

Post FATF:

TF Prosecutions and Investigations in Pakistan

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Abstract

This research paper delves into Pakistan's efforts to enhance the effectiveness of its countering the financing of terrorism (CFT) regime in accordance with the FATF standards, with a specific focus on TF investigations and prosecutions. The study covers the post-FATF period i.e., August 2022 - May 2023, and analyzes the progress made in TF investigations and prosecutions as compared to the preceding four years. Primary and secondary sources were explored through qualitative and quantitative research methods. Unstructured interviews and focused discussion sessions were conducted with various stakeholders and experts at policy, strategy, and operational levels. The case study research method was employed by examining the ATCs' judgments in TF prosecutions. Analysis of data on TF investigations and prosecutions in the FATF Action Plan and post-FATF periods was done for situation analysis. Survey questionnaires responses from a targeted sample of TF investigators and prosecutors were analyzed to ascertain the operational level issues and gaps in TF investigations and prosecutions. A narrative and thematic analysis approach was adopted.

While efforts were made during the FATF Action Plan period to adequately strengthen the legal, institutional, and coordination frameworks and build the capacity of LEAs to establish a sustainable CFT system as per the FATF CFT standards, the effectiveness of TF investigations and prosecutions in the post-FATF period remains a matter of concern. In the post-FATF period, there has been a significant decrease in the initiation of proactive, parallel, and wide-range TF investigations. The number of accused persons arrested

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and convicted has also gone down by 27% and 73% respectively. There was not a single accused person convicted in Sindh and Baluchistan in a TF prosecution. The progress on MLA requests for international cooperation has not been up to the mark. The convictions in TF prosecutions have decreased by 63%. The inter-agency coordination and implementation gap is hampering the effectiveness of the CFT system. There is a need for dedicated TF investigators and an adequate number of TF prosecutors. The FMU has capacity issues in terms of detecting, developing, and disseminating actionable financial intelligence with CTDs. The proactive role of NACTA and FMU is crucial for the effectiveness of TF investigations and prosecutions in Pakistan. The absence of a unified National CTD hampers the strategic response to terrorism financing. The establishment of National CTD at the federal level is needed to do away with the lack of coordination and the issue of varied levels of implementation of CFT standards in the provinces.

Keywords: *Financial Action Task Force, Action Plan, Anti-Terrorism Court, Baluchistan, National Counter Terrorism Authority.*

1. Introduction

Terrorist financing involves the solicitation, collection or provision of funds with the intention that they may be used to support terrorist acts or organizations. According to the International Convention for the Suppression of the Financing of Terrorism, a person commits the crime of financing of terrorism "if that person by any means, directly or indirectly, unlawfully and willfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out" an offense within the scope of the Convention (IMF, n.d.). The FATF is an international watchdog established in 1989; by G7 countries in Paris. It was an initiative in the backdrop of increased money laundering problems rising from Mexico, Latin American countries, drug cartels and other crime proceeds. The objective was to combat money laundering and other threats to the integrity of the international financial system. Later on, combating terrorist financing and the financing of proliferation of weapons of mass destruction was also added to its mandate in 2001 and 2012 respectively. The FATF creates a set of obligations for its member jurisdictions. FATF's mandate recognizes the need for FATF to continue to lead decisive, coordinated and effective global action to counter the threats of abuse of international financial system by criminals and terrorists, and strengthens its capacity to respond to these threats; that all countries face (FATF). The FATF formulates standards and promotes effective implementation of measures to combat these illicit activities, acting as a global standard-setter in the field of AML and CFT. The FATF performs this task through a membership of 39 countries and jurisdictions, including major financial centers around the world such as IMF and World Bank. It also



collaborates with several international organizations and regional groups to foster global cooperation in combating money laundering and terrorist financing. These international organizations and regional groups are called FATF-Style Regional Bodies. There are nine FATF-style Regional Bodies such as the Asia/Pacific Group on money laundering and terrorism financing (APG); Caribbean Financial Action Task Force (CFATF); Eurasian Group and others. These FSRBs have respective regional countries as their members (APG). By virtue of joining FSRB; country stands committed to implement FATF AML/CFT standards. The APG was established in 1997 and now have 41 active members; it is the largest FATF-Styled Regional body having countries from Asia and the Pacific regions as its members. Pakistan joined the APG in May 2000 (APG).

Pakistan was placed on the FATF's increased monitoring list; known as "grey list", on June 28, 2018. Previously, Pakistan remained on FATF grey list in 2008-10 and 2012-15 (Dawn, 2022). It was alleged by the FATF that Pakistan has structural and strategic deficiencies in its AML/CFT system. The FATF stressed on the strengthening of AML/CFT regime and addressing "its strategic counter-terrorist financing-related deficiencies" (Hayat, 2018). Pakistan was asked to comply with FATF action plan on two occasions since 2018. The 2018 action plan was initiated on the basis of nomination proposal by USA, UK, France & Germany to list Pakistan for strategic CFT weaknesses, nomination proposal was approved by FATF (Musarat Amin). Pakistan was required to demonstrate a high-level commitment to Action Plan that had 27 TF based action items. Pakistan got second action plan on money laundering in 2021 on the basis of strategic deficiencies identified in MER 2019 which comprised of 7 action items (APG, 2019).

In view of the challenge of terrorism in Pakistan, the significance of this research cannot be overemphasized. The existing debate hinges on the premise that if Pakistan's efforts to improve upon the effectiveness of its CFT regime have been sustainable? The available arguments cast doubt as to the sustainability of initiatives put on place by Pakistan during the implementation stage of Pakistan's FATF Action Plan during 2018-2022. Now, when Pakistan has managed its way out of the FATF grey list and next ME in respect of Pakistan is scheduled for 2027; it is incumbent that the effectiveness of Pakistan's CFT regime be revisited in the post FATF period and necessary issues and gaps be identified and bridged to demonstrate necessary effectiveness of Pakistan's TF investigations and prosecutions regime during the upcoming mutual evaluation of Pakistan. since the post FATF period commenced nearly ten months past and no organized effort has been made to precisely ascertain the effectiveness of Pakistan's TF investigations and prosecutions regime, this research is crucial to our preparedness for upcoming FATF ME in 2027.

1.1. Statement of the Problem

In June 2018, Pakistan was placed on the FATF grey list; on account of “strategic counter-terrorist financing-related deficiencies” of its AML/CFT system. Compliance with the FATF Action Plan helped the country to get off the Grey List in October 2022. Pakistan is looking forward to the FATF Mutual Evaluation in 2027 and cannot afford to have any leeway and falter on its commitment to continue implementing the FATF standards. It could well be critical. It is imperative to study the implementation status of the FATF standards on the effectiveness of TF investigations and prosecutions during the post-FATF period with a view to identifying significant issues and challenges of Pakistan’s current CFT regime. (Hussain, 2022) How to overcome these challenges to establish an effective and sustainable CFT regime for TF investigations and prosecutions in Pakistan?

1.2. Significance and Scope of Study

Pakistan has had difficulties with its grey listing in the past on more than one occasion. Pakistan’s effectiveness with regard to the TF investigations and prosecutions was assessed as *low* in the APG Pakistan MER 2019. Being placed on the FATF grey list has negative implication for a jurisdiction not only in terms of its international stature but also for its access to the international financial markets and financial institutions. Pakistan’s FATF mutual evaluation is scheduled for the year 2027. There is a need to examine the sustainability of Pakistan’s CFT system in the post FATF period. This study will focus on examining the effectiveness of Pakistan’s CFT system in respect of TF investigations and prosecutions conducted by provincial CTDs during the post FATF Action Plan period i.e., August 2022-May 2023.

