>
4. Oanda Foreign Exchange Converter <https://www1.oanda.com>
5. Privacy International <https://www.privacyinternational.org/about>
6. Transparency International <https://www.transparency.org>
7. Terrorism Research Center <https://www.oodalooop.com>
8. Bellingcat <https://www.bellingcat.com>

APPENDIX C – LINKS TO INTERNATIONAL INSTRUMENTS

UNITED NATIONS

United Nations Treaty Collection – <https://treaties.un.org/Pages/Home.aspx?lang=en>

United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna, 20th December 1988

United Nations website with link to the convention –

http://www.unodc.org/pdf/convention_1988_en.pdf

Status of convention and reservations etc –

http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VI-19&chapter=6&lang=en

United Nations Convention against Transnational Organized Crime, New York, 15th November 2000 (also referred to as the Palermo Convention as was opened for signature in Palermo, December 2000)

United Nations Office of Drugs and Crime website with links to the convention, status, reservations etc. –

<http://www.unodc.org/unodc/en/treaties/CTOC/index.html>

United Nations Convention against Corruption, New York, 31st October 2003

United Nations Office of Drugs and Crime (UNODC) website with links to the convention, status, reservations et

cetera – <http://www.unodc.org/unodc/en/treaties/CAC/index.html>

REVISED HARARE SCHEME

http://thecommonwealth.org/sites/default/files/key_reform_pdfs/P15370_13_ROL_Schemes_Int_Cooperation.pdf

APPENDIX D – STATE SPECIFIC INFORMATION

Please note this is a general guide and could be subject to change – please review the EJM website for up to date information on EU Member States: https://www.ejm-crimjust.europa.eu/ejm/EJM_Home.aspx or the Council of Europe MLA Country Information: <https://www.coe.int/en/web/transnational-criminal-justice-pcoc/MLA-country-information>

ALBANIA

Ministry of Justice - <http://www.justice.gov.al/index.php?gj=gj2>

AUSTRIA

A separate MLAR is required for each province in which an enquiry is requested to be made. The name of the province should be added to the address. When more than one MLAR is being sent to Austria in the same case, inform the competent judicial authority in each province that a corresponding MLAR has been sent to another province.

Provinces – Burgenland, Carinthia (Kärnten), Lower Austria (Niederösterreich), Salzburg, Styria (Steiermark), Tyrol (Tirol), Upper Austria (Oberösterreich), Vienna (Wien), Vorarlberg.

AUSTRALIA

Information and fact sheets on Australia's schemes for mutual assistance, extradition and international transfer of prisoners are available online.

<http://www.ag.gov.au> - follow the link in 'Crime protection and enforcement' to 'International Crime' and 'Extradition and mutual assistance'.

E-mail for mutual assistance queries - mutualassistance@ag.gov.au

CANADA

For guidance on Canadian criminal law see the following: ^[1]Public Prosecution Service of Canada – <http://www.ppsc-sppc.gc.ca/eng/index.html>

The Prosecution Service Handbook (Part VIII 'International Assistance') –

<http://www.ppsc-sppc.gc.ca/eng/fps-sfp/fpd/toc.html>

Department of Justice, law search (includes link to Criminal Code) – <http://laws-lois.justice.gc.ca/eng/>

The following MLA Guidelines are available: Canadian [eGuidance](#)

Cayman Islands

Judicial and Legal Information website - <http://www.caymanjudicial-legalinfo.ky/>

Channel Islands

Guernsey

See <http://www.gov.gg> and follow the links from 'Government and Administration', 'Law Officers' and 'Advice and assistance' to view the MLA handbook entitled 'Mutual assistance in criminal matters and the Bailiwick of Guernsey'.

Jersey

See <http://www.jerseylaw.je/> For MLA, follow the links 'Laws', 'Revised Edition A-Z', and 'C'. On page 6 is the Criminal Justice (International Co-operation) (Jersey) Law 2001 and the associated regulations.

For a helpful article on the same website, click on 'Publications', 'Jersey and Guernsey Law Review', '2002 volume', to 'Recent developments in international mutual assistance in Jersey'.

For both Guernsey and Jersey an undertaking is required to the effect that any information and documents obtained through the MLAR will only be used for the specified investigation, prosecution and confiscation, and that such material will not be released to any other person without the consent of the respective Attorney-General.

Example of undertaking:

Investigation of Fraud (Jersey) Law, 1991, or Criminal Justice (International Co-operation) (Jersey) Law, 2001 Person under Investigation:

I ..., undertake that any information and documents obtained for the purposes of the above investigation on behalf of ... (name of authority), by Her Majesty's Attorney General for Jersey, pursuant to the powers conferred upon him by the Investigation of Fraud (Jersey) Law, 1991, or the Criminal Justice (International Co-operation) (Jersey) Law, 2001, will only be used by the said ... (name of authority) for the purposes of that investigation, any prosecution arising out of that investigation and any connected criminal confiscation proceedings and will not be released by the said ... (name of authority) to any person or any other enforcement agency without the express consent of Her Majesty's Attorney General for Jersey.

I further undertake that in the event of any application to a court or tribunal in respect of which... (name of authority) has notice to disclose the information and documents obtained from Jersey in relation to the above criminal investigation / prosecution, Her Majesty's Attorney General for Jersey will be notified and consulted on the approach the ... (name of authority) might take in relation to that application.

Signature:

Position: Date:

CZECH REPUBLIC

Disclosure obligations - in the Czech Republic the judicial authorities may have an obligation to inform an affected person after intrusive measures have been taken against that person. In these circumstances the Central Authority must address these issues in advance, preferably via direct contact with the requested authorities in advance of sending the MLAR, and supported by a suitable 'confidentiality request'.

DJIBOUTI

Bureau du procureur General de Djibouti

Palais de justice de Djibouti

Procureur general

Tel: 0025321326900

0025321326901

0025321353201

Fax: 0025321350855

ETHIOPIA

Federal Office of the Attorney General

Yesuf Jemaw

Director

International Co-operation on Legal Affairs Directorate (Ethiopian Central Authority)

Mobile number: +251 911401377

Office number: +251 115157429

Email: yesjemaw2000@gmail.com

www.moj.gov.et

FINLAND

See Czech Republic 'Disclosure obligations' as similar obligations may arise in Finland. The Central Authority is:

Ministry of Justice,
International Affairs,
PO Box 25,
00023 Valtioneuvosto
Finland

FRANCE

For Guidance on MLA process see: https://www.coe.int/T/dghl/standardsetting/pc-oc/PCOC_documents/8_MLA%20step-by-step_CN152011_CRP.6_eV1182196.pdf

See the following link for the Penal Code and Code of Criminal Procedure –
<http://195.83.177.9/code/index.phtml?lang=uk>

GEORGIA

The Central Authority is:

Georgia Ministry of Justice
24a Gorgasali
St. Tbilisi
Georgia
Phone: (995 + 32) 2 405 505
E-mail: press-center@justice.gov.ge

GERMANY

For Guidance on MLA process see: https://www.coe.int/T/dghl/standardsetting/pc-oc/PCOC_documents/8_MLA%20step-by-step_CN152011_CRP.6_eV1182196.pdf

A separate MLAR is required for each judicial authority (land) in which an enquiry is requested to be made.

When more than one MLAR is sent to Germany in the same case, the prosecutor should inform the competent judicial authority in each area that a corresponding MLAR has been sent to another area.

See also Czech Republic 'Disclosure obligations' as similar obligations may arise in Germany.

GIBRALTAR

Requests to Gibraltar must be addressed to, 'The Competent Judicial Authority in (or 'of') Gibraltar', and not '... for Gibraltar'. If a requests states '... for Gibraltar' it is likely that it will be returned unactioned. For the laws of Gibraltar see - http://www.gibraltarlaws.gov.gi/full_index.php

Gibraltar's Financial Services Commission produces an online guide to MLA with Gibraltar –
<http://www.fsc.gi/international/judicial.htm>

HONG KONG

Hong Kong requires mandatory assurances to be given in an MLAR. These are found on page 31 of a guide to MLA produced in 2007 by the International Law Division of Hong Kong's Department of Justice. Hong Kong's MLA in Criminal Matters Ordinance 1997 (updated since then) provides detailed information on MLA with Hong Kong. Sections 27-30 relate to requests for enforcement of confiscation orders in Hong Kong.

INDIA

MLARs to India are subject to scrutiny by various agencies in India, and follow a complex route, before they are ultimately undertaken. They are likely to take many months to be completed. If television links at trial are being considered, or the attendance of witnesses from India, then it is important that enquiries should be started well in advance of the trial date.

ICELAND

The Central Authority is:

Legal Affairs Department,
Ministry of Justice and Ecclesiastical Affairs,
Skuggasundi,
150-Reykjavik
Iceland
Tel: +354-545-9000
Fax: +354-552-7340

ISLE OF MAN

The Central Authority is:

The Attorney General,
Attorney General's Chambers,
3rd Floor,
St Mary's Court,
Hill Street,
Douglas IM1 1EU
Isle of Man
Tel: 01624 685452

IRELAND

For statements from willing witnesses it is sometimes possible to obtain the statement without the need for an MLAR. Check in advance with the Irish Central Authority.

For evidence relating to telecommunications and banking, it is likely that this material will be obtained in Ireland via a production order. A supporting statement from an officer will be provided but it is unlikely that a statement will be provided from either the telecoms company or bank.

Ireland requires undertakings in an MLAR relating to the following:

1. The accused's right to challenge the admissibility of evidence provided at court;
2. Using the evidence supplied;
3. In requests for searches.

Undertakings in relation to 1. and 2. must always be provided; an undertaking in relation to 3. is only relevant where a search is requested see: Criminal Justice (Mutual Assistance) Act 2008 – <http://www.irishstatutebook.ie/2008/en/act/pub/0007/index.html>

The Central Authority for evidence is:

Central Authority for Mutual Assistance
Department of Justice, Equality and Law Reform
51 St. Stephen's Green, Dublin 2, Ireland

Requests for enforcement of confiscation, securing freeze and asset tracing post making of confiscation order should be sent to:

Central Authority for Mutual Assistance
Department of Justice, Equality and Law Reform
51 St. Stephen's Green, Dublin 2, Ireland

ITALY

For Guidance on MLA process see: https://www.coe.int/T/dghl/standardsetting/pc-oc/PCOC_documents/8_MLA%20step-by-step_CN152011_CRP.6_eV1182196.pdf

JAPAN

In Japan, a single exhibits' list will be created in a case, with items referenced in sequential order. Exhibits are not referenced by a person's initials however, nor or they 'produced' by a specific person. In the request it should be sufficient to ask that any exhibits relevant to a person's statement are produced in a documentary form, 'in accordance with Japanese law and procedure'. For Guidance on MLA process see: https://www.coe.int/T/dghl/standardsetting/pc-oc/PCOC_documents/8_MLA%20step-by-step_CN152011_CRP.6_eV1182196.pdf

KENYA

The Attorney General
International Law Division,
Attorney General Chambers
P.O. BOX 40112-00100, Nairobi, Kenya
Tel No. +254 202 227461/ 2251355/ 0700072929/073252999
Email: info@ag.go.ke
www.attorney-general.go.ke

LIECHTENSTEIN

The Central Authority is:

Ministry of Justice,
Haus Greber,
Herrengasse 8,
FL-9490 Vaduz
Liechtenstein

LITHUANIA

Ministry of Justice - <http://tm.infolex.lt/default.aspx?lang=3>

Requests for evidence should be sent to:

Post-charge:

Ministry of Justice,
Gedimino Av. 30/1, 2600 Vilnius, Lithuania

Pre-charge:

General Prosecutor's Office,
Rinktinės str. 5A, LT-01515 Vilnius, Lithuania

Phone: +370 5 266 2305

Fax: +370 5 266 2317, E-mail: generaline.prokuratura@prokuraturos.lt

Requests for enforcement of confiscation, securing freeze and asset tracing post making of confiscation order

Ministry of Justice,
Gedimino Av. 30/1, 2600 Vilnius, Lithuania

It is suggested that contact is made in advance with the prosecutor who is likely to execute the request

MALAYSIA

Attorney General's Chambers - <http://www.agc.gov.my/>

MLA legislation link, including Mutual Assistance in Criminal Matters Act 2002 -

http://www.agc.gov.my/index.php?option=com_content&view=article&id=398&Itemid=334&lang=en

MALTA

The Central Authority is:

Office of the Attorney General
International Co-operation in Criminal Matters Unit,
The Palace, CMR 02 - Valletta, MALTA
Phone: +356 21 238189 / 235315 / 225401 / 225402 / 221223
Fax: +356 21 240738
E-Mail: ag@gov.mt

MOROCCO

Requests to Morocco must be translated into Arabic. They will not accept French translations.

NETHERLANDS

The Department for Legal Assistance in Criminal Matters (AIRS) of the Ministry of Justice is the central authority for international legal assistance in criminal matters.

Links: Dutch prosecution service - http://www.om.nl/vast_menu_blok/english/

Link from above site to information leaflet in English -

http://www.om.nl/vast_menu_blok/english/@143912/brochure_national/

Ministry of Justice - <http://english.justitie.nl/>

Dutch judiciary - <http://www.rechtspraak.nl/english/Pages/default.aspx>

PANAMA

Panama requires an MLAR to be legalized. The Central Authority must arrange this before sending.

PHILIPPINES

For judicial assistance in the Philippines see the U.S. Department of State website – http://travel.state.gov/law/judicial/judicial_660.html

PORTUGAL

Portuguese Central Authority is:

Public Prosecutor / Magistrat du Parquet Procuradoria Geral de la Republica
Gabinete de Documentacao e Comparado Rua do Vale do Pereiro no.2
1200 Lisboa, Russia

For Guidance on MLA process see: https://www.coe.int/T/dghl/standardsetting/pc-oc/PCOC_documents/8_MLA%20step-by-step_CN152011_CRP.6_eV1182196.pdf

SINGAPORE

The Singaporean authorities have requested that the following text formula is used:

‘This request is made by for assistance to be extended under the Mutual Assistance in Criminal Matters Act, Chapter 190A, Statutes of the Republic of Singapore.’ (MACMA)

MACMA defines what co-operation is possible. Certain provisions only apply to ‘prescribed’ countries. Check if a prescribed country under MACMA as prescription is only possible if there is a bilateral treaty etc. in force. Some co-operation is available to all states, including taking witness evidence and service of process; section 16(1)(a). Some co-operation is only available to prescribed countries, including search and seizure, production orders and registering a foreign confiscation order; section 16(1)(b). However, section 16(2) provides that if the appropriate authority of the Requested State gives a particular reciprocity undertaking, then assistance under section 16(1)(b) can be given.

Therefore, an MLAR to Singapore must contain the necessary undertaking as required by MACMA. The wording used is the following:

‘Reciprocity Undertaking - The Government of x will comply (so far as is possible and within the limits of x law) with a future request by the Government of Singapore for similar assistance, by providing (so far as is possible and within the limits of x law) assistance having a comparable effect to that requested from the Government of the Republic of Singapore in this case.’

Requests to Singapore also require a ‘foreign law immunity certificate’. Requests should also clearly note if there are any special considerations to be taken into account relating to the execution of the request including confidentiality requirements, manner and / or form in which the evidence is to be taken et cetera.

MACMA, Section 16 (1) Subject to the provisions of this Part (a) assistance under sections 21 and 27(1) and Divisions 7 and 8 may be provided to any foreign country; and (b) assistance under section 27(2) and Divisions 2 (other than section 21), 3, 5 and 6 may only be provided to any prescribed foreign country.

(2) Notwithstanding subsection (1)(b) but subject to the provisions of this Part, any assistance referred to in that provision may be provided to a foreign country that is not a prescribed foreign country if the appropriate authority of that country has given an undertaking to the Attorney-General that that country will comply with a future request by Singapore to that country for similar assistance in a criminal matter involving an offence that corresponds to the foreign offence for which assistance is sought.

(3) The foreign country referred to in subsection (2) shall be deemed a prescribed foreign country for the purposes of the relevant provisions of this Part and (if applicable) the Schedule.

A copy of MACMA is available online – <http://statutes.agc.gov.sg/> [Chapter 190A]

SOUTH AFRICA

For details of MLA treaties – <http://www.justice.gov.za/docs/emlatreaties.htm#>
For general information including 'International Legal Relations' and MLA –
<http://www.info.gov.za/aboutgovt/justice/international.htm>

SPAIN

There are national networks of both prosecutors and judges with special responsibility for MLA requests. See the Spanish prosecutors website at www.prontuario.org (only in Spanish) OR contact: internacional.fge@fiscal.es

SWITZERLAND

Requests to Switzerland should always be sent to an appropriate Swiss authority that deals with MLARs. They should not be sent direct to Swiss corporations. Acting on Swiss territory without the agreement of the appropriate Swiss authority breaches Swiss sovereignty and may constitute an imprisonable offence. Requests pertaining to general criminality should be sent to the relevant canton. A canton is an administrative region with its own government.

A separate MLAR is required for each canton in which an enquiry is to be made. The name of the canton should be added to the address.

When more than one MLAR is being sent to Switzerland in the same case inform the competent judicial authority in each canton that a corresponding MLAR has been sent to another canton.

If the MLAR pertains to general criminality but does not involve or identify a canton, the request should be sent to the Federal Office of Justice, who will then designate a canton to lead the procedure. MLARs in relation to terrorism and serious organized crime, or involving customs or other federal agencies, should also be sent to the Federal Office of Justice - MLA Guidelines can be found at:
<https://www.rhf.admin.ch/dam/data/rhf/strafrecht/wegleitungen/wegleitung-straftsachen-e.pdf>

THAILAND

Ministry of Justice - <http://www.moj.go.th/en/>

TURKEY

Ministry of Justice – <http://www.justice.gov.tr/>
Follow up Center for MLA – <http://www.uhdigm.adalet.gov.tr/724aytam/eng/index.html>

UGANDA

The Attorney General
Ministry of Justice and Constitutional Affairs,
Plot 1, Parliamentary Avenue, Queens Chambers,
P.O.Box 7183,
Kampala Uganda
Tel: +256 414253207
Fax+256 41254829
Email: info@jlos.go.ug / info@justice.go.ug

UNITED KINGDOM

England and Wales and Northern Ireland

The UK Home Office deals with MLA requests in England, Wales and Northern Ireland (except tax and fiscal customs matters, see below). For Guidance on Procedure see:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/415038/MLA_Guidelines_2015.pdf

MLARs in England, Wales and Northern Ireland relating to tax and fiscal customs matters

Subject to the treaty basis or the type of investigative measure requests, these MLARs should be sent to HM Revenue and Customs:

Criminal Law and Benefits and Credits Advisory Team
HM Revenue and Customs - Solicitor's Office
1st Floor (South)
Bush House S/W Wing
The Strand
London
WC2B 4RD
Tel: +44 (0)3000 586324
Email: mla@hmrc.gsi.gov.uk

All MLARs relating to Scotland

Requests seeking assistance solely from Scotland should be sent directly to the Crown Office in Edinburgh, unless the treaty states that requests should be sent to the Home Office.

International Co-operation Unit
Crown Office
25 Chambers Street
Edinburgh
EH1 1LA
Tel: +44 (0)131 243 8152
Fax: +44 (0)131 243 8153
Email: coicu@copfs.gsi.gov.uk

U.S.

In general, an MLAR is required when coercive measures are requested. If not, it is often possible to obtain evidence from the US by less formal routes. Where permitted, informal assistance and evidence gathering is strongly encouraged, and will usually result in the evidence being provided more quickly than via an MLAR.

For Guidance on the MLA process contact:

US Department of Justice
Criminal Division
Office of International Affairs
1301 New York Avenue, NW
Washington, DC 20005
USA
Email: oia.mla@usdoj.gov

APPENDIX E – MLAR CHECKLIST

MLAR CHECKLIST

Operation Name:

Subjects:

1.
2.
3.
4.

Reference:

Have alternatives to an MLAR been assessed by the prosecutor

Can the evidence requested be obtained through informal assistance e.g. voluntary witness or by consent from the holder of the evidence

☐

Yes

☐

No

If No confirm reasons:

Is there or has there been an overseas investigation allowing sharing of evidence on a law enforcement to law enforcement basis

☐

Yes

☐

No

Is the evidence a public record and can be obtained without an MLAR

☐

Yes

☐

No

Correct Opening Paragraph I am [insert name and job title] from [insert agency] and I am designated to transmit this letter by the [insert designating authority i.e. Attorney General and any relevant enabling legislation]

☐

Yes

☐

No

Correct Treaty Reference

I make this request pursuant to [insert date relevant bilateral or multilateral Treaty or International Instrument e.g. UNTOC]

☐

Yes

☐

No

Urgency

If an urgent request provide details of why (e.g. imminent trial date, facts included to support serious risk of harm) and any dates when the evidence is required by.

Is this an Urgent MLAR

☐

Yes

☐

No

If Yes are there sufficient reasons stated in the MLAR

☐

Yes

☐

No

confirm further detail required if insufficient reasons:

Confidentiality

If notification to the subject and/or disclosure of the application to the public would prejudice the investigation – include this section and reasons why notification or disclosure would hamper the investigation e.g. destruction of evidence or suspect would flee.

Required

☐

Yes

☐

No

Are reasons clearly included to justify confidentiality

☐

Yes

☐

No

Is the correct paragraph used:

In order not to prejudice the investigation, I request that no person (including any of the above subjects) is notified by the competent authorities in your country of the existence and contents of this mutual legal assistance request and any action taken in response to it. I further request that action is taken to ensure that any person from whom evidence is sought does not so notify any other person.

If the above subjects or an associated party became aware of the existence of sensitive material, namely **[identify the sensitive material – either the entire request or confirm the relevant part]** or of action taken in response to it, it is reasonably justifiable to believe that disclosure of the fact of an investigation to the subjects will result in **[insert as appropriate destruction of evidence as supported by [describe conduct in support]; disclosure of the identity of the confidential informant has the potential to place his life in danger or risk of serious injury [describe conduct in support i.e. if informant close to subject and subject has a history of violence]**

If it is not possible to preserve confidentiality in the above manner, please notify me prior to executing this mutual legal assistance request.

☐

Yes

☐

No

Purpose of the Request

Is this set out clearly i.e. insert type of evidence requested

☐ Yes

☐ No

Does the MLAR state that the evidence will be for use in the prosecution (including any related freeze, attachment or forfeiture and enforcement proceedings and any related ancillary proceedings)

☐ Yes

☐ No

Are all subjects listed:

☐ Yes

☐ No

With:

Full name

☐ Yes

☐ No

Date of Birth

☐ Yes

☐ No

Place of Birth

☐ Yes

☐ No

Nationality

☐ Yes

☐ No

If subject details not known is there sufficient information provided (for example IP address, hosting company, email address, username, known alias, known address or other identifying information)

☐ Yes

☐ No

confirm further details required:

Law

Are the offences each suspect/accused has been charged with listed

☐ Yes

☐ No

☐ N/A

If pre-charge are the offences being investigated listed

☐ Yes

☐ No

☐ N/A

Is the relevant section and statute listed for each offence

☐ Yes

☐ No

Is the maximum sentence for each offence provided

☐

Yes

☐

No

Is the relevant statute for each offence provided in an annex to the MLAR

☐

Yes

☐

No

Have any de minimis requirements been confirmed

☐

Yes

☐

No

Is dual criminality a requirement?