1.3. Review of Literature

The quality of police investigations and subsequent prosecution of criminal cases hold center stage in the effective functioning of criminal justice system. The effectiveness of criminal investigations and prosecutions have been subject of research for quite some time now. Hence a plenty of literature is available on the subject. As far CT investigations and prosecutions in Pakistan; traditionally the focus have been on the detection of incident as such and arresting the culprits for their inhuman acts and bringing them to justice by making strong cases so that convictions could be achieved from Anti-terrorism courts. This development resulted in focus on counter terrorism investigations. The issue of TF investigations and prosecutions got in focus as Pakistan was put on grey list for the third time in 2018 and had to comply with a comprehensive FATF Action Plan to improve upon the effectiveness of AML/CFT regime. As far the available literature on TF investigations and prosecutions; the FATF standards and assessment methodology provides with an insight into the contours of effective TF investigations and prosecutions. A

policy paper titled *Strategic Policy Options to Curb Terrorism Financing in Pakistan* (2020), published by National Initiative against Organized Crime Pakistan (NIOC) talks about the policy options for Pakistan at the strategic level and about the gaps in our legal framework for CFT. A study on *Terrorism Prosecutions in Pakistan* by Syed Manzar Abbas Zaidi (2016) discusses the CT prosecutions in light of 235 ATC judgements and has tried to identify the gaps in police investigations and prosecution of terrorism cases. Choking of terrorism financing and proscribed organizations has been included as an agenda point in the Revised National Action Plan 2021 and consequently, NACTA issues a quarterly/annual *review on the implementation status of R-NAP* (2022). The Annual review 2022 gives the state of TF investigations and prosecutions by LEAs and through constituting JIT along with the implementation of multi-lateral MoU for effective TF investigations and Prosecutions. Training module developed by International Criminal Investigative Training Program (ICITAP) as *Money Laundering and Terrorism Financing Training-Participant Guide* (2022) and a *Guide for the effective investigation and Prosecution of Money Laundering and Terrorist Financing in Pakistan* (2020) and *Toolkit on AML/CFT in Pakistan* by Research Society of International Law (RISL); provide the operational level guidance for conducting effective ML/TF investigations and successful prosecutions. In addition to that the documents/reports related to TF investigations and prosecution available at the APG and FATF websites were perused. These documents included the FATF standards on AML/CFT, the FATF 40 Recommendations and the FATF methodology to assess the member jurisdictions both on technical compliance and effectiveness of AML/CFT regime. Mutual evaluation reports in respect of Pakistan were perused in order to better understand Pakistan's evolution in developing its AML/CFT system as per the FATF standards.

1.4. Research Methodology

1.4.1. Secondary Sources

Given the nature of study being specialized in nature; an effort has been made to go through the secondary sources available on CT investigations in general and TF investigations and prosecutions in particular. Given the fact that the subject of research has got the spot light in the wake of Pakistan's placement on the FATF grey list and no research work specifically pertaining to TF investigations and prosecutions has been available hence it was considered pertinent to consult the data analyzed by different authors on the subject of counterterrorism investigations and prosecutions to be able to develop a better understanding of the subject. Data for the FATF Action Plan period and post-FATF period was collected from provincial CTDs, FMU and NACTA; regarding the number of TF investigations, arrests made, accused persons convicted, convictions achieved, mutual legal assistance requests initiated, term of sanctions in convicted cases, number of JITs in TF investigations

constituted, number of STRs initiated etc. It was utilized for the situation analysis by drawing a comparison of the progress made by Pakistan during the FATF Action Plan and the post-FATF periods. The case study method of research has been adopted by analyzing the judgments by ATCs from across the province in TF investigations and prosecutions resulting in acquittals. The judicial proceedings and subsequent verdicts by the courts of law signify the culmination of TF investigations and prosecutions. This exercise provided the author with a unique and crucial insight into the quality of TF investigations and prosecutions in Pakistan. The exercise was incumbent to get to the depth of the matter as achieving the conviction in a criminal case is the ultimate goal of effective TF investigations and prosecutions.

1.4.2. Primary Sources

Primary data sources both in qualitative and quantitative domains were utilized. Survey questionnaires were devised for TF investigators and prosecutors of Punjab, Sindh, KPK and Balochistan; to solicit their responses on the issues and challenges being faced at the operational level. It was deemed necessary to have operational level input from the practitioners directly dealing with TF investigations and prosecutions in Pakistan. TF investigators and prosecutors were selected as sample from the target populations comprising of different stakeholders in TF investigations and prosecutions because they are the directly related officials who stay connected and attached throughout the conduct of TF investigations and prosecutions. Based on the analysis of survey results a focused discussion session was conducted involving the strategic and supervisory officials from provincial CTDs and TF prosecutors from across the provinces to reach to the answers intended for in the statement of the problem. The subject was further explored through unstructured interviews with experts and high-level officials dealing with TF investigations and prosecutions at the policy, strategy and operational levels. A narrative and thematic analysis approach was employed. The exercise helped the author to further analyze the situation and reach to the issues and challenges responsible for the present situation.

2. The FATF AML/CFT Standards: Pakistan's Compliance Status

2.1. The FATF Methodology

The FATF envisages a complementary approach in order to assess a jurisdiction's technical compliance with the FATF 40 Recommendations and for assessing whether and to what an extent a jurisdiction's AML/CFT system is effective in terms of yielding the desired results. The technical assessment together with the assessment of effectiveness of AML/CFT system of a given country provides an integrated analysis regarding its compliance with the FATF standards and to the fact that how successfully that country is maintaining a strong AML/CFT system under the FATF Recommendations. (FATF, 2021)



2.1.1. Technical Compliance

The assessment of technical compliance focuses on the specific requirements of the FATF Recommendations; primarily with regard to the legal and institutional framework of a jurisdiction. Moreover, it addresses the assessment of the powers and procedures of competent authorities meant to comply with the FATF AML/CFT standards. The FATF Recommendations constitute the fundamental building blocks of AML/CFT system. The technical assessment is a desk-based exercise which is conducted prior to undertaking on-site visit of the jurisdiction undergoing the mutual evaluation. (FATF, 2023) Each of the *FATF Recommendation* is assessed during mutual evaluation of a jurisdiction under the FATF Methodology on five parameters i.e., Compliant, largely compliant, partially compliant, non-compliant and not-applicable. (FATF, 2021)

2.1.2. Effectiveness of AML/CFT Regime

The effectiveness assessment is fundamentally different from the assessment of technical compliance. It is concerned with the adequacy of implementation of FATF Recommendations. The effectiveness analysis assesses the extent to which the jurisdiction has achieved a set of defined goals and outcomes that lie at the core of an effectively functioning legal and institutional framework. It deals with the question that if an AML/CFT system yields the expected results in consonance with the ML/TF risk profile of that country? It seeks to identify the extent to which a country has achieved the 11 *Immediate Outcomes*; that have been clearly spelled out by the FATF as AML/CFT effectiveness standards. (FATF, 2021) (FATF, 2023) The effectiveness of TF investigations and prosecutions is assessed under the Immediate Outcome 9 in line with the FATF methodology 2013. Each of the *Immediate Outcome* is assessed during mutual evaluation of a jurisdiction under the FATF Methodology. (FATF, 2021)

2.1.3. Effectiveness Ratings

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

2.1.4. Mutual Evaluation

The FATF/APG membership rules require that on joining, members automatically undertake to a mutual evaluation under a peer review system to ascertain the level of compliance with the FATF AML/CFT standards. The process involves a team of experts belonging to the member jurisdictions of APG who have been trained and qualified in the FATF assessment methodology and include legal experts; financial and regulatory experts; and law enforcement experts. The findings and recommendations of these evaluations can have significant implications, as they can impact a country's reputation and influence its access to international financial markets and networks. Mutual evaluation is a two-pronged exercise. Firstly, the technical compliance of a jurisdiction is assessed by an APG team of assessors with regard to the specific requirement of each of the 40 FATF recommendations. Secondly, the effectiveness assessment of a country's AML/CFT system against 11 IOs is done through an onsite visit. (FATF)

2.1.5. Terrorism Financing: Risk Assessment Methodology

The FATF *Recommendation 1* deals with assessing risks and application of risk-based approach by the member jurisdictions. Countries are required to identify and assess TF risks by having designated authorities. A mechanism should be put in place for the communication of results on risk assessment to all the relevant authorities and such assessment needs to be kept updated. A risk-based approach needs to be employed thereafter for the purpose of allocation of resources and devising measures to combat the TF/ML risks identified. The key concepts involved in the risk assessment at the national level include *threat, vulnerabilities and consequences*. A risk assessment is primarily meant to enable relevant authorities to make judgement on these three factors in the context of a given country. A *threat* might be a terrorist, terrorist organization, its facilitators, funding and includes past or present having potential to harm to country, economy or a society. A *vulnerability* is something that can be exploited by a given threat to further its activities e.g., a weak CFT system, a specific sector, financial products or services etc. A *Consequence* signifies the impact of an executed threat on society, economy, financial systems or institutions. Understanding the consequences can help a jurisdiction to understand threats and vulnerabilities comprehensively and thus help to prioritize resource allocations and actions to mitigate the threat by employing risk-based approach.