☐

Yes

☐

No

If dual criminality a requirement has contact been made with the Requested State to confirm that requirements satisfied?

☐

Yes

☐

No

Factual Summary

The summary of facts must be relevant to the required assistance. Therefore, provide facts to show a crime has been committed but not a summary of the complete investigation. Include those facts that are relevant to the evidence required. Also confirm the source of any supporting facts.

Is there a brief chronology of the investigation/proceedings to date (i.e. insert when arrested, charged, and when any trial date is fixed if known)

☐

Yes

☐

No

Do the facts demonstrate a prima facie case that each named accused or suspect has committed the identified criminal offences, or that a criminal offence has been committed.

☐

Yes

☐

No

Searches

Details of how the place to be searched is connected with the suspected or accused person

☐

Yes

☐

No

Why the evidence is thought to be on the particular premises or in the possession of the particular person concerned ?

☐

Yes

☐

No

An explanation of why the search is requested and why the evidence is relevant

☐

Yes

☐

No

An explanation of why the material requested is important evidence to the investigation or proceedings

☐

Yes

☐

No

An explanation as to why the material could not be produced by less coercive measures.

☐

Yes

☐

No

How it is reasonably suspected that the evidence will be at the location (**PLEASE NOTE different legal standards may apply in Requested State and the MLAR will need to apply those standards**)

☐

Yes

☐

No

Witness evidence

Is there an indication of their willingness to provide

☐

Yes

☐

No

Searches

Details of how the place to be searched is connected with the suspected or accused person

☐

Yes

☐

No

An explanation of why the material requested is relevant

☐

Yes

☐

No

An explanation of why the search is requested and why the evidence is relevant

☐

Yes

☐

No

An explanation of why the material requested is important evidence to the investigation or proceedings

☐

Yes

☐

No

An explanation as to why the material could not be produced by less coercive measures.

☐

Yes

☐

No

Suspect Interview

Is there an indication of their willingness to provide evidence

☐

Yes

☐

No

Is there a reciprocal power to compel the suspect to attend an interview

☐

Yes

☐

No

An explanation of why the material requested is relevant

☐

Yes

☐

No

An explanation of why the material requested is important evidence to the investigation or proceedings

☐

Yes

☐

No

Are any other measures required such as taking DNA and/or fingerprints - if so: An explanation of why the material requested is relevant

☐

Yes

☐

No

An explanation of why the material requested is important evidence to the investigation or proceedings

☐

Yes

☐

No

An explanation as to why the material could not be produced by less coercive measures.

☐

Yes

☐

No

Is all information necessary to assist the Requested State in connection with the execution of the request included (e.g. what should be done with the evidence once seized)

☐

Yes

☐

No

Banking Evidence

Does the summary of facts clearly indicate why such evidence is relevant to the investigation or prosecution

☐

Yes

☐

No

An explanation of why the material requested is important evidence to the investigation or proceedings

☐

Yes

☐

No

If any intelligence material is referred to in the MLAR has permission been received to include this

☐

Yes

☐

No

Freeze/Attachment

If the investigation is still covert is it appropriate to freeze/attach assets disclosing the operation

☐

Yes

☐

No

If an urgent request has the Requested State been contacted to confirm the procedure

☐

Yes

☐

No

Is a domestic order in place

☐

Yes

☐

No

Does this need to be signed and/or sealed for registration/enforcement in the Requested State

☐

Yes

☐

No

Is information included about the location of the asset/s

☐

Yes

☐

No

The location must include the following information:

For Bank Accounts: Branch, Address, account number, account holder's name

☐

Yes

☐

No

For Real Property: Value, details of any mortgages or co-owners

☐ Yes

☐ No

Explanation of any connection between accused and any corporate entities in whose name the assets may be held

☐ Yes

☐ No

If this is on the basis of intelligence – has this been verified and can it be disclosed

☐ Yes

☐ No

Is there evidence establishing the connection between the property to be frozen/attached and money laundering/terrorist financing

☐ Yes

☐ No

Is the risk of dissipation confirmed

☐ Yes

☐ No

Are there any third-party issues

☐ Yes

☐ No

Has a request been made that if any third parties assert an interest in any proceedings brought in the Requested State the Requested State is informed and to see copies of the evidence on which they rely and to be given the opportunity (either directly or through the Requested State) to contest their claims

☐ Yes

☐ No

Has confirmation been provided that the need to preserve the availability of the assets outweighs the hardship on any party against whom the order is to be entered

☐ Yes

☐ No

Service Provider Evidence

Are all relevant accounts preserved If an account isn't preserved there will be no certainty there is evidence to seize and the MLAR will not be executed.

☐ Yes

☐ No

Is the date of preservation included

☐ Yes

☐ No

Is the expiry date of preservation included

☐ Yes

☐ No

Is the reference number of preservation included

☐ Yes

☐ No

If only Basic Subscriber Information (BSI) requested has an informal approach been attempted to secure the evidence

☐

Yes

☐

No

☐

N/A

If No confirm reasons:

If MLAR required is there sufficient supporting information to show that BSI is relevant and related to the offences being investigated/prosecuted

☐

Yes

☐

No

☐

N/A

If only transactional Information requested has an informal approach been attempted to secure the evidence

☐

Yes

☐

No

☐

N/A

If No confirm reasons:

If MLAR required is there sufficient supporting information to show that transactional information is relevant and material (specify date range – with justification why relevant and material to investigation)

☐

Yes

☐

No

☐

N/A

If an MLAR is required for content has the author:
Provided facts to attribute each account to the user

☐

Yes

☐

No

If answered No - list accounts where attribution is still required:

If No confirm reasons other ways to attribute:

Note: If multiple accounts requested confirm for each account)

Detailed the type of content to be seized (e.g., an email communication)

☐

Yes

☐

No

Provide the reason why the content is relevant to the criminal offence being investigated.

☐

Yes

☐

No

Provide specific facts of the types of communications or specific examples supporting the belief that the evidence (content) sought will be found among the records of the Communication Service Provider

☐

Yes

☐

No

Provide specific facts and their source to support the belief that the evidence (content) relates to a crime.

☐

Yes

☐

No

If source of information has a criminal record or is anonymous – has further information been provided to show credibility and reliability

☐

Yes

☐

No

☐

N/A

Has the date range for content been provided and justified on the facts

☐

Yes

☐

No

☐

N/A

If there are any relevant consents have these been included in an annex

Telephone Evidence

An explanation of why the evidence requested is relevant

☐

Yes

☐

No

An explanation of why the evidence requested is important evidence to the investigation or proceedings

☐

Yes

☐

No

Is all information necessary to assist the Requested State in connection with the execution of the request included

☐

Yes

☐

No

Special Investigation Techniques (SIT)s

Is the use of the SIT proportional i.e. are there less coercive measures that can be taken

☐

Yes

☐

No

Is the use of the SIT reasonable in the circumstances i.e. an explanation of why the evidence is important to the investigation

☐

Yes

☐

No

Is the use of the SIT necessary i.e. is this the only way the evidence can be obtained

☐

Yes

☐

No

For all other Requests

An explanation of why the evidence requested is relevant

☐

Yes

☐

No

An explanation of why the evidence requested is important evidence to the investigation or proceedings

☐

Yes

☐

No

An explanation as to why the evidence could not be produced by less coercive measures.

☐

Yes

☐

No

Is all information necessary to assist the Requested State in connection with the execution of the request included

☐

Yes

☐

No

If there is insufficient nexus - confirm information still required:

☐

Yes

☐

No

Assistance Requested

Searches

☐

Yes

☐

No

Full address or other sufficient details of location to be searched included

☐

Yes

☐

No

confirm the owner/suspected owner or provenance

☐

Yes

☐

No

Details of how the place to be searched is connected with the suspected or accused person

☐

Yes

☐

No

confirmation of evidence to be seized

☐

Yes

☐

No

Is all information necessary to assist the Requested State in connection with the execution of the request included (e.g. what should be done with the evidence once seized)

☐

Yes

☐

No

Witness evidence

Full details of the witness (e.g. name and date of birth)

☐

Yes

☐

No

confirmation of where they can be located

☐

Yes

☐

No

Is a list of questions to be asked and topics to be covered included

☐

Yes

☐

No

Suspect Interview

Full details of the suspect (e.g. name and date of birth)

☐

Yes

☐

No

confirmation of where they can be located

☐

Yes

☐

No

Is there an indication of their willingness to provide evidence

☐

Yes

☐

No

Is a list of questions to be asked and topics to be covered included

☐

Yes

☐

No

Is the attendance of a domestic law enforcement necessary

☐

Yes

☐

No

confirmation of the domestic procedure to confirm if any elements (such as recording the interview on tape/DVD/CD) can be complied with)

☐

Yes

☐

No

DNA and/or fingerprints

Is there an indication of their willingness to provide evidence

☐

Yes

☐

No

Is the attendance of a domestic law enforcement necessary

☐

Yes

☐

No

confirmation of the procedure to confirm if any elements can be complied with

☐

Yes

☐

No

Procedure to ensure integrity and continuity of samples taken

☐

Yes

☐

No

Banking Evidence

Bank Address included

☐

Yes

☐

No

Relevant account numbers including IBAN number

☐

Yes

☐

No

confirm if following required:

- a. Any information or copy identification documents held relating to the Bank Account holder/s or signatories as part of the 'Know your customer' requirements

☐

Yes

☐

No

- b. Details and copies of signatories to the Account

☐

Yes

☐

No

- c. Account statements - inserting dates remembering to ensure they are relevant to the request and justification for the evidence required for this time frame

☐

Yes

☐

No

- d. The amounts of and dates of withdrawals and deposits during together with identification of the receiving or sending financial institution/individual - inserting dates remembering to ensure they are relevant to the request and justification for the evidence required for this time frame

☐

Yes

☐

No

- e. The current balance on the Account?

☐

Yes

☐

No

- f. Details of any correspondence to and from the Account holder to the Bank - inserting dates remembering to ensure they are relevant to the request and justification for the evidence required for this time frame

☐

Yes

☐

No

- g. Information about the conduct of the Account - inserting dates remembering to ensure they are relevant to the request and justification for the evidence required for this time frame - for the following:

- Direct debits

☐

Yes

☐

No

- Standing orders

☐

Yes

☐

No

- Inter account transfers

☐

Yes

☐

No

- Wires ??

☐

Yes

☐

No

- SWIFT ??

☐

Yes

☐

No

- CHAPS ??

☐

Yes

☐

No

- Paid cheques ??

☐

Yes

☐

No

- Returned cheques ??

☐

Yes

☐

No

- Foreign drafts ☐ Yes ☐ No
- Vouchers (both credit and debit) ☐ Yes ☐ No
- Signature cards ☐ Yes ☐ No
- Application forms ☐ Yes ☐ No
- References ☐ Yes ☐ No
- Internal memoranda ☐ Yes ☐ No
- Head Office or Manager Notes ☐ Yes ☐ No

h. Details of any documents, files, accounts or other records used in ordinary business, including bonds, securities or deeds, held by the Bank on behalf of

☐ Yes ☐ No

i. Confirmation if any safety deposit box/es or other material are held by the Bank in the name of and any inventory of the contents [If contents to be seized then refer to the requirements for an MLAR for a Search]

☐ Yes ☐ No

j. Evidence of any linked Bank Accounts by name, signatory, or contact details

☐ Yes ☐ No

k. Confirm if intelligence from any Egmont or CARIN enquiry on location of assets and ownership

☐ Yes ☐ No

Telephone Evidence

What evidence is required:

Subscriber information i.e. to whom a particular phone is registered

☐ Yes ☐ No

If incoming/outgoing call data requested is a date range specified

☐ Yes ☐ No

confirm if following required:

a. Any customer information provided at purchase

☐ Yes ☐ No

b. The date of purchase ?