A variety of processes can be employed to develop a genuine risk understanding by countries. A top-down approach may be adopted through a single coordinated system. Starting with high level political commitment; a designated committee can steer the process. It may be assisted by a number of working groups comprising of the representatives from concerned authorities both at national and sub national levels including the financial sector of the



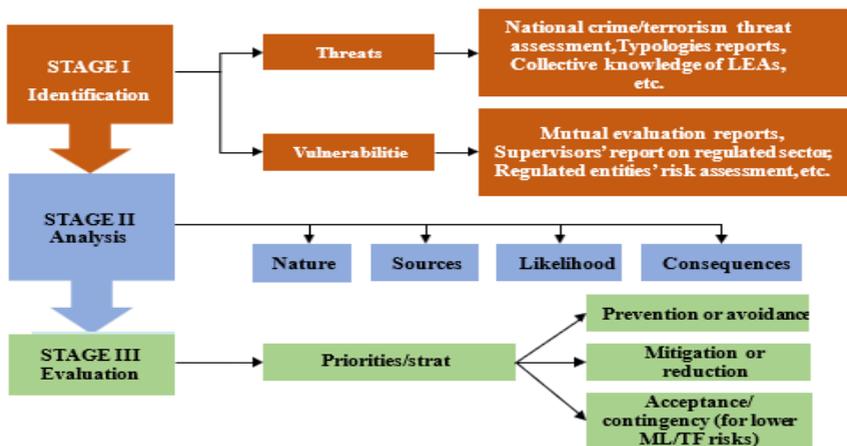
country.

Figure 1.
NRA Process: Stakeholders and their Relationship



The risk assessment process essentially involves three steps i.e., identification, analysis and evaluation. Based on known or suspected threats and vulnerabilities a list of risk factors or potential risks is prepared. Risk factors signify the threats and vulnerabilities that are sources, causes or possible drivers of TF risk. The analysis part lies at the heart of process. The nature, likelihood, sources and consequences with regard to the identified risks are taken into account at this stage. The aim is to develop a holistic understanding of risks and each of the risk factors as a combination of threat, vulnerability and consequence. The evaluation is done in the context of comparing it with the previous assigned risk levels and to prioritize actions. The process can help developing the requisite strategy to mitigate the identified risks (FATF, 2013).

Figure 2.
TF Risk Assessment Process



2.2. Pakistan's Compliance Status to FATF Action Plan 2018-2021

The FATF 'Action Plans' required Pakistan to primarily focus at plugging the gaps in its counter terrorism financing regime and the activities of UN-designated terrorists. The FATF Plenary in June 2022, acknowledged the progress Pakistan made against money laundering and terrorist financing (AML/CFT) with all 34 action points implemented. The FATF-APG delegation conducted the onsite visit in connection with the implementation of action plan by Pakistan in August-September 2022. A weeklong visit included meetings with all the stakeholders in Pakistan's AML/CFT regime at the policy, strategy and operational level. (Musarat Amin)

Pakistan has successfully implemented significant legal, regulatory and institutional reforms across its AML/CFT regime which provided sustainability and improved effectiveness of AML/CFT system. Pakistan's national AML/CFT system is led by a National Strategy and a Roadmap with key coordination bodies driving implementation of the reforms at the national level. The entire spectrum of the legal framework is in place which includes AML Act, 2010, AML/CFT Regulations for DNFBPs, AML/CFT Sanctions Rules for DNFBPs, Supervisory Framework and Enforcement Policies, Anti-Terrorism Act, 1997. On 21st October, 2022 Pakistan was removed from the FATF grey list. The official statement issued by FATF appreciated Pakistan's unflinching resolve to abide by the rules and regulations recommended by the global watchdog. The statement read, "The FATF welcomes Pakistan's significant progress in improving its AML/CFT regime. Pakistan has strengthened the effectiveness of its AML/CFT regime and addressed technical deficiencies to meet the commitments of its action plans regarding strategic deficiencies that the FATF identified in June 2018 and June 2021, the latter of which was completed in advance of the deadlines, encompassing 34 action items in total. Pakistan is therefore no longer subject to the FATF's increased monitoring process." (Jappa, 2022).

3. TF Investigations and Prosecutions in Pakistan

The Immediate Outcome 9 of the FATF effectiveness criteria provides that "terrorist financing activities are investigated and persons who finance terrorism are prosecuted and subject to effective, proportionate and dissuasive sanctions" (FATF, 2021). The FATF standards for effective TF investigations and prosecutions underline five core issues highlighting various aspects of effective TF investigations and prosecutions. These core issues refer to a jurisdiction's understanding the TF risk, level of international cooperation, the capacity of LEAs to identify and investigate TF cases and ensuring dissuasive and proportionate sanctions to the persons involved through successful prosecutions.



3.1. Pakistan's TF National Risk Assessment 2019

Pakistan National Terrorist Financing Risk Assessment was revised in 2019 by the working group led by NACTA through collaborative efforts of all relevant agencies using the World Bank methodology, including an assessment of terrorism and TF threats, containing quantitative and qualitative variables based on available Threat Intelligence. Under the World Bank methodology, using the TF module, the assessment of the TF threats looked primarily at two main factors: the threat based on terrorism, and the threat based on the direction of financial flows, sources, and channels. As per the World Bank methodology to categorize perceived TF threat in terms of its pronouncement vis-a-vis any terrorist organization, there are 5 levels i.e., low, medium low, medium, medium high and high. These ratings are assigned to TOs on the basis of their assessment of threat and impact on TF. Threat Intelligence was used for the purpose of this analysis.

Based on TFNRA Working Group analysis; 2 terrorist organizations were assessed with high TF risk, 10 with medium high, 7 with medium and 19 terrorist organizations were assessed with medium low and low level of TF risk. The external terrorism and TF threats are exploiting Pakistan's highly active and porous borders primarily with Iran and Afghanistan. In this regard major TF sources include cash smuggling, illegal trade, drug trafficking, kidnapping for ransom, extortion and hawala business and foreign funding. Therefore, the geographic location of Pakistan is in itself a primary high inherent vulnerability towards incoming transnational TF element. The main TF source in Punjab is charity and donations in form of *Sadqa, Zakat and Khairat* as part of religion's benevolence culture. The person-to-person charity coupled with strong urge not to divulge the name of the donor makes it even a bigger challenge. Donations have an important international dimension in the context of TF. Donations are a source of funding for almost all assessed TOs.

3.2. The FATF Action Plan and Pakistan's Response

3.2.1. Legal, Institutional Framework and Stakeholders

Pakistan has put in place a robust institutional framework in order to ensure the effectiveness of TF investigations and prosecutions in line with FATF CFT standards. The primary legal framework includes a comprehensive set of CFT laws under the ATA, 1997 and Anti Money Laundering Act, 2010 along with necessary amendments in both legislations to enhance the efficacy of these laws (Justice, 2020) (Pakistan, Financial Monitoring Unit, 2020). The Mutual Legal Assistance (criminal matters) Act, 2020 enables the relevant authorities to initiate requests for international cooperation related to terrorisms financing and other criminal matters (Pakistan, 2020). The institutional framework includes the National FATF Secretariate, National Task Force on TF led by NACTA, TF Subcommittee led by NACTA, CFT wing NACTA, Financial

Intelligence and Co-ordination Committee, provincial coordination Committees, CTDs, JITs, ATCs, and DICC. Various stakeholders with regard to the TF investigations and prosecutions include the LEAs dealing with TF investigations and prosecutions i.e., provincial CTDs, FIA, ANF, Pakistan Customs. The stakeholders include the judiciary, MoI, MoFA, NACTA, FMU, provincial home departments, provincial IsGP, provincial prosecutor general offices and intelligence agencies at provincial and federal level.

3.2.2. The Financial Monitoring Unit

The Financial Monitoring Unit (FMU) was established in the State Bank of Pakistan in compliance with the FATF Recommendation 29 and has been playing an important role in the identification of suspicious financial transactions and helping the concerned LEAs in taking legal action against the accused persons (FMU, Government of Pakistan, n.d.). It is responsible for receipt and analysis of STRs and CTRs. FMU has dual monitoring and intelligence functions. The FMU provides proactive and reactive financial information to CTDs. It has disseminated 496 STRs the provincial CTD since June 2018 (Ahmad, 2023). FMU has also organized various capacity building programs for CTDs to enhance CTDs officers understanding about AML/CFT regime and use of FMU's financial intelligence reports.

As a result of Pakistan's grey listing by the FATF in 2018; Pakistan was given a comprehensive action plan; that primarily related to the strategic deficiencies in its CFT regime. In total it had 34 points regarding the technical compliance of the *FATF 40 Recommendations* and required actions were spread over most of the *Immediate Outcomes* in terms of improving the effectiveness of Pakistan's AML/CFT systems. This subsection will deal with the FATF Action Plan's action items on TF investigations and prosecutions i.e., *Immediate Outcome 9* and Pakistan's response.