☐

Yes

☐

No

c. Activation details ?

☐

Yes

☐

No

d. Subscriber details

☐

Yes

☐

No

e. Payment details

☐

Yes

☐

No

f. PIN and PUK codes ?

☐

Yes

☐

No

g. Top up history

☐

Yes

☐

No

h. Copies of any customer notes held ?

☐

Yes

☐

No

i. Download of any SMS or other instant messaging

☐

Yes

☐

No

j. Incoming and outgoing call data with geo-locations/cell site data for

☐

Yes

☐

No

Has the Requested State been contacted to confirm if SIT is legal

☐

Yes

☐

No

Is there a domestic requirement for authorization of the SIT

☐

Yes

☐

No

See specific requirements for an account monitoring order in the Model MLAR in Appendix A

Service Provider Evidence

Is the correct address included

☐

Yes

☐

No

Special Investigation Techniques (SITs)

Is the username/URL/email account/social media account confirmed.

☐

Yes

☐

No

Is the required date range confirmed

☐

Yes

☐

No

Is the required date range correct for content and transactional information?

☐

Yes

☐

No

If no confirmed reasons:

Does the MLAR confirm what type of stored evidence is required for each account (i.e. BSI and/or transactional and/or content)?

☐

Yes

☐

No

Does the list of required evidence list the evidence required for each account according to what is available from each SP

☐

Yes

☐

No

If No confirm evidence that still needs to be requested:

confirm if the following is requested from SPs

For Basic Subscriber Information:

1. The subscriber's account or login name

☐

Yes

☐

No

2. The subscriber's name and street address

☐

Yes

☐

No

3. The subscriber's telephone number or numbers

☐

Yes

☐

No

4. The subscriber's email address

☐

Yes

☐

No

5. The Internet Protocol (IP) address used by the subscriber to register the account or otherwise initiate service

☐

Yes

☐

No

6. All IP addresses used by the subscriber to log into the account

☐

Yes

☐

No

7. Session times, dates and durations

☐

Yes

☐

No

8. Any other information pertaining to the identity of the subscriber, including, but not limited to billing information (including type and number of credit cards, student identification number, or other identifying information)

☐

Yes

☐

No

For Transactional Information:

Connection information for other systems to which user connected via the email account (or into the web host account) including:

1. Connection destination or source of connection

☐

Yes

☐

No

2. Connection time and date

☐

Yes

☐

No

3. Disconnect time and date

☐

Yes

☐

No

4. Method of connection to system (e.g., telnet, ftp, http)

☐

Yes

☐

No

5. Data transfer volume (e.g., bytes)

☐

Yes

☐

No

6. Any other relevant routing information

☐

Yes

☐

No

7. Source or destination of any electronic mail messages sent from or received by the account (known as the header of the email or the 'To' and 'From' fields), and the date, time, and length of the message

☐

Yes

☐

No

8. Information pertaining to any image(s) or other documents uploaded to the account (or the website), including the dates and times of uploading, and the sizes of the files but not including the contents of such files

☐

Yes

☐

No

9. Name and other identifying details of individuals that accessed a specific image/file/web page between a specified period of time, on a specified date

☐

Yes

☐

No

For Content

1. Any content of emails/messages available in the user's mail account, including the IP address of the computer used to send the mail/message

☐

Yes

☐

No

2. Any attachments, photos and contact lists

☐

Yes

☐

No

3. Any draft emails

☐

Yes

☐

No

4. Any available deleted emails

☐

Yes

☐

No

5. Any other records and other evidence relating to the requested account. Such records and other evidence include, without limitation, correspondence and other records of contact by any person or entity about the above-referenced account, the content and connection logs associated with or relating to postings, communications and any other activities to or through the requested account, whether such records or other evidence are in electronic or other form

☐

Yes

☐

No

For Forensic Image:

1. To obtain a forensic image of the server

☐

Yes

☐

No

2. To provide all of the customer records, data and information that is held about any customer who has rented the server as listed on above. This should include:

- a. I communication addresses or identification details held or registered against the account OR linked Full account holder details?

☐

Yes

☐

No

- b. When the account was opened?

☐

Yes

☐

No

- c. Any linked accounts

☐

Yes

☐

No

- d. The method and details of payments?

☐

Yes

☐

No

- e. AI accounts?

☐

Yes

☐

No

f. All telecommunication numbers and email accounts given by the account holder

☐

Yes

☐

No

g. Any customer service logs held in relation to the servers?

☐

Yes

☐

No

h. All email or other recorded communication held between the account holder and host company?

☐

Yes

☐

No

3. To provide all 'NetFlow data' for the servers (NetFlow data covers IP network traffic, comprising details of which other IP addresses are contacting servers and which they are contacting)

☐

Yes

☐

No

4. To provide all IP log in history for the servers in question

☐

Yes

☐

No

Freeze/Attachment

Determine if request for order to be applied for applying Requested State's law or register/enforce order obtained in Requested State

☐

Yes

☐

No

Ex parte application required

☐

Yes

☐

No

Confirmation that order in Requested State is not subject to appeal

☐

Yes

☐

No

Forfeiture

Has a request been made that all necessary steps be taken in accordance with the law of the Requested State to register and enforce the order by realising property applying the proceeds in accordance with the law of the Requested State.

☐

Yes

☐

No

Is it confirmed that if property is realised to provide the Requested State with a certificate stating the following:

a. The property that has been realised ?

☐

Yes

☐

No

b. The date of the realisation

☐

Yes

☐

No

c. The monetary sum obtained by the realisation

☐

Yes

☐

No

Confirmation that order in Requested State is not subject to appeal

☐

Yes

☐

No

For all requests

Is there a catchall paragraph re any other enquiries and preservation of evidence

'Unless you indicate otherwise, any evidence obtained pursuant to this request may be used in any criminal prosecution and related ancillary proceedings (including trials, freeze, attachment, forfeiture and enforcement hearings) arising in whole or in part from the above noted investigation / prosecution, whether relating to the above named subject(s) or to any other persons who may become a subject of this investigation / prosecution.'

☐

Yes

☐

No

Is a paragraph included to confirm the following:

After obtaining any appropriate subpoena, search warrant, court order or other order, to obtain a witness statement in writing from [insert relevant official]

☐

Yes

☐

No

Is a paragraph included to confirm the following

Such other enquiries are made, persons interviewed and exhibits secured as appear to be necessary in the course of the investigation

☐

Yes

☐

No

Is a paragraph included to confirm the following

Any records are produced as exhibits in any statements together with an explanation of the technical terms used in the records.

☐

Yes

☐

No

Is a paragraph included to confirm the following

Any information held on computer in any form be preserved and secured from unauthorized interference and made available to the Requested State for use at any subsequent trial.

☐

Yes

☐

No

Is a paragraph included to confirm the following

The above enquiries are made and that permission be given for the original or signed and certified copies of any statements made and documents or other items secured during the course of the enquiries to be removed to the Requested State for use in any criminal proceedings, trial, forfeiture and enforcement proceedings.

☐

Yes

☐

No

Legalisation

Is an Apostille or other form of legalisation of the MLAR required

☐

Yes

☐

No

Form in which evidence is requested

Is the information provided sufficient for admissibility (i.e. include a form the evidence is required in)

☐

Yes

☐

No

Reciprocity

Is the following standard paragraph included:

I confirm that the assistance requested above may be obtained under current law of [insert name of Requested State] if in a like case a request for such assistance were made to the authorities in [insert name of Requested State]

☐

Yes

☐

No

Transmission of Evidence

Is the following standard paragraph included:

It is requested that any documents or other correspondence are sent to me at the above address and that you notify me as to any need to return any documents at the conclusion of the proceedings in [insert name of Requested State]

☐

Yes

☐

No

Confirmation of Approval

Can this MLAR be approved

☐

Yes

☐

No

If no - detail further action required (Use a separate sheet if necessary):

1.

2.

3.

Additional sheet required

☐

Yes

☐

No

Date to re-submit

Signature:

Date

Print Name:

Title/Position:

APPENDIX F – MLAR FORM

MLAR FORM

Offences:

1.

Charged
☐ Yes
☐ No
2.

Charged
☐ Yes
☐ No
3.

Charged
☐ Yes
☐ No

Subjects:

Name:

Date of Birth:

Nationality:

Known Location:

Reference:

Requested State:

(If evidence or investigative method required from more than one State please list)

Name:

Address:

Tel No:

Email Address:

Contact:

Name of Agency Requesting:

Name of Contact Point (CP) at Agency:

Email address of CP:

Telephone number of CP:

Backup contact in case of CP unavailability:

Evidence linking the suspect to the offence/s or measure requested

Confirm evidence requested and/or investigative measure and/or order to be enforced

If Order to be enforced is there a certified copy attached

☐ Yes

☐ No

Date span of evidence or period of time investigative measure requested

**When evidence needs to be received by or order enforced
(if URGENT or an EMERGENCY confirm reasons and timeframe)**

If an investigative measure (i.e. observation, tracker, account monitoring order etc) requested confirm commencement

Any sensitivity to sharing of intelligence or other information to Requested State

Confirmation of any contact already made with Requested State (e.g. FIU)

Details of Contact:

Name:

Contact Details:

Email:

Tel:

Have alternatives to an MLAR been assessed

Can the evidence requested be obtained through informal assistance:

☐ Yes

☐ No

If No confirm reasons:

Is there or has there been an investigation in the Requested State allowing sharing of evidence on a law enforcement to law enforcement basis:

☐ Yes

☐ No

Can information be shared spontaneously with the Requested State so they can commence their own investigation:

☐ Yes

☐ No

Form in which evidence is requested (i.e. is a statement needed to adduce any evidence or can this be requested at a later date)

Reciprocity

Can the assistance requested be obtained if in a like case a request for such assistance were made to domestic authorities:

☐ Yes

☐ No

Confirm domestic legal provision:

Transmission of Evidence - confirm who should be sent the evidence or product of any measure

Certification

Signature:

Date:

Print Name:

Grade:

ADDITIONAL SHEET

Further Action continued:

Signature:

APPENDIX G – CHECKLIST FOR OUTGOING EXTRADITION CASEWORK PLANNING⁶⁵⁵

<input type="checkbox"/> Earliest contact with Requested State	Where the location of the person sought is known, communicate informally before making the request for provisional arrest and/or extradition for all the Requested States to know relevant requirements and acceptable fast communication/transmission channels.
<input type="checkbox"/> Concurrent requests	Check for them at earliest stage. If there are any, ensure the case for priority is prepared, communicated and negotiated at soonest.
<input type="checkbox"/> Legal basis	Check whether an extradition request can be made to the proposed Requested State.
<input type="checkbox"/> Arrest, search and seizure	Check legal preconditions and limitations of the Requested State for each and pre-empt potential problems Check whether conditional release/bail is possible. If so, supply (before arrest if possible) all relevant information on the issue.
<input type="checkbox"/> Time Limits	Check the time limits for receipt of the request in the Requested State following arrest and ensure the time limits will be met.
<input type="checkbox"/> Format of documents and any evidentiary requirements	Always check with the Requested State to make sure documents are in the correct format. Where evidentiary rules apply, check for evidentiary requirements in the Requested State, particularly as to the standard of proof required and the types of evidence needed, check whether they are in deposition or affidavit format, with one signed/sworn by correct officer of the State/judicial authority, are sealed together, etc, to ensure that they will be admissible in the Requested State.
<input type="checkbox"/> Potential grounds for refusal	The Requesting and Requested States should communicate at the outset of the process to identify any issues, which could be raised as potential grounds for refusal.
<input type="checkbox"/> In absentia proceedings	Warn the Requested State in advance if the proposed extradition request relates to such proceedings. Check the requirements of the Requested State for extradition in such a case, and ensure justifiable requirements will be capable of being met.