A. Demonstrate how authorities properly identify, assess and understand both domestic and trans-national TF risks to guide TF investigations.

As a response to this action item; Pakistan established the mechanism for identification and assessment of TF risks; wherein, the National Executive Committee (NEC) tasked Terrorist Financing Risk Assessment (TFRA) Working Groups to conduct TF risk assessment. During 2018 and 2019, this TFRA Working Group finalized three core documents including Transnational TF Threat Profiles of Key Terrorist Organizations. Furthermore, under the supervision of NRA coordinator, the TFRA Working Group developed the 2019 NRA. The TF risks were disseminated to all stakeholders to ensure an improved and uniformed operational understanding of the TF risks. In 2020; the National FATF secretariate was established along with the NRA committee under National FATF Coordination Committee to further strengthen the system. The committee was tasked to identify, assess and communicate the nature and level of TF risks vis-à-vis TOs and vulnerable sectors to the



concerned authorities. The committee has been tasked to oversee the development and formulation of NRA including TFRA through various working groups. It is a continuous process and involves the input from all stakeholders. Pakistan adopted a top-bottom approach in accordance with the FATF guidelines for its national risk assessment. (NACTA I. , 2022)

B. Demonstrate improving inter-agency coordination, including between provincial and federal authorities on combating TF risks, including pursuing TF investigations and prosecutions.

In order to address the FATF requirements with regard to demonstrating improvement in the inter-agency coordination to combat TF risks and pursue TF investigations and prosecutions; Pakistan established a National Task Force on CFT as a national policy forum for developing and implementing national CFT strategies. It has 28 members including federal/ provincial LEAs. TF Sub-Committee of National Task Force on CFT, another national level forum was established to provide guidance to federal/ provincial LEAs on operational matters in TF Investigations & prosecutions. In order to enhance inter-agency involvement at the operational level the forum of JITs in TF cases was activated under section 19 of ATA 1997. The representatives from SECP, FIA, State Bank of Pakistan, FMU along with provincial CTDs and other intelligence agencies were made part of these JITs for effective investigations of TF cases. Table 1 demonstrates the constitution of JITs in TF cases. No such practice was in place before the FATF action plan. However, since 2019 the constitution of JITs in TF cases have been institutionalized. A total number of 774 JITs for TF investigations have been formed from 2019 to July 2022 in Pakistan. This practice has resulted in enhanced interagency coordination among different LEAs at the provincial and federal level to improve the quality of TF investigations.

Table 1.
JITs Constituted in TF Cases

Province	Before AP	2019	2020	2021	2022 (Till July)	Total During AP Period
Total	Nil	432	88	114	140	774

In order to further institutionalize interagency coordination; a Multilateral MoU was signed in NACTA between 25 federal/ provincial agencies/authorities to enhance cooperation in CFT matters and sharing of financial intelligence (NACTA, 2022). The FMU issued Guidelines and SOPs for the Utilization of Financial intelligence by CTDs for the processing of Financial Intelligence. There is enhanced cooperation between FMU and CTDs resulting in exchanges through *goAML* platform. To standardize investigator-prosecutor cooperation in all provinces, NACTA issued an “SOP on the Investigator-Prosecutor Cooperation in TF Cases”. These measures have

facilitated better coordination among the TF investigators, prosecutors and relevant expert agencies and helped better prosecution of TF cases. As a special arrangement, office of the Director General Military Operations, Pakistan Army played a pivotal role in terms of coordinating the efforts of all ministries, divisions, departments, organizations and agencies at the national level (NACTA I. , 2022).

C. Establish and implement a policy for all responsible LEAs to:

- i. Proactively initiate financial inquiries and/or investigations of terrorist groups and their members; and
- ii. make reactive parallel financial inquiries and/or possible investigations a part of every terrorism investigation.

A parallel financial investigation refers to initiation of parallel TF related investigation in a hardcore terrorism case. In response to this action item; NACTA issued specific guidelines and SOPs to all LEAs to conduct reactive parallel TF investigations in all terrorism cases and invoke the relevant provisions of the law. NACTA in consultation with the stakeholders devised the first standalone policy of financial investigations of terrorism cases by LEAs with the approval of Prime Minister of Pakistan. CTDs across Pakistan have initiated parallel financial investigations in 660 terrorism cases since 2019 i-e during the FATF action plan period.

Table 2.

Parallel & Proactive TF investigations

TF Investigations	2018	2019	2020	2021	2022 (Till July)	Total in AP Period
Parallel Financial Investigations	0	423	61	96	80	660
Proactive Financial Investigations	49	394	204	85	101	833

Source: (NACTA I. , 2022)

D. Demonstrate that LEAs are identifying and investigating the widest range of TF activity (e.g., domestic or trans-national provision, collection, movement or use of funds). Particular focus should be on key aspects of the TF risk profile including cash smuggling, illegal MVTS, narcotics trafficking, misuse of NPOs, proceeds of smuggling including natural resources, as well as funding the terrorist groups including Da’esh, AQ, JuD, FiF, LeT, JeM, HQN, and persons affiliated with the Taliban.

Wide range TF investigations involve terror financing through a range of predicate offences and offences related to organized crime with TF linkages. In



response to this action item LEAs targeted wide ranging TF activities. The TF cases under this category increased to 1572 in July 2022 from only 150 before the action plan. LEAs identified and investigated a wide range of TF activities in line with identified risks/TF risk profile. These actions targeted domestic or trans-national provision, collection, movement or use of funds including through cash smuggling, narcotics, illegal MVTS, misuse of NPOs, kidnapping for ransom, extortion, donations, etc.

Table 3.

Data of Wide Range of TF Investigations

TF Risk Activity/Area	Before AP	2018	2019	2020	2021	2022 (Till July)	Total During AP Period
Cash smuggling	0	0	20	15	0	10	45
Narcotics	0	0	15	18	8	16	57
Smuggling of natural resources	0	0	0	15	0	11	26
Illegal MVTS	0	0	13	13	2	11	39
Misuse of NPOs	0	0	102	43	1	0	146
Extortion	29	55	43	11	24	31	164
Donation/ fund raising	112	49	240	98	70	51	508
Kidnapping for ransom	4	5	4	1	4	2	16
Skin/hides collection	0	0	4	2	4	0	10
Total	145	109	441	216	113	132	1011

Source: (NACTA I. , 2022)

E. Proactively request and provide international cooperation in cases of targeting, investigating and prosecuting TF cases.

- i. Demonstrate that this has included police to police, customs to customs, FIU to FIU and formal cooperation (MLA).
- ii. Demonstrate that the timeliness of such cooperation has improved and is pursued in line with the TF risk profile.

Pakistan has taken a number of steps to streamline its processes and legal framework to develop an effective mechanism for international cooperation and mutual legal assistance. MOI is the leading agency in international cooperation matters. While Pakistan was previously seeking and providing international cooperation in TF matters under the umbrella of UNSC resolutions/ conventions, during the action plan period it has further

introduced legal, policy and procedural interventions include:

- a) NACTA’s revised SOP on JITs including International Cooperation that required LEAs to trace international linkages in TF cases and pursue international cooperation through formal and informal means.
- b) NACTA’s Directive on International Cooperation in TF Matters provides authorities detailed procedures in pursuing mutual legal assistance and informal international cooperation.
- c) Mutual Legal Assistance Act was amended to further reinforce the international cooperation regime and designates the MoI as the Central Authority.

During the Action Plan Period Pakistan initiated 192 formal and 373 informal mutual legal assistance requests through a range of LEAs that demonstrated a considerable improvement during the Action Plan as against pre-Action plan period (NACTA I. , 2022).

Table 4.
Formal Outgoing MLAs

MLAs	2019	2020	2021	2022 (Till July)	Total MLAs During AP Period
Total	78	49	47	18	192

Table 5.
Informal Outgoing International Cooperation Requests

Agency	2019	2020	2021	2022 (till July)	Total Requests During AP Period	
FMU to FMU		5	52	117	12	186
Customs to Customs		92	67	13	0	172
ANF to ANF		8	0	1	0	9
FIA to FIA through Interpol		0	2	2	2	6
Total		105	121	136	12	373

F. Demonstrate that TF prosecutions successfully result in effective, proportionate, and dissuasive sanctions against natural and legal persons convicted of TF offences.

Pakistan has put in place an effective system of TF investigators-prosecutors cooperation and has made other systematic improvements during the action plan. As a result, terrorist financing prosecutions resulted in effective, proportionate, and dissuasive sanctions under the ATA, 1997 (NACTA I. , 2022).