⁶⁵⁵ UN EGM on Extradition

<input type="checkbox"/> Rule of Specialty	Ensure you identify all offences for which extradition will be sought, whether extraditable offences or not (this may not be possible for non-extraditable offences under domestic law). This avoids later problems with seeking waiver of the rule of specialty from the Requested State because you want to prosecute for another prior offence.
<input type="checkbox"/> Language of request	The request and accompanying documents should be made in or accompanied by a certified translation into a language as specified by the Requested State.
<input type="checkbox"/> Submit a draft request for feedback	Consider doing this, particularly if you are not familiar with the requirements of the Requested State, or the case is complex.
<input type="checkbox"/> Hearings Presence of Representatives	Check whether police, legal/liaison representatives, consular officials may be present at foreign extradition proceedings to assist if needed. If so, ensure it is arranged and monitor the proceedings.
<input type="checkbox"/> Transit arrangements	Responsibility should be clearly fixed as to what authority will secure the necessary transit authorizations and care should be taken to avoid unnecessary risk factors. Ensure it is effectively planned, organized, conducted and monitored.
<input type="checkbox"/> Surrender arrangements	Check time limits and precise last day in the Requested State date by which the person must be surrendered. Calculate the local time and date equivalents. Organize and ensure entry of escorts to remove the person from the Requested State before that date.

APPENDIX H – CHECKLIST FOR THE CONTENT OF EXTRADITION REQUESTS⁶⁵⁶

Mandatory content/document requirements for all requests:	
<input type="checkbox"/> Identity of the fugitive	A description of the fugitive and optionally all other information, which may help to establish that person's identity, nationality and location (including for example: fingerprints, photo, DNA material).
<input type="checkbox"/> Facts and procedural history of the case	An overview of the facts and procedural history of the case, including the applicable law of the Requested State and the criminal charges against the fugitive.
<input type="checkbox"/> Legal provisions	A description of the offence and applicable penalty, with an excerpt or copy of the relevant parts of the law of the Requested State.
<input type="checkbox"/> Statute of Limitation	Any relevant limitation period beyond which prosecution of a person cannot lawfully be brought or pursued.
<input type="checkbox"/> Legal basis	A description of the basis upon which the request is made, e.g., national legislation, a relevant extradition treaty or arrangement or, in the absence thereof, by virtue of comity.
If the person sought is accused of an offence (but not yet convicted) ⁶⁵⁷	
<input type="checkbox"/> Warrant of Arrest	The original or certified copy of a warrant issued by a competent judicial authority for the arrest of that fugitive, or other documents having the same effect.
<input type="checkbox"/> Statement of the offence(s)	A statement of the offence(s) for which extradition is requested ⁶⁵⁸ and a description of the acts or omissions constituting the alleged offence(s), including as accurate as possible an indication of the time and place of the commission given the status of the proceedings at that time, maximum sentences for each offence, the degree of participation in the offence by the fugitive and all relevant limitation periods.
<input type="checkbox"/> Evidence	Identity evidence is always required. Check whether sworn evidence is required. If so, check whether the witness must depose that he or she both knows the fugitive and knows that the person engaged in the relevant acts or omissions constituting the relevant offence(s). Suspicion of guilt for every offence for which extradition is sought must be substantiated by evidence. Check in advance whether it must take the form of sworn or unsworn evidence of witnesses, or whether a sworn or unsworn statement of the case will suffice. If a statement of the case will suffice, check whether it has to contain particulars of every offence. Where sworn evidence is required, check if this has to show prima facie evidence of every offence for which extradition is sought. If so, clarify what is required and admissible to establish that or any lesser test. Ensure all is provided in the form required.

⁶⁵⁶ UN EGM on Extradition

⁶⁵⁷ Some States also require an affidavit establishing probable cause that the person sought committed the crime in question.

⁶⁵⁸ Identify all offences for which extradition is sought, in order to avoid difficulties and delays (principle of speciality).

If the fugitive is convicted of an offence

<input type="checkbox"/> (convicted, sentenced)	An original or a certified/authenticated copy of the original conviction/detention order, or other documents having the same effect, to establish that the sentence is immediately enforceable. The request should also include a statement establishing to what extent the sentence has already been carried out.
<input type="checkbox"/> (convicted, sentenced in absentia)	A statement indicating that the fugitive was summoned in person or otherwise informed of the date and place of hearing leading to the decision or was legally represented throughout the proceedings against him or her, or specifying the legal means available to him to prepare his defence or to have the case retried in his/her presence.
<input type="checkbox"/> (convicted, no sentence imposed yet)	A document setting out the conviction and a statement affirming that there is an intention to impose a sentence.

Signature of documents, assembly of request and attachments:

<input type="checkbox"/> Arrest warrants and Conviction/detention orders	Check in each case whether the warrant or order must be signed by a judge, magistrate or other judicial officer, or Officer of State. Check whether the Officer of State must also sign each separate document.
<input type="checkbox"/> Assembly of request	Check whether all the documents included in the request and attachment must be bundled together, and what if any seals are required to prevent later arguments that documents have been added or removed.
<input type="checkbox"/> Transmission of the request	Ensure the request and attachments are transmitted by the channel agreed with the Requested State (not necessarily the diplomatic channel). Monitor the transmission and delivery to ensure crucial time limits are met.

Optional additional content / documents:

<input type="checkbox"/> Identity of Authority	Identification of the office/authority requesting the provisional arrest / extradition.
<input type="checkbox"/> Prior communication	Details of any prior contact between officers in the Requesting and Requested States.
<input type="checkbox"/> Presence of officials	An indication as to whether the Requested State wishes its officials or other specified persons to be present at or participate in the execution of the extradition request and the reason why this is requested.

<input type="checkbox"/> Indication of urgency and/or time limit	An indication of any particular urgency or applicable time limit within which compliance with the request is required and the reason for the urgency or time limit.
<input type="checkbox"/> Use of other channels	Where a copy of the request has been sent or is being sent through other channels, this should be made clear in the request.
<input type="checkbox"/> Language	The request and accompanying documents should be made in or accompanied by a certified translation (of whole, not only part of the documents) in a language specified by the Requested State (or if that State permits more than one, the preferred language indicated after consultation).
<input type="checkbox"/> Supplementary documents	If the documents provided do not suffice after checking in advance of the request with the Requested State, provide the needed supplementary information/documents.

APPENDIX I – MODEL LETTER FOR PROVISIONAL ARREST

Bold Black text to be inserted

Blue text guidance to be deleted once complete

Contact details & case reference details **[insert]**

Date

BY E-MAIL/ POST/FAX

Dear Sir,

*Proposed Extradition of **[insert name]** from **[insert Requested State]***

I write to confirm that it is the intention of the **[insert name of the Competent Authority in Requested State]** to seek extradition of **[insert name]** from **[insert Requested State]** for the offences set out in the attached copy warrant dated **[insert date]** and issued by **[insert judicial authority]**

The case has been reviewed by a **[insert Prosecutor/Attorney/Investigating Judge/Examining Magistrate]**, who confirms that there is sufficient evidence against **[insert name]** and it is in the public interest to proceed with the prosecution.

I enclose:

1. A copy of the case summary which summarizes the facts of the matters. It also sets out details where **[insert name of fugitive]** is believed to reside **(This case summary should be set out as simply as possible and include all relevant facts)**
2. A recent photograph of **[insert name of fugitive]** **(if available)**
3. A copy of **[insert name of fugitive]** fingerprints **(if available)**
4. Any known aliases **(if known)** of **[insert name of fugitive]**
5. Any other known identifying features **(i.e. height, weight etc)** of **[insert name of fugitive]**
6. A copy of **[insert name of fugitive]** driving licence **(if available)**
7. A copy of **[insert name of fugitive]** fingerprints **(if available)**
8. A copy of **[insert name of fugitive]** passport **(if available)**

If needed: Please note that **[insert State]** police have worked in close liaison with the police in **[insert State]**. This request for provisional arrest is being made with the full knowledge and co-operation of the **[insert name of Department]**. I request that the provisional arrest of **[insert name of fugitive]** be co-ordinated with the co-operation of the **[insert Requested State]** police as set out above, pending the submission of the full extradition documentation.

If needed: confirm if any searches required or any items to be seized upon arrest – provide as much information as possible about specific items to be seized in a search (i.e. mobile phone and relevance to investigation)

If needed: confirm if a request should be made to remand in custody pending extradition request – provide any risks if granted bail i.e. flight risk, commit offences on bail – supported by supplying any relevant previous convictions

I would be grateful if you would let me know as soon as **[insert name of fugitive]** is arrested pursuant to this request. The investigating officer is:

Name of officer:

Tel:

Fax:

Mobile telephone number: (available 24 hours)

Please let me know if there is any further information that you require

Yours faithfully,

DRAFT CASE SUMMARY

[Insert name] states [or on oath states] :-

I am [insert name] a [insert rank and agency] of [insert name of State].

I set out below the relevant facts for the provisional arrest of [insert name] for the following offences listed in the warrant issued on [insert date].

[Only include relevant facts and any information on known location]

Signature of [insert name and date] *preferably on every page*

DRAFT PARTICULARS OF IDENTITY

Attach photograph of fugitive

I certify that the above is a true likeness of [insert name of fugitive, including all aliases]

(Add any other identifying features that may be known or attach documents such as passport etc)

Signed: [insert full name & rank of officer]

Attach fingerprints and or DNA of fugitive

I certify that the above are the fingerprints and or DNA of [insert name of fugitive, including all aliases]

Signed: [insert full name & rank of officer]

Date:

APPENDIX J – MODEL DOCUMENTS FOR EXTRADITION⁶⁵⁹

Bold Black text to be inserted

Blue text guidance to be deleted once complete

DRAFT LETTER

Excellency,

Request for extradition of [insert name of the fugitive]

I, the undersigned [insert name and position of the person who has the authority to make the request], of [insert name of the Requested State], have the honour to request the competent authority of [insert name of the Requested State] in accordance with the Extradition Treaty between [insert name of the Requested State] and [insert name of the Requested State], which entered into force on [insert date of the entry into force of the Treaty]

Or in the absence of an extradition treaty, the legal basis on which a request is made:

[Insert Convention, multilateral treaty, arrangement or reciprocity] for the extradition of [insert name of the fugitive and his nationality] to [insert name of Requested State].

[Name of the wanted person and personal details to identify him or her (if known)] is believed to be currently residing at [insert address or whereabouts of the wanted person].

In the case of a request for extradition in order to prosecute:

[Insert name of the fugitive] is suspected of [insert name of the offence(s)], which [is/are] punishable under the laws of the [insert Requested State] by the following sentence(s) [...].

[Insert name of the court] summons him/her for such crime(s) on [insert date of summons].

The Competent Authority under the law of [insert name of the Requested State] has already issued an arrest warrant for [insert name of the fugitive].

In the case of a request for extradition for the purpose of enforcement of a sentence:

[Insert name of the fugitive] has been convicted of [insert name of the offence(s)], which [is/are] punishable under the laws of the [insert Requested State] for a period of at least [...] year(s). A copy of the court judgment is attached.

[Insert Requested State] seeks the surrender of [insert name of the fugitive] to serve the remainder of the sentence handed down of [insert sentence]

A summary of the facts of the case and the applicable criminal statute(s) of [insert name of the Requested State], as well as all supporting documents, are attached for the information and consideration of [insert name of the Requested State].

I attest that [insert name of the fugitive] will not be prosecuted for crimes other than that/those stated in the present request.

Please contact [insert name and contact details for the case officer, including telephone number, facsimile number and e-mail address] of the Requested State if you require further information.

⁶⁵⁹ See <https://egmontgroup.org/content/about>

Please rest assured that [insert name of the Requested State] will provide the same assistance for extradition requests from [insert name of the Requested State] in the future.

Accept, Excellency, the assurances of my highest consideration.

Date:

Place:

Signature:

Seal:

DRAFT STATEMENT OF LAW

[Insert name] states [or on oath states] :-

I am a [insert Barrister/Solicitor/State Prosecutor/Attorney/ Investigative Judge/Examining Magistrate] and with the [insert name of organization] of [insert name of State]. I am well acquainted with the criminal law of [insert name of State].

The offences for which extradition is requested under the terms of the [insert the treaty/convention etc being relied upon] are [list all the offences for which extradition is sought and these should be identical to the offences set out in the warrant].

I set out below the relevant law.

[Set out the provisions of law including the sentence and where relevant any extra-territorial provisions. If reliance is being placed on the common law then it would assist to have that explained in detail]

Signature of [Barrister/Solicitor/State Prosecutor/ Attorney/ Investigative Judge] preferably on every page

DRAFT PARTICULARS OF IDENTITY

Attach photograph of fugitive

I certify that the above is a true likeness of [insert name of fugitive, including all aliases]

(Add any other identifying features that may be known or attach documents such as passport etc)

Signed: [insert full name & rank of officer]

Attach fingerprints and or DNA of fugitive

I certify that the above are the fingerprints and or DNA of [insert name of fugitive, including all aliases]

Signed: [insert full name & rank of officer]

Date:

APPENDIX K – MODEL REQUEST FORM FOR TRANSFER OF PROCEEDINGS

MODEL REQUEST FORM FOR TRANSFER OF PROCEEDINGS

Request for:

Made on the basis of:

☐

The European Convention on the Transfer of Proceedings

☐

Article 21 of the European Convention on Mutual Assistance in Criminal Matters

☐

Article 6, paragraph 2 of the European Convention on Extradition

Other:

1. REQUESTING AUTHORITY:

Name of the requesting authority:

Name and function of contact person: -

Address:

Tel.:

Fax:

E-mail:

Working language(s):

2. REQUESTED AUTHORITY

3. PERSON(S) WHO IS/ARE THE SUBJECT(S) OF THE REQUEST

All information available on the person(s) concerned (identity, nationality, location, etc.)

4. SUMMARY OF FACTS (INCLUDING DATE, PLACE AND CONDUCT)

5. LEGAL QUALIFICATION AND PROVISIONS

Legal qualification

Legal provisions concerning the offence(s) and the maximum penalty applicable (in attachment)

Legal provisions concerning lapse of time where appropriate (in attachment)

Other legal provisions where appropriate (in attachment)

6. INFORMATION ON THE PROCEDURE IN THE REQUESTED STATE (INCLUDING ACTION TAKEN AND EVIDENCE GATHERED)**7. REASON(S) FOR THE REQUEST**

- ☐ The suspected person is ordinarily resident in the Requested State
- ☐ The suspected person is a national of the Requested State or that state is his or her state of origin
- ☐ The suspected person is undergoing or is to undergo a sentence involving deprivation of liberty in the Requested State
- ☐ Proceedings for the same or other offences are being taken against the suspected person in the Requested State
- ☐ The transfer of the proceedings is warranted in the interests of arriving at the truth/ the most important items of evidence are located in the Requested State
- ☐ The enforcement in the Requested State of a sentence if one were passed is likely to improve the prospects for the social rehabilitation of the person sentenced
- ☐ The presence of the suspected person cannot be ensured at the hearing of proceedings in the Requested State and his or her presence in person at the hearing of proceedings in the Requested State can be ensured
- ☐ The Requested State cannot itself enforce a sentence if one were passed, even by having recourse to extradition, and the Requested State could do so

Other:

8. ADDITIONAL INFORMATION AND REQUESTS

Request for confirmation of receipt of the request for transfer of proceedings (possible special requirements with regard to the confirmation)

Indication of available information or items not attached to the request

Readiness to furnish translations

Any other additional information or requests such as requests for provisional measures

9. INDICATION OF ATTACHMENTS (COPIES OF DOCUMENTS, FILES, ITEMS, ETC.)**10. SIGNATURE AND SEAL**

End

APPENDIX L – FORMS FOR F.I.R, ARREST, COLLECTION OF EVIDENCE

F.I.R Outline Form (Referenced in Chapter 7, Section 7.2)

FORM No. 24.5(1)																																								
FIRST INFORMATION REPORT																																								
FIRST INFORMATION OF A COGNIZABLE CRIME REPORTED UNDER SECTION 154, CODE OF CRIMINAL PROCEDUREABLES																																								
Police Station _____ District _____			No. _____ Date and hour of occurrence _____																																					
1	Date and hour when reported																																							
2	Name and residence of informant and complainant																																							
3	Brief description of offence (with section) and of property carried off, if any																																							
4	Place of occurrence and distance and direction from Police Station.																																							
5	Steps taken regarding investigation; explanation of delay in recording information																																							
6	Date and hour of despatch from Police Station																																							
<p><i>Signed</i> _____ <i>Designation</i> _____ (First information to be recorded below) <i>Note.</i> -The signature, seal or mark of the informant shall be affixed at the foot of the information and shall be attested by the signature of the officer recording the "first information".</p> <p style="text-align: center;">(REVERSE OF POLICE STATION COPY OF FIRST INFORMATION REPORT)(NOT TO BE PRINTED ON REVERSE OF OTHER COPIES)INDEX OF CASE DIARIES(To be filled in immediately on receipt of case diaries)</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>Serial No.</th> <th>Date of case diary</th> <th>Name of</th> <th>Serial No.</th> <th>Date of case</th> <th>Name of</th> <th>Serial No.</th> <th>Date of case diary</th> <th>Name of</th> </tr> </thead> <tbody> <tr> <td></td> <td></td> <td>investigating officer</td> <td></td> <td></td> <td>investigating officer</td> <td></td> <td></td> <td>investigating officer</td> </tr> </tbody> </table> <p style="text-align: center;">Information to be filled in when the charge-sheet or final report is submitted</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>Date and hour of submission of Charge-sheet or final Report and section under which accused are sent for trial</th> <th>Names of witnesses</th> <th>Name and residence of accused A. - Sent in custody for trialB. - On bail or recognizanceC. - Not sent for trial</th> <th>Property (including weapons) found</th> </tr> </thead> <tbody> <tr> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table> <p style="text-align: center;">Information to be filled in as soon as received</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>Date of receipt of chalan in Court</th> <th>Offence according to which convicted or acquitted</th> <th>Result of the case (In case of conviction or acquittal, the name of court, date and details of the order)</th> </tr> </thead> <tbody> <tr> <td></td> <td></td> <td></td> </tr> </tbody> </table>									Serial No.	Date of case diary	Name of	Serial No.	Date of case	Name of	Serial No.	Date of case diary	Name of			investigating officer			investigating officer			investigating officer	Date and hour of submission of Charge-sheet or final Report and section under which accused are sent for trial	Names of witnesses	Name and residence of accused A. - Sent in custody for trialB. - On bail or recognizanceC. - Not sent for trial	Property (including weapons) found					Date of receipt of chalan in Court	Offence according to which convicted or acquitted	Result of the case (In case of conviction or acquittal, the name of court, date and details of the order)			
Serial No.	Date of case diary	Name of	Serial No.	Date of case	Name of	Serial No.	Date of case diary	Name of																																
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Arrest Report Memo (Referenced in Chapter 7, Section 7.5)

FORM No. 26.8(2) <div style="display: flex; justify-content: space-between; margin-top: 10px;"> POLICE STATION (NAME) _____ _____ DISTRICT </div> <p style="text-align: center; margin-top: 10px;">REPORT OF ARREST (Under Section 62 Criminal Procedure Code)</p> <p>Has the honour to report that _____, son of _____, caste _____, resident of _____, has been apprehended (or detained, as the case may be) this day at _____ o'clock, as he is accused of _____.</p> <p>Dated _____</p> <p>The _____</p> <p style="text-align: right; margin-top: 20px;"><i>Sub-Inspector</i></p> <p style="text-align: center; margin-top: 20px;">To be lithographed on a post-card.</p>	
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Recovery Memo During Search (Referenced in Chapter 7, Section 7.6)

FORM No. 25.23(1)(c) <i>Form of search list prescribed by Section 103(2), Cr.P.C.</i>	
F.I.R. No. _____, dated _____ Police Station _____	
The house of _____, son of _____, caste _____, resident of village, _____, was searched in the presence of the undermentioned witnesses and the following articles were recovered and taken into possession by the police on the statement and indication of _____, son of _____, caste _____, village _____, accused in the abovementioned case.*	
*Cross out if not applicable.	
Articles <i>Name and signature the witnesses</i>	Place from which recovered. <i>Signature and designation of of the officer conducting the search.</i>
Date _____	

Memo Format for Recording Witness Statement (Referenced in Chapter 7, Section 7.7)

I have explained to (....name....), that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that confession was voluntarily made. It was taken in my presence, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him".

(Signed)
"Distt. Superintendent of Police."

Memo Format for Recording Witness Statement (Referenced in Chapter 7, Section 7.7)

RECORD OF A CONFESSION MADE BY AN ACCUSED PERSON.

(SECTION 264 OF THE CODE OF CRIMINAL PROCEDURE)

In the court of _____ Division

THE CROWN

versus

The Confession of _____ taken by me _____ a Magistrate of the _____ District, this _____ day of _____ 19 .

Memorandum of Enquiry

(The magistrate shall first, as required by section 164(3), Code of Criminal Procedure, explain to the accused person that he is not bound to make a confession, and that if he does so, it may be used as evidence against him, and shall then put and record answers to the following questions. If the answers are of such a character as to require him to do so, he should put such further questions as may be necessary to enable him to judge whether the accused person is acting voluntarily. In arriving at his conclusion on this point the Magistrate should consider *inter alia* the period during which the accused person has been in police custody and make sure that the confession is not the result of any undue influence or ill treatment. Special care should be taken when women or children are produced by the police for their confession being recorded) :-

Q. - Do you understand that you are not bound to make a confession ?

A. -

Q. - Do you understand that your statement is being recorded by a magistrate, and that if you make a confession, it may be used as evidence against you ?

A. -

Q. - Understanding these two facts, are you making a statement before me voluntarily ?

A. -

Statement of accused.
(Mark or signature of accused)
Magistrate.

I have explained to _____ that he is not bound to make a confession, and that if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it, and admitted by him to be correct, and, it contains a full and true account of the statement made by him.

Magistrate.

Dated _____

Memo Format for Recording Witness Statement (Referenced in Chapter 7, Section 7.7)

FORM No. 26.32(1)(e)²**POLICE DEPARTMENT**_____ **DISTRICT***Identification of suspects*

Note. - Whenever it is necessary to submit any person suspected of having been concerned in any offence for identification, particular care should be taken, pending the arrival of the identifying witnesses to keep the suspect in some place where they cannot have access to him. On their arrival the suspect should be placed with 8 to 9 men similarly dressed, and of the same religion and status, and the identification carried out whenever possible in the presence of a Magistrate or independent witnesses who should be asked to satisfy themselves that the identification has been conducted under conditions precluding the possibility of collusion. Care must be taken that the identification by each witness is done out of sight and hearing of the other identifying witnesses.

1	2	3	4	5	6
Date and place of identification	Name of witness	Name of suspects he identifies	Description of manner in which the rule regulating such identifications were complied with	Signature of Magistrate or other witnesses in whose presence the test is carried out	Signature of Police Officer in charge.