Table 6.
Data of TF Convictions

	Before AP	2018	2019	2020	2021	2022 (till July)	Total During AP Period
Total Number of TF convictions	39	32	151	128	93	34	438

Table 6 demonstrates that the number of persons convicted on TF charges is 438 during the action plan period as compared to just 39 before the action plan. This represents a significant increase in number of convictions achieved. As for the evidence of effective, proportionate, and dissuasive sanctions, dissuasiveness refers to how effective legal sanctions imposed are in deterring a person or a group of persons from taking a similar course of action in the future. The imposition of legal sanctions includes, but is not limited to, imprisonment. The scope of sanctions encompasses other forms like financial penalties, proscription, social exclusion, forfeiture of properties belonging to persons and entities, the restriction of movement etc. TF sentences are effective and proportionate in comparison to sentences awarded in cases of murder, which has a maximum of 14 years. The total number of convictions, by the severity of the punishment, are provided in the table below:

Table 7.
Severity of Punishments in TF Convictions

Total Convictions	Punishments Awarded				
	10 years & above	6-9 years	5 years	Aggregate	Less than 5 years
417	50	43	202	295 (71%)	122 (29%)

Source: (NACTA I. , 2022)

G. Demonstrate activities to enhance capacity and support for prosecutors and the judiciary involved in TF cases.

NACTA, in collaboration with UNODC Office in Pakistan, implemented a three-year project “Support to Pakistan’s Action to Counter Terrorism (PACT)” for improving the skills and knowledge of officials from the Prosecution Departments, Judiciary and CTDs. Another similar project with the support of Japan, titled “Strengthening the Response of Pakistan to Counter Financing of Terrorism” for the capacity building on CFT was undertaken in 2018/19 in which a series of training programs were conducted for prosecutors, the

judiciary and other stakeholders. NACTA also engaged with relevant domestic partners in improving the AML/CFT capacity of key stakeholders i.e., prosecutors, ATC judges and others. The Ministry of Law & Justice/ Federal Judicial Academy organized a series of discussions in 2021, with a panel of experts (retired judges, prosecutors and legal experts) to analyze the issue of the dissuasiveness of TF convictions within Pakistan’s jurisprudence/ common law framework (NACTA I. , 2022).

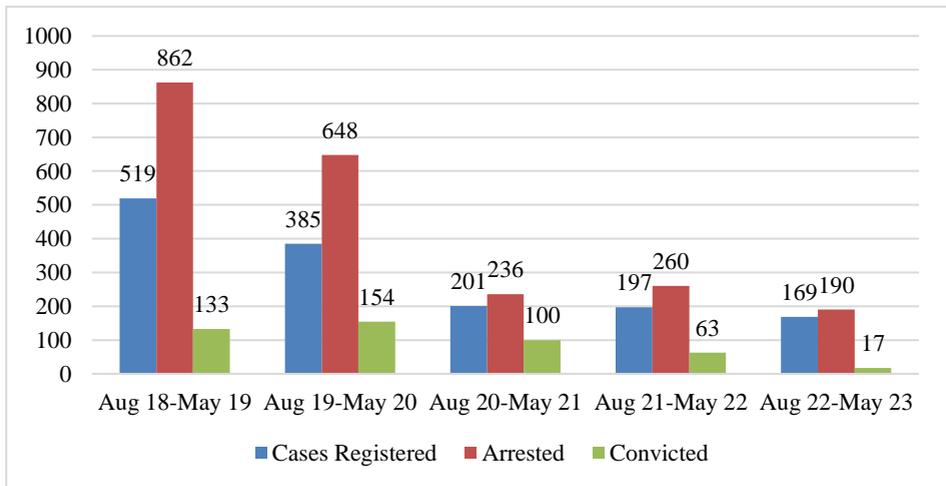
4. Post-FATF: Issues and Challenges

Pakistan last reported its progress to the FATF on TF investigations and prosecutions (IO 9) in July 2022. August 2022 can be taken as the commencement point with regard to Pakistan’s post-FATF period. For the purpose of situation analysis and identifying the issues and challenges of TF investigations and prosecutions in Pakistan; it is imperative to review the progress made by Pakistan on the subject. The FATF Action Plan’s action items have been taken as template for a cogent analysis of post-FATF dynamics of TF investigations and prosecutions.

4.1. TF Investigations and Prosecutions in Post-FATF Action Plan Period

The progress made by Pakistan in TF investigations and prosecutions during *August 2022-May 2023*, in comparison with Pakistan’s response to the FATF Action Plan in the last four years during the corresponding period will be discussed in this subsection.

Figure 3.
FATF Action Plan Period - Post FATF Response



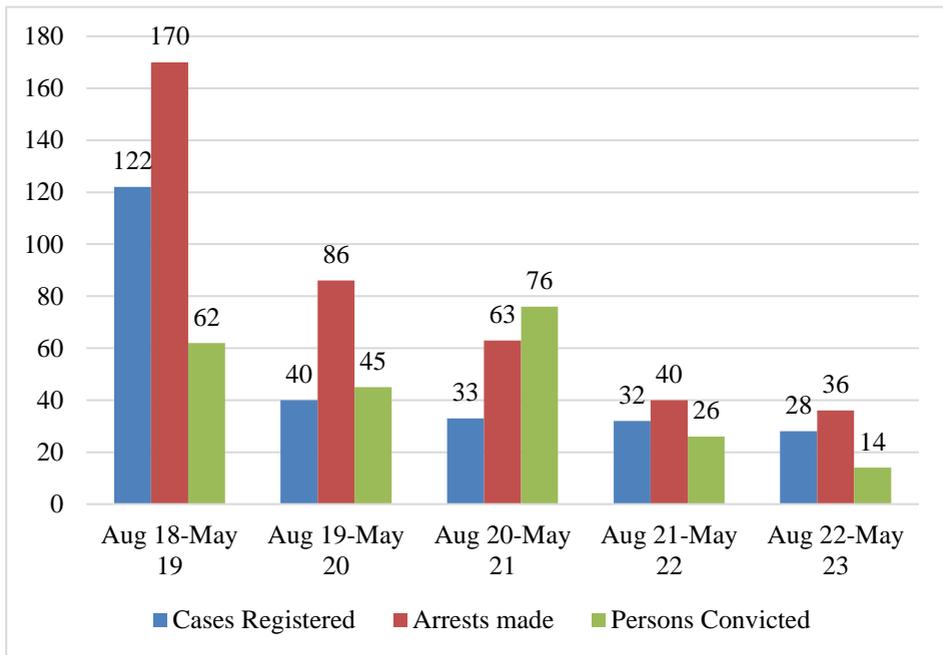
Source: (CTDs, 2023)



A decreasing trend can be observed from the figure 3 in the TF investigations initiated, arrests made and convictions achieved. Only 17 accused persons were convicted during post-FATF period as against 63 during corresponding period last year decreasing by 73%. The figures reflect Pakistan’s poor performance in TF investigations and prosecutions.

Figure 4 presents the trend in the province of Punjab. Number of TF investigations initiated and arrests made in the post-FATF period remains stable. However, a considerable decrease in the number of persons convicted can be noted as it has gone down to 14 as against 26 during the corresponding period last year recording a decrease by 46%. The performance of Punjab has gone down by 50% in terms of number of persons convicted in the post-FATF period as against the corresponding period during the FATF AP period.

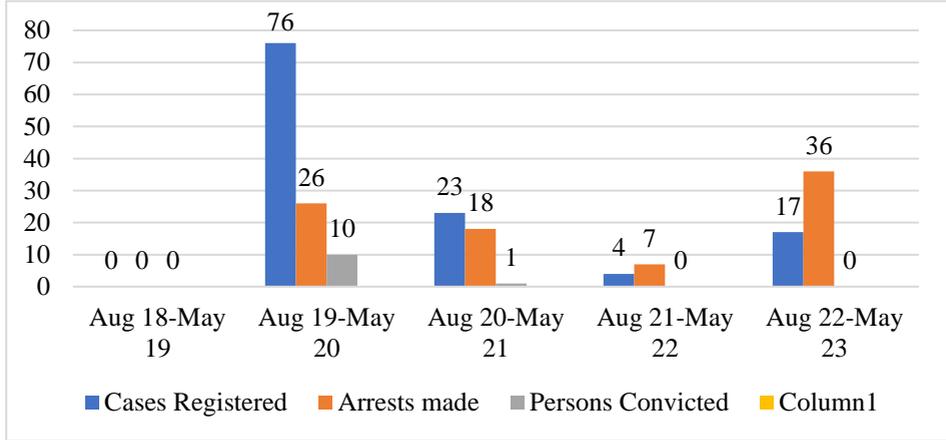
Figure 4.
Punjab



Source: (Punjab, 2023)

Figure 5 shows that the trend in registration of TF cases and the number of arrests made has gone up in Sindh. However, not a single accused person has been convicted by the court of law in the post-FATF period in the province demonstrating poor quality of TF investigations and prosecutions.