APPENDIX M – EXAMPLES OF CHARACTERISTICS OF STRs

Examples or Characteristics of Suspicious Transactions (Red Alerts) that May Be a Cause for Increased Scrutiny for AML/CFT Purposes⁶⁶⁰

1. General Comments

The following are examples or characteristics of possible suspicious transactions for money laundering or financing of terrorism. This list of situations may be taken as a means of highlighting the basic ways in which money may be laundered. The examples provided are not exhaustive and may serve only as guidance of banks/DFIs to recognize suspicious activities.

While each individual situation may not be sufficient to suggest that money laundering is taking place, a combination of such situations may be indicative of such a transaction. A customer's declarations regarding the background of such transactions shall be checked for plausibility and explanation offered by the customer may be accepted after reasonable scrutiny.

2. Transactions which do not make economic sense or inconsistent with customer's business or profile

- i) A customer's relationship having a large number of accounts with the same bank, frequent transfers between different accounts or exaggeratedly high liquidity;
- ii) Transactions in which assets are withdrawn immediately after being deposited, unless the customer's business activities furnish a plausible reason for immediate withdrawal;
- iii) Transactions that cannot be reconciled with the usual activities of the customer, for example, the use of Letters of Credit and other methods of trade finance to move money between countries where such trade is not consistent with the customer's usual business;
- iv) Provision of bank guarantees or indemnities as collateral for loans between third parties that are not in conformity with market conditions;
- v) Unexpected repayment of an overdue credit without any plausible explanation;
- vi) Back-to-back loans without any identifiable and legally admissible purpose;
- vii) Paying in large third-party cheques endorsed in favour of the customer;
- viii) Substantial increases in deposits of cash or negotiable instruments by a professional firm or company, using client accounts or in-house company or trust accounts, especially if the deposits are promptly transferred between other client company and trust accounts;
- ix) High velocity of funds through an account, i.e., low beginning and ending daily balances, which do not reflect the large volume of funds flowing through an account;
- x) Mixing of cash deposits and monetary instruments in an account in which such transactions do not appear to have any relation to the normal use of the account;
- xi) Multiple transactions carried out on the same day at the same branch of a financial institution but with an apparent attempt to use different tellers;

⁶⁶⁰ Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) Regulations for Banks & Development Finance Institutes. Annex II

- xii) The structuring of deposits through multiple branches of the same bank or by groups of individuals who enter a single branch at the same time;
- xiii) The deposit or withdrawal of cash in amounts which fall consistently just below identification or reporting thresholds;
- xiv) The deposit or withdrawal of multiple monetary instruments at amounts which fall consistently just below identification or reporting thresholds, if any, particularly if the instruments are sequentially numbered;
- xv) Customers making large and frequent deposits but cheques drawn on the accounts are mostly to counter-parties not normally associated with customer's business;
- xvi) Extensive or increased use of safe deposit facilities that do not appear to be justified by the customer's personal or business activities;
- xvii) Goods or services purchased by the business do not match the customer's stated line of business;
- xviii) A retail business has dramatically different patterns of currency deposits from similar businesses in the same general location;
- xix) Loans are made for, or are paid on behalf of, a third party with no reasonable explanation;
- xx) Suspicious movements of funds occur from one financial institution to another, and then funds are moved back to the first financial institution.
- xxi) The deposit of excess balance in the accounts linked to credit cards/store value cards.
- xxii) Unusual pattern of purchase through credit cards/store value cards etc.

3. Transactions involving large amounts of cash

- i) Exchanging an unusually large amount of small-denominated notes for those of higher denomination;
- ii) Purchasing or selling of foreign currencies in substantial amounts by cash settlement despite the customer having an account with the bank;
- iii) Frequent withdrawal of large amounts by means of cheques, including traveler's cheques;
- iv) Large cash withdrawals from a previously dormant/inactive account, or from an account which has just received an unexpected large credit locally or from abroad;
- v) Large cash withdrawals made from a personal or business account not normally associated with customer's profile;
- vi) Company transactions, both deposits and withdrawals, that are denominated by unusually large amounts of cash, rather than by way of debits and credits normally associated with the normal commercial operations of the company, e.g. cheques, letters of credit, bills of exchange, etc.;
- vii) Depositing cash by means of numerous credit slips by a customer such that the amount of each deposit is not substantial, but the total of which is substantial;
- viii) The deposit of unusually large amounts of cash by a customer to cover requests for bankers' drafts, money transfers or other negotiable and readily marketable money instruments;
- ix) Customers who together, and simultaneously, use separate tellers to conduct large cash transactions or foreign exchange transactions;

- x) Large cash deposits made to the account of an individual or legal entity when the apparent business activity of the individual or entity would normally be conducted in cheques or other payment instruments.

4. Transactions involving locations of concern & wire transfers

- i) Transactions involving foreign currency exchanges or deposits that are followed within a short time by wire transfers to locations of specific concern (for example, countries identified by national authorities/international bodies, UN or FATF etc.);
- ii) A personal or business account through which a large number of incoming or outgoing wire transfers take place without logical business or other economic purpose, particularly when this activity is to, through or from locations of specific concern (as mentioned above);
- iii) The use of multiple accounts to collect and then funnel funds to a small number of foreign beneficiaries, both individuals and businesses, particularly when these are in locations of specific concern (as mentioned above);
- iv) Obtaining credit instruments or engaging in commercial financial transactions involving movement of funds to or from locations of specific concern when there appears to be no logical business reasons for dealing with those locations (as mentioned above);
- v) The opening of accounts of financial institutions from locations of specific concern (as mentioned above);
- vi) The business relationships conducted in unusual circumstances e.g. significant unexplained geographic distance between the bank and the customer;
- vii) The receipt of small or large amounts (in cash, using online or otherwise) from various locations from within the country especially if such deposits are subsequently transferred within a short period out of the account and/or to a destination not normally associated with the customer;
- viii) Substantial increase in cash deposits by a customer without apparent cause, especially if such deposits are subsequently transferred within a short period out of the account and/or to a destination not normally associated with the customer;
- ix) Building up large balances, not consistent with the known turnover of the customer's business, and subsequent transfer to account(s) held overseas;
- x) Transfer of money abroad by an interim customer in the absence of any legitimate reason;
- xi) Repeated transfers of large amounts of money abroad accompanied by the instruction to pay the beneficiary in cash;
- xii) Large and regular payments that cannot be clearly identified as bona fide transactions, from and to countries or geographic areas identified by credible sources;
 - as having significant levels of corruption, or other criminal activity as providing funding or support for terrorism activities
 - as associated with the production, processing or marketing of narcotics or other illegal drugs etc.
- xiii) Wire transfers ordered in small amounts in an apparent effort to avoid triggering identification or reporting requirements;
- xiv) Wire transfers to or for an individual where information on the originator, or the person on whose behalf the transaction is conducted, is not provided with the wire transfer, when the inclusion of such information would be expected;
- xv) Use of multiple personal and business accounts or the accounts of non-profit organizations or charities to collect and then funnel funds immediately or after a short time to a small number of foreign beneficiaries.

- xvi) Customer who generally use credit cards/store value cards out of their defined geographical location or locations prone to money laundering and terrorist financing.

5. Transactions involving unidentified parties

- i) Provision of collateral by way of pledge or guarantee without any discernible plausible reason by third parties unknown to the bank and who have no identifiable close relationship with the customer;
- ii) Transfer of money to another bank without indication of the beneficiary;
- iii) Payment orders with inaccurate information concerning the person placing the orders;
- iv) Use of pseudonyms or numbered accounts for effecting commercial transactions by enterprises active in trade and industry;
- v) Customer's holding in trust of shares in an unlisted company whose activities cannot be ascertained by the bank;
- vi) Customers who wish to maintain a number of trustee or clients' accounts that do not appear consistent with their type of business, including transactions that involve nominee names.

6. Other suspicious accounts or customers

- i) Large sums deposited through cheques or otherwise in newly opened accounts which may be suspicious;
- ii) The customers who are reluctant to provide minimal information or provide false or misleading information or, when applying to open an account, provide information that is difficult or expensive for the bank to verify;
- iii) An account opened in the name of a moneychanger that receives structured deposits;
- iv) Customers whose deposits contain counterfeit notes or forged instruments;
- v) An account operated in the name of an offshore company with structured movement of funds;
- vi) Accounts that receive relevant periodical deposits and are dormant at other periods. These accounts are then used in creating a legitimate appearing financial background through which additional fraudulent activities may be carried out;
- vii) A dormant account containing a minimal sum suddenly receives a deposit or series of deposits followed by daily cash withdrawals that continue until the sum so received has been removed;
- viii) An account for which several persons have signature authority, yet these persons appear to have no relation among each other (either family ties or business relationship);
- ix) An account opened by a legal entity or an organization that has the same address as other legal entities or organizations but for which the same person or persons have signature authority, when there is no apparent economic or legal reason for such an arrangement (for example, individuals serving as company directors for multiple companies headquartered at the same location, etc.)
- x) An account opened in the name of a recently formed legal entity and in which a higher than expected level of deposits are made in comparison with the income of the promoter of the entity;
- xi) An account opened in the name of a legal entity that is believed to be involved in the activities of an association or foundation whose aims are related to the claims or demands of a terrorism organization;

- xii) An account opened in the name of a legal entity, a foundation or an association, which may be linked to a terrorism organization and that shows movements of funds above the expected level of income;
- xiii) Shared address for individuals involved in cash transactions, particularly when the address is also a business location and/or does not seem to correspond to the stated occupation (for example student, unemployed, self-employed, etc.);
- xiv) Stated occupation of the customer is not commensurate with the level or type of activity (for example, a student or an unemployed individual who receives or sends large numbers of wire transfers, or who makes daily maximum cash withdrawals at multiple locations over a wide geographic area);
- xv) Regarding non-profit or charitable organizations, financial transactions for which there appears to be no logical economic purpose or in which there appears to be no link between the stated activity of the organization and the other parties in the transaction;
- xvi) A safe deposit box is opened on behalf of a commercial entity when the business activity of the customer is unknown or such activity does not appear to justify the use of a safe deposit box;
- xvii) Safe deposit boxes are used by individuals who do not reside or work in the institution's service area despite the availability of such services at an institution closer to them;
- xviii) Unexplained inconsistencies arising from the process of identifying or verifying the customer (for example, regarding previous or current country of residence, country of issue of the passport, countries visited according to the passport, and documents furnished to confirm name, address and date of birth);
- xix) Official embassy business is conducted through personal accounts.
- xx) Large deposits on pretext of transfer/disposition of property.
- xxi) Frequent and unusual advance payments against imports.

APPENDIX N – MODEL CHARGES

MODEL CHARGES IN MONEY LAUNDERING CASES

STATEMENT OF OFFENSE

KNOWINGLY CONVERTING PROCEEDS OF CRIME contrary to Section 2(v)(i)(1) and section 2(v)(vii) of the Money Laundering Prevention Act 2012.

PARTICULARS OF OFFENSE

[name of suspect] on [insert date] (or between [insert dates]) knowingly converted the proceeds of crime, namely [if cash insert amount or description of property] involved in a predicate offence [insert predicate crime from schedule] to [insert one of the following conceal or disguise the illicit nature, source, location ownership or control of proceeds of crime] by [insert particulars of how concealed, disguised etc e.g. 'by transferring to x's bank account']

STATEMENT OF OFFENSE

KNOWINGLY ASSISTING ANOTHER TO EVADE THE LEGAL CONSEQUENCES OF A CRIME contrary to Section 2(v)(i)(2) and section 2(v)(viii) of the Money Laundering Prevention Act 2012.

PARTICULARS OF OFFENSE

[name of suspect] on [insert date] (or between [insert dates]) knowingly assisted [insert name] who was involved in [insert predicate crime from schedule] to evade the legal consequences of [insert predicate offense] by [insert particulars of the assistance].