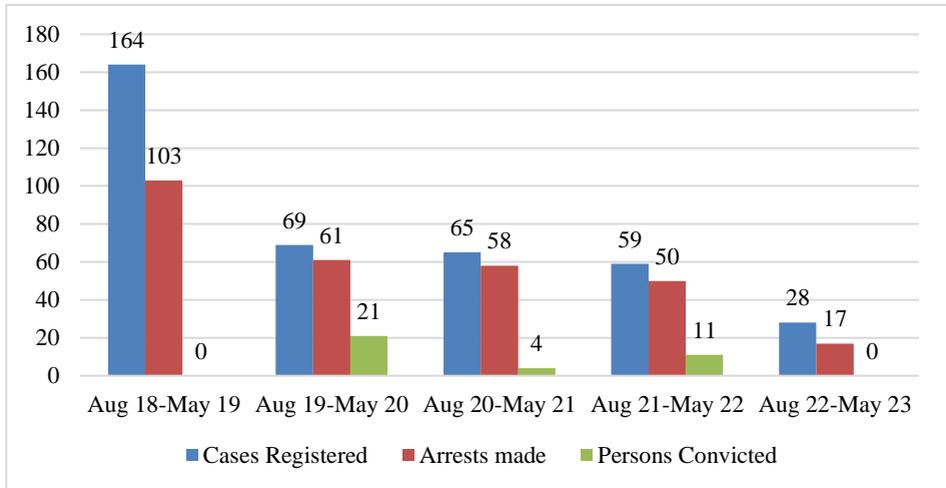
Figure 5.
Sindh



Source: (CTD Sindh, 2023)

Figure 6 presents that during the post-FATF period; the number of TF investigations, arrests made in TF cases has decreased significantly in Baluchistan. No accused has been convicted.

Figure 6.
Baluchistan

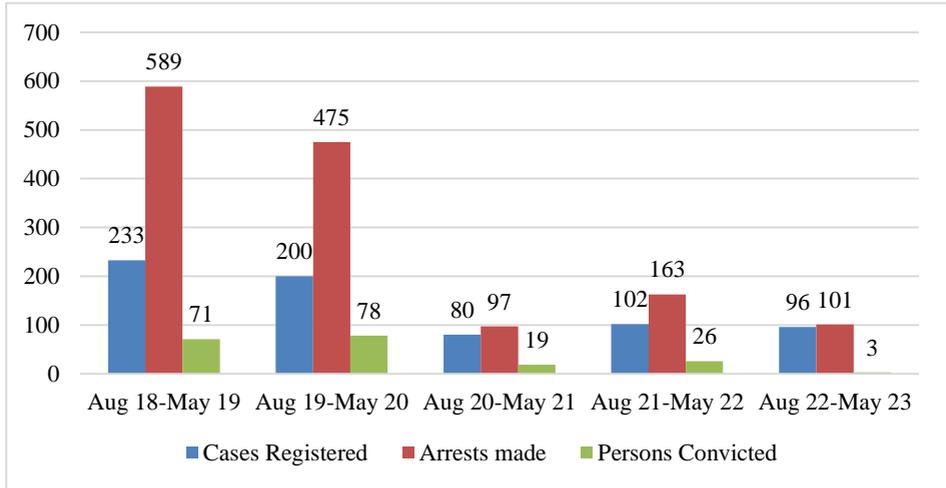


Source: (Balochistan, 2023)

In KPK, the situation is not very different; as 101 TF arrests were made as against 163 during the corresponding period last year and only 3 accused persons got convictions.



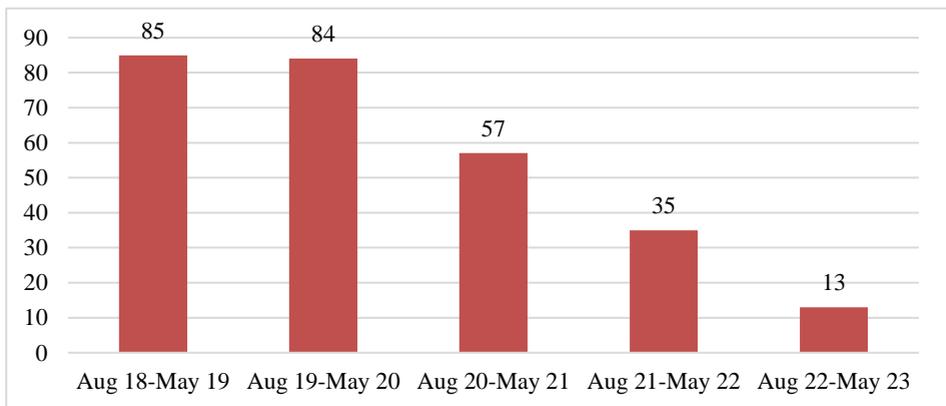
Figure 7.
Khyber Pakhtunkhwa



Source: (KPK, 2023)

Figure 8 demonstrates that Pakistan’s situation in terms of TF convictions achieved during the post-FATF period in very unsatisfactory. Poor rate of TF convictions started in 2020-2021 which continues during the post-FATF period. There has been 63% decrease in the number of convictions in the reporting period as against the corresponding period last year.

Figure 8.
TF Convictions



Source: (CTDs, 2023)

The constitution of Joint Investigation Teams under the ATA, 1997 in TF cases has been recognized by the FATF onsite team as welcome practice in terms of

enhancing the capacity of investigators to successfully detect, investigate and prosecution complex TF cases. The table 8 shows a stable trend vis-à-vis the number of JITs constituted by the authorities in the post-FATF period but looking at the convictions ratio the practice does not seem to have improved the quality of TF investigations and prosecutions.

Table 8.

JITs Constituted in TF Cases

Duration	Aug 18- May 19	Aug 19- May 20	Aug 20- May 21	Aug 21- May 22	Aug 22-May 23
Total	139	112	100	118	116

Source: (CTDs, 2023)

NACT guidelines of TF investigations and prosecutions provide for initiation of parallel TF investigations in each terrorism case and enhanced focus on the proactive TF investigations. The practice makes it mandatory for the TF investigators to follow TF leads in the commission of any kind of terrorist act. The table 9 shows a sharp decline in parallel TF investigations initiated whereas the number of proactive TF investigations have gone up in the post-FATF period in Pakistan. However, no figures were shared by the authorities regarding the progress of parallel TF investigations and prosecutions. (CTDs, 2023).

Table 9.

Parallel & Proactive TF investigations

TF Investigations	Aug 18- May 19	Aug 19- May 20	Aug 20- May 21	Aug 21- May 22	Aug 22-May 23
Parallel Financial Investigations	261	166	88	85	26
Proactive Financial Investigations	258	219	113	112	143

Wide range TF investigations are conducted to unearth the diverse and extensive networks of terrorism financing. Under the Multilateral MoU referrals are made to CTDs by other agencies such as ANF, Pakistan Customs, district police etc., in cases suspected of TF for the investigation of TF angle. The table 10 denotes that in the post-FATF period except for the wide range TF investigation related to extortion and kidnapping for ransom; there is a decreasing trend in the initiation of wide range TF investigations by the



authorities in all other categories. Again, no data was shared as to the progress in wide range TF investigations with regard to the prosecutions. (CTDs, 2023)

Table 10.
Data of Wide Range of TF Investigations

TF Risk Activity/Area	Aug 18- May 19	Aug 19- May 20	Aug 20- May 21	Aug 21- May 22	Aug 22- May 23
Cash smuggling	19	20	7	7	1
Narcotics	13	11	18	3	1
Smuggling of natural resources	0	0	11	0	0
Illegal MVTs	3	5	8	3	2
Misuse of NPOs	7	22	9	0	0
Extortion	63	32	21	23	45
Kidnapping for ransom	7	2	4	0	5
Skin/hides collection	16	5	2	0	0
Total	128	97	80	36	54

Given the transnational nature of the offense; mutual legal assistance among jurisdictions is crucial to the successful TF investigations and prosecutions. The number of MLA requests as shown in the Table 11 depicts that the relevant authorities have not been proactive vis-à-vis reaching out these jurisdictions effectively. (CTDs, 2023)

Table 11.
Formal Outgoing MLAs

MLAs	Aug 18- May 19	Aug 19- May 20	Aug 20- May 21	Aug 21- May 22	Aug 22- May 23
Total	33	15	12	6	9

One of the key elements of the FATF effectiveness standards of TF investigations and prosecutions is the effectiveness, proportionality and dissuasiveness of the sanctions awarded in TF prosecutions. The Table 11 shows that we have failed in achieving the requisite dissuasiveness and proportionality of the sanctions being awarded to the accused persons in TF prosecutions. During the post-FATF period there has not been a single TF case where a term of 10 years was awarded to the accused and only in one case the

accused was imprisoned for a term of more than 6 years. (CTDs, 2023)

Table 12.
Severity of Punishments in TF Convictions

Period	Convictions	Punishments Awarded			
		10 years & above	6-9 years	5 years	Less than 5 years
Aug 18-May 19	97	17	02	18	60
Aug 19- May 20	92	19	2	51	32
Aug 20- May 21	96	02	11	55	31
Aug 21- May 22	35	06	05	10	19
Aug 22- May 23	13	0	1	13	3

4.2. TF Investigation and Prosecution Challenges

A three-pronged approach was employed to understand and identify the issues and challenges of ensuring effective TF investigations and prosecutions in Pakistan. Firstly, in order to solicit an operational level input; comprehensive survey questionnaires were devised for TF investigators and prosecutors and shared across the provincial CTDs and PGOs/Director prosecutions KPK in the country (Annexures – I & II). The requisite responses of 103 TF investigators (Total 236) and 21 TF prosecutors (total 35) were received and analyzed in the light of the author’s first-hand experience of having worked in provincial CTDs of Punjab and Baluchistan. (Provincial CTDs and PGOs, 2023) (Director Prosecution office, KPK, 2023). Secondly, a focused discussion session was conducted with the officers at the strategic and supervisory levels in provincial CTDs and the Prosecutor General offices to better understand the nature and complexity of issues hampering the effectiveness of TF investigations and prosecutions in Pakistan. Thirdly, the policy, strategy and supervisory level officers were interviewed to have their perspective and invaluable input.

The analysis of responses from TF investigator revealed that 75% of the TF IOs and 85% of the TF prosecutors considered lack of specialized capacity building as the most important issues. Lack of quality assistance and input from the FMU was a major issue affirmed by 80% of the TF investigators and 50% of the TF prosecutors. Lack of investigator-prosecutor coordination was highlighted as a crucial issue by 56% of the TF IOs and 70% of the TF prosecutors. There are only 35 dedicated TF prosecutors across Pakistan which leads a huge workload. Lack of requisite number of dedicated TF prosecutors was reported to be a serious issue by 80% of the TF prosecutors. Workload in terms of the number of investigations assigned was reported as an issue by 50% of the TF investigators. Lack of international cooperation was highlighted as a challenge



by 57% of the target group.

TF investigations are different from the investigations of hard-core terrorism cases or other criminal investigations. They become complex because of the well-planned exploitation of financial systems by terrorist organization and HIAs. The investigators and prosecutors face a complex set of challenges. TF activities and offenses may be as simple as donations or Chanda collection or as complex as money laundering, abuse of NPOs and Illegal MVTs, perpetrated through a range of predicate crimes, or other organized crimes such as NARCO, cash smuggling, natural resource or precious stones smuggling, extortion, and foreign funding.

Terrorism is a transnational phenomenon and so is terrorist financing. TF investigations involve tracing, tracking and detecting very complex financial transactions. TF activities often involve various jurisdictions and multiple entities. In order to understand the flow of funds, identify the TF techniques, trace the sources of funds and their destination requires a great deal of expertise in financial intelligence and forensic accounting. Lack of financial data integration and access to financial records both from domestic and international financial institutions poses a serious challenge for TF investigators (Khan, 2023). Issues related to international jurisdictions pose serious challenges for TF investigators. Owing to the different legal systems, mutual legal assistance processes, and varied levels of cooperation in terms of information sharing with international counterparts and between the countries do have a negative impact on the effectiveness of TF investigations. Terrorist financing often involves front organizations (NPOs), DNFBPs, and shell companies in order to disguise the flow of funds. Unraveling these setups and establishing their connection with terrorism incidents demands wide-ranging investigative efforts along with prompt financial intelligence sharing, and effective cooperation between the relevant authorities both at the domestic and international level including the financial regulators. Incomplete or no response from foreign jurisdictions to MLA requests poses a constant challenge for TF investigations and prosecutions (Sherazi, 2023).

The availability of actionable financial intelligence is essential for effective TF investigations. The FMU has been established yet it lacks in its outreach and capacity to develop and disseminate real time and actional information to the provincial CTDs. The intelligence gaps, constantly evolving tactics by the terrorism financiers, and availability of limited resources hamper the effectiveness of TF investigations in a big way. Despite the institutional mechanisms being in place, ensuring effective cooperation, information sharing and combined operational-level efforts remain crucial and as well as challenging because of different mandates, structures, and competing preferences of different agencies and departments and stakeholders. (Goraya, 2023)

Rapid advancement in ICT, digitalization of financial transactions, and rapid growth of cryptocurrencies provide immense exploitative opportunities for TF financiers and consequently add to the challenges of TF investigations. Detection of digital footprints, unearthing virtual financial networks, and keeping up with rapidly changing and emerging new trends in digital currencies require special expertise and skills for both TF investigators and prosecutors. Inadequate resources, the skills gap among investigators, absence of experts and technical tools hinder the investigative capacity of designated LEAs and hinder the effectiveness of TF investigations. Lack of conclusive evidence against the accused persons is exploited by the defense councils in the court of law and results in acquittals. (Wattoo, 2023) (Shah F. H., 23)

4.2.1. ATC Judgements in TF Prosecutions: Lesson Learnt

In order to understand the investigative and prosecutorial gaps and issues vis-à-vis the TF investigations and prosecutions, 28 ATC judgments in TF cases of acquittals from across Pakistan were studied by the author. A foremost reason cited for acquittals in TF prosecutions by the honorable judges was the prosecution failing to establish a link between the TF accused and the act of terrorism. The investigation could not establish a clear financial trail connecting the accused to his illicit financing activities related to terrorism. This may be due to difficulties in tracing the money flow or the absence of concrete evidence. Another reason was the absence of private witnesses in TF prosecutions. Private witnesses often play a crucial role in providing firsthand accounts and testimony regarding the involvement of accused in terrorism financing activities. Without their presence or recorded statements, the prosecution faces challenges in establishing a direct link between the accused and the alleged crimes. It becomes almost impossible for the TF investigators to produce private person as a witness in a TF case given the kind of risk involved to his life and family in the absence of an effective witness protections program/regime in place. The legislation for the witness protection program has been done by all the provinces but it has not been effectively implemented. The failure of investigators and prosecutors to establish the accused's membership of proscribed organization poses difficulties for the prosecution. Without concrete evidence or a clear link between the accused and the organization, the prosecution's case weakens, and results in acquittal. The failure to arrest donors who provided financial support for terrorism emerged as another frequent reason for acquittals. Proving the involvement of donors is crucial to establishing the illicit flow of funds. However, when the investigators fail to apprehend or present evidence regarding the donors, it becomes difficult for the court to establish the direct link between the accused and the financing sources, ultimately resulting in acquittals. The vacuity of investigation regarding the motive and intention of the accused also emerged as a significant reason for acquittals. Proving intent and motive is crucial to achieve convictions in any criminal or terrorism financing case. It is incumbent to



establish knowledge of the accused and his active participation in supporting terrorism in order to achieve conviction. The absence of a previous criminal record of the accused individuals is another common reason for acquittals. Previous criminal records can provide valuable context and support the prosecution's case by demonstrating a pattern of illegal activities or connections to terrorism. However, without such records, the prosecution may struggle to establish a history of involvement, making it challenging to prove guilt beyond a reasonable doubt. Another reason was the failure to compare the accused's handwriting with the assistance of a handwriting expert/PFSA. Handwriting analysis can be crucial in establishing the accused connection to certain documents or records related to terrorism financing. The absence of such comparisons weakens the prosecution case to establish a direct link between the accused and the financial activities under scrutiny. The failure of the investigating officer to preserve the fingerprints of the accused on donation books and currency notes also emerged as a reason for acquittals. Fingerprints can serve as essential evidence to link the accused to specific transactions or financial materials. Acquittals were granted where the prosecution failed to meet the burden of proof, procedural errors were made, or legal technicalities and loopholes were exploited by the defense counsels. The lack of cooperation or insufficient evidence provided by foreign jurisdictions emerged as an additional factor contributing to acquittal in TF prosecutions.