STATEMENT OF OFFENSE

TRANSFER OF ILLICITLY GAINED MONEY OR PROPERTY OUTSIDE THE COUNTRY contrary to Section 2(v)(ii) of the Money Laundering Prevention Act 2012.

PARTICULARS OF OFFENSE

[name of suspect] on [insert date] (or between [insert dates]) [insert one of the following – transferred/held, refrained from repatriating] [insert one of the following – money or property], earned through either legal or illegal means, across the borders of Bangladesh in breach of [insert laws] by [insert particulars of the offense].

STATEMENT OF OFFENSE

KNOWINGLY HIDING THE PROCEEDS OF CRIME contrary to Section 2(v)(iii) of the Money Laundering Prevention Act 2012.

PARTICULARS OF OFFENSE

[name of suspect] on [insert date] (or between [insert dates]) knowingly [insert one of the following – transferred, remitted] the proceeds of a crime, namely [if cash insert amount or description of property], [insert one of the following – into Bangladesh, out of Bangladesh into a foreign country] with the purpose of disguising or hiding the illegal source of the proceeds by [insert particulars of how transferred, remitted, etc.].

STATEMENT OF OFFENSE

INTENT TO MOVE PROPERTY TO ASSIST A CRIME contrary to section 2(v)(v) of the Money Laundering Prevention Act 2012.

PARTICULARS OF OFFENSE

[name of suspect] on [insert date] (or between [insert dates]) knowingly [insert one of the following – converted, moved or transferred] property, namely [if cash insert amount or description of property] involved in [insert predicate crime from schedule] with the intent to instigate or assist in the commission of [insert predicate crime from schedule].

STATEMENT OF OFFENSE

KNOWINGLY POSSESSING THE PROCEEDS TO A CRIME contrary to section 2(v) (vi) of the Money Laundering Act 2012.

PARTICULARS OF OFFENSE

[name of suspect] on [insert date] (or between [insert dates]) knowingly [insert one of the following – acquired, possessed or used] property, namely [if cash insert amount or description of property], involved in a predicate offense [insert predicate crime from schedule] by [insert particulars of how acquired, possessed, or used].

STATEMENT OF OFFENSE

OBSTRUCTING AN INVESTIGATION WITHOUT REASONABLE GROUND contrary to Section 7 of the Money Laundering Prevention Act 2012.

PARTICULARS OF OFFENSE

[name of suspect] on [insert date] (or between [insert dates]), without reasonable ground, [insert one of the following – obstructed an investigation, failed to cooperate with an investigation, declined to supply information, declined to submit a report] in response to a request from an investigating officer carrying out an investigation by [insert particulars of how obstructed, failed to cooperate, declined, etc.].

STATEMENT OF OFFENSE

KNOWINGLY PROVIDING FALSE INFORMATION contrary to Section 9 of the Money Laundering Prevention Act 2012.

PARTICULARS OF OFFENSE

[name of suspect] on [insert date] (or between [insert dates]), knowingly provided false information, in any matter, regarding [insert one of the following – the source of funds, self-identity, the identity of an account holder, the beneficiary or nominee of an account], namely [insert the false information provided] when [insert particulars of when they provided the false information].

MODEL Charges in Terrorism Cases

STATEMENT OF OFFENSE

KILLING, HARMING, CONFINING, OR KIDNAPPING A PERSON FOR TERRORIST PURPOSES contrary to section 6(1)(a)(i) of the Anti-Terrorism Act 2009.

PARTICULARS OF OFFENSE

[name of suspect] on [insert date] (or between [insert dates]) threatened the [insert one of the following – the unity, the integration, the public security or sovereignty] of Bangladesh by creating panic among the public or a section of the public with a view to compelling [insert one of the following – the government, an entity, any person] to do any act or preventing them from doing any act by [insert one of the following – attempting to or actually killing, causing grievous hurt, confining, kidnapping any person] [insert particulars of how killed, hurt, confined, etc.].

STATEMENT OF OFFENSE

ABETTING OR INSTIGATING THE KILLING, HARMING, CONFINING, OR KIDNAPPING A PERSON FOR TERRORIST PURPOSES contrary to section 6(1)(a)(ii) of the Anti-Terrorism Act 2009.

PARTICULARS OF OFFENSE

[name of suspect] on [insert date] (or between [insert dates]) threatened the [insert one of the following – the unity, the integration, the public security or sovereignty] of Bangladesh by creating panic among the public or a section of the public with a view to compelling [insert one of the following – the government, an entity, any person] to do any act or preventing them from doing any act by [insert one of the following – abetting, instigating] [name of individual(s)] to [insert one of the following – murder, seriously injure, confine, kidnap any person] [insert particulars of how abetted or instigated].

STATEMENT OF OFFENSE

DAMAGING OR ATTEMPTING TO DAMAGE PROPERTY FOR TERRORIST PURPOSES contrary to section 6(1)(a)(iii) of the Anti-Terrorism Act 2009.

PARTICULARS OF OFFENSE

[name of suspect] on [insert date] (or between [insert dates]) threatened the [insert one of the following – the unity, the integration, the public security or sovereignty] of Bangladesh by creating panic among the public or a section of the public with a view to compelling [insert one of the following – the government, an entity, any person] to do any act or preventing them from doing any act by [insert one of the following – damaging, attempting to damage] the property of [insert one of the following – any person, any entity, the state], namely [description of property] [insert particulars of how they damaged the property].

STATEMENT OF OFFENSE

CONSPIRING, ABETTING, OR INSTIGATING DAMAGE TO PROPERTY FOR TERRORIST PURPOSES contrary to section 6(1)(a)(iv) of the Anti-Terrorism Act 2009.

PARTICULARS OF OFFENSE

[name of suspect] on [insert date] (or between [insert dates]) threatened the [insert one of the following – the unity, the integration, the public security or sovereignty] of Bangladesh by creating panic among the public or a section of the public with a view to compelling [insert one of the following – the government, an entity, any person] to do any act or preventing them from doing any act by [insert one of the following – conspiring, abetting, instigating] to damage the property of [insert one of the following – any person, any entity, the state], namely [description of property]

STATEMENT OF OFFENSE

USING OR POSSESSING EXPLOSIVES OR ARMS FOR TERRORIST PURPOSES contrary to section 6(1)(a)(v) of the Anti-Terrorism Act 2009.

PARTICULARS OF OFFENSE

[name of suspect] on [insert date] (or between [insert dates]) threatened the [insert one of the following – the unity, the integration, the public security or sovereignty] of Bangladesh by creating panic among the public or a section of the public with a view to compelling [insert one of the following – the government, an entity, any person] to do any act or preventing them from doing any act by [insert one of the following – using, keeping] [insert one of the following – an explosive substance, an inflammable substance, arms], namely [description of weapons],

STATEMENT OF OFFENSE

KNOWINGLY DISRUPTING SECURITY OR CAUSING DAMAGE TO PROPERTY OF A FOREIGN STATE contrary to section 6(1)(b) of the Anti-Terrorism Act 2009.

PARTICULARS OF OFFENSE

[name of suspect] on [insert date] (or between [insert dates]) knowingly [insert one of the following – disrupted security, caused damage to property of any foreign state] by [insert one of the following – committing/attempting to commit, instigating, conspiring, abetting] [insert one of the section 6(1)(a) offenses – killing, harming, confining, kidnapping, damaging property] when [insert particulars of how killed, harmed, confined, damaged, etc.].

STATEMENT OF OFFENSE

COMPELLING ANY INTERNATIONAL ORGANIZATION TO ACT contrary to section 6(1)(c) of the Anti-Terrorism Act 2009.

PARTICULARS OF OFFENSE

[name of suspect] on [insert date] (or between [insert dates]) created panic among the public or a section of the public by [insert one of the following – committing, attempting to commit, instigating, abetting] the [insert one of the section 6(1)(a) offenses – killing, harming, confining, kidnapping, damaging property] with the purpose of compelling [name of international organization] to do any act or preventing them from doing any act when [insert particulars of offense].

STATEMENT OF OFFENSE

KNOWINGLY POSSESSING TERRORIST PROPERTY contrary to section 6(1)(d) of the Anti-Terrorism Act 2009.

PARTICULARS OF OFFENSE

[name of suspect] on [insert date] (or between [insert dates]) knowingly [insert one of the following – used, possessed] any terrorist property, namely [insert description of property] by [insert particulars of how used or possessed].

STATEMENT OF OFFENSE

COMMISSION OR INSTIGATION OF UN CONVENTION OFFENSE contrary to section 6(1)(e) of the Anti-Terrorism Act 2009

PARTICULARS OF OFFENSE

[name of suspect] on [insert date] (or between [insert dates]) [insert one of the following – abetted, instigated, conspired, committed, attempted to commit] an offense described in the U.N. conventions included in Schedule 1 of the Anti-Terrorism Act 2009, namely [name of offense] by [insert particulars of how abetted, instigated, conspired, committed].

STATEMENT OF OFFENSE

ANY ACT INTENDING TO CAUSE DEATH OR SERIOUS INJURY TO CIVILIANS OR COMPELLING ACTION/ABSTENTION FROM THE STATE OR AN INTERNATIONAL ORGANIZATION contrary to section 6(1)(f) of the Anti-Terrorism Act 2009.

PARTICULARS OF OFFENSE

[name of suspect] on [insert date] (or between [insert dates]) [insert action or offense] with the intention to [insert one of the following – cause death or serious bodily injury to a civilian or to any other person not taking an active part in the hostilities in a situation of armed conflict when the purpose of such act, by its nature or context, is to intimidate a population OR compel a government or an international organization to do or to abstain from doing any act] by [insert particulars of the action or offense].

STATEMENT OF OFFENSE

FINANCING TERRORIST ACTIVITIES contrary to section 7 of the Anti-Terrorism Act 2009.

PARTICULARS OF OFFENSE

[name of suspect] on [insert date] (or between [insert dates]) willfully [insert one of the following – provided, received, collected, made] arrangements for [insert one of the following – money, services, any other property], namely [insert description of item(s)] whether from legitimate or illegitimate sources, by any means, directly or indirectly, with the intention [insert one of the following – it will be used to carry out terrorist activity OR it will be used for any purposes by terrorist persons or entities or in the knowledge that they are to be used by terrorist persons or entities].

STATEMENT OF OFFENSE

MEMBERSHIP IN A PROSCRIBED ENTITY contrary to section 8 of the Anti-Terrorism Act 2009.

PARTICULARS OF OFFENSE

[name of suspect] on [insert date] (or between [insert dates]) was or claimed to be a member of a prohibited entity proscribed under section 18 of the Anti-Terrorism Act 2009, namely [name of entity], by [insert particulars of membership or purported membership].

STATEMENT OF OFFENSE

SUPPORTING A PROSCRIBED ENTITY contrary to section 9 of the Anti-Terrorism Act 2009.

PARTICULARS OF OFFENSE

[name of suspect] on [insert date] (or between [insert dates]) [insert one of the following – requested, invited someone to join a proscribed entity OR arranged, directed, assisted in the organizing of a meeting for a proscribed entity OR made a speech in a meeting to a proscribed entity] with the intent to [insert one of the following – support, expedite, or encourage] the entity's activities by [insert particulars of the entity and how requested, invited, arranged, etc. support].

STATEMENT OF OFFENSE

INSTIGATING TERRORIST ACTIVITIES contrary to section 13 of the Anti-Terrorism Act 2009.

PARTICULARS OF OFFENSE

[name of suspect] on [insert date] (or between [insert dates]) instigated terrorist activities by [insert one of the following – preparing, distributing any documents OR transmitted any information through any print or electronic media OR training], knowing that the [insert one of the following – document, apparatus, assistance, technology, training] shall be used in committing any offense under the Anti-Terrorism Act 2009 or any such person or entity shall use the same for committing similar offenses when [insert particulars of the instigation, participation, or activities].