4.3. The Caveat

Given the complex and intricate nature of modern-day financial systems and the advent of virtual currencies, an effective CFT system requires a great deal of capacity both in terms of human resource and infrastructure to deal with complex financial investigations. In the wake of the FATF action plan; Pakistan has been able to develop its capacity in terms of putting the requisite legal and institutional frame work in place. Post-FATF; TF investigations and prosecutions are characterized by various gaps leading to a very low conviction ratio. There have been enhanced focus on the capacity building of TF investigators and prosecutors including that of judicial officers during the FATF-AP period. However, in the post-FATF period; the transfers/postings of officers/officials and lack of consistency in capacity building regime, lead to the capacity and skill gaps which resulted in poor quality TF investigations and prosecutions. There are no specialized TF investigators in CTDs and a negligible number of TF prosecutors. TF cases require specialized investigators and prosecutors with requisite knowledge and expertise in financial systems. CTDs are having police officers of the rank of inspectors borrowed from provincial police as TF investigators. These officers are least motivated and have minimal or no understanding of the complexities involved in TF investigations. Given their educational background and capacity, they are not even able to grow as professional and skilled TF investigators. As far the infrastructure, the provincial CTDs do not have any financial forensics, data

analytics and technical tools to respond to the challenge of highly specialized and complex realm of TF investigations. The capacity issues of TF prosecutors are no different than the TF investigators. Except for Punjab, TF prosecutors have no specialized training so as to be able to better assist the ATCs judges in terms of application of TF and evidence related laws. Punjab has better administrative structure of prosecution and coordination between TF prosecutors and investigators. Although, NACT has issued SOP for investigators-prosecutors coordination but owing to the capacity issues of both TF investigators and prosecutors such guidelines are not yielding desired results. CTDs do not have the capacity to analyze and establish cogent connections and sift out the important from the trivial while handling the STRs shared by the FMU. No access to the financial information/integrated databases has been provided to CTDs. The FMU is contended with sharing STRs and that too primarily in respect of the 4th schedulers under the ATA, 1997 (UNSCR 1373) and UNDPs under UNSCR 1267. And these reports are not supported by any meaningful financial analysis having the potential to be developed into an actionable financial intelligence or information. The FMU do not have an effective and real time interface with the provincial CTDs. The goAML platform serves no efficient purpose except for sharing STRs. There is gap of financial data integration which causes delays in response to the time sensitive financial queries from TF investigators. Financial data is rigidly centralized. FMU does not have any set up at the provincial headquarters. There is a coordination gap both at the interagency/department and among the provincial CTDs. The NACTA multilateral MoU signed by 25 departments/agencies is not being utilized at the operational level. No systematic mechanism of coordination at the operational level exists. NACTA has played an effective role in coordinating CTDs' response during the FATF action plan but in the post-FATF period it could not continue with same vigor, follow up and efficacy. As far the practice of constituting JITs in TF cases; there is a serious implementation gap. These forums are not being utilized to their potential. There is a negligible input from the experts from other departments and hence no contribution to the effectiveness of TF investigations and prosecutions is being made. Recently, an amendment has been made in section 19 of ATA, 1997 to enable CTDs to employ modern investigative techniques such as controlled delivery, undercover operations, accessing computer systems and intercepting communications. But no concrete step has been taken towards the implementation of these provisions. There is a priorities gap. Counter terrorism investigations in general and TF investigations in particular do not find their due share of attention or focus in the provincial CTDs. Major chunk of available resources is being utilized for intelligence gathering, detection of hardcore terrorism incidents and conducting IBOs. Not so friendly relations with Afghanistan and Iran invariably result in no or incomplete response to MLA requests in TF cases; that has negative implications for TF investigations and prosecutions in the country. Last but not least, Pakistan has



not finalized its National Risk Assessment including TF NRA since 2019. As of today, we do not have a formal and updated TF NRA to provide field formations with the analysis and an insight into the level and nature of TF risk being posed by different terrorist organizations.

5. Conclusion

In response to its placement in the FATF grey list in 2018; Pakistan established requisite legal and institutional framework by enacting amendments in relevant laws, rules and procedures and by establishing various committees, working groups and teams at the policy, strategy and operational level. An exercise spread over a period of four years; did help the country to develop its understanding with regard to the FATF AML/CFT standards and enhance the capacity of its institutions and human resource at the strategic and middle tier management levels. In the post-FATF period, the number of accused persons arrested and convicted in TF cases have gone down by 27% and 73% respectively. During the post-FATF action plan period; there has not been a single accused person convicted in Sindh and Balochistan. The progress on MLA requests for international cooperation has not been up to the mark either. The convictions in TF prosecutions have decreased by 63% in Pakistan. As far the awarding of dissuasiveness and proportionality of punishments in TF cases, there have been no sanction of 10 years or above and only in one case it has been up to 6 years. The robust inter-agency coordination mechanism established during the FATF action plan period is seriously lacking on its effectiveness. TF investigators and prosecutors have both skills and capacity issues. No practical steps are being taken to implement recent amendments in ATA 1997 regarding the use modern investigative techniques in TF cases. FMU too has capacity issues in terms of detecting, developing and real time sharing of actionable financial intelligence with CTDs. Pakistan has established the requisite legal and institutional framework to ensure technical compliance in line with the FATF Recommendations. However, the situation analysis of the TF investigations and prosecutions in the post-FATF period reveals that Pakistan is struggling to demonstrate the effectiveness of its institutional framework. It raises serious questions as to the sustainability of Pakistan's CFT system.

5.1. Recommendations

1. The role of FMU is critical to successful TF investigations and prosecutions. In the present dispensation, FMU is adding no or little value to the TF investigations. The FMU should be mandated and adequately capacitated to play its role in developing actionable financial intelligence and real-time dissemination to the provincial CTDs. There is a need to set up FMU sub-offices at the provincial level for active and real-time engagement and coordination with TF investigators. Preferably CFTUs of provincial CTDs may be co-located with the FMU setups at provincial headquarters. A real-

time interface between provincial CTD and FMU is needed of the hour. Immediate measures should be taken by the MoI and SBP for sharing data/details such as CNIC numbers with FMU in respect of the individuals concerned in CT investigations, undertrial accused persons, convicted, in jail, and released from jails. A comprehensive database needs to be developed, maintained, and kept updated with SBP/FMU in order to keep a watch on their financial activities in domestic financial systems. Any red flags should immediately be shared with the concerned CTD for necessary inquiry or investigations.

2. In order to bridge the huge coordination gap both at the national level and among the provincial CTDs, there is a need for the establishment of a National CTD in line with the FIA; to coordinate, devise strategies and execute its decisions for effective, sustainable and robust CFT system in Pakistan. The National CTD shall have an exclusive mandate to pursue proactive and wide-range TF investigations. Provincial CTD should only have the mandate to initiate parallel TF investigations and where pertinent, the National CTD shall have powers to take over TF investigations thus initiated by provincial CTDs. A uniform policy stemming from a single command will not only help the effective implementation of the FATF CFT standards but will be able to ensure sustainability. Moreover, National CTD will be ideally placed at the federal level to ensure uniform implementation of the FATF CFT standards across Pakistan. A federal-level organization will be able much better positioned to effectively coordinate with relevant authorities since all the relevant organizations are operating at the federal level except for the prosecution departments/PGOs.
3. In order to address the capacity and skills gap of TF investigators, there is a need for dedicated TF investigators. A requisite number of police inspectors can be selected from the lot initially recruited in provincial police departments through respective Public Service Commissions. These officers should be trained in TF investigations and deployed as dedicated TF investigators. As for developing the capacity of TF investigators, organizations like ICITAP and IRSL have developed quite comprehensive training modules on the subject of TF investigations and prosecutions. Such modules can be revisited and utilized for the capacity building of TF investigators. The FMU and State Bank of Pakistan are needed to be engaged in the capacity building of TF investigators and prosecutors. The strength of TF prosecutors is need to be increased across the provinces. The Punjab model of prosecution service need to be employed for dedicated and well-trained TF prosecutors in other provinces.
4. The provincial CTDs need to employ special investigative techniques provided under recent ATA amendments such as undercover operations and intercepting communications, accessing computer systems and controlled delivery. The implementation of these specialized and advanced



investigative techniques requires formulation of rules, sufficient resources, technical equipment, specialize human resource and special trainings along with an elaborate backup support system and coordination among various departments/ stakeholders. Provincial governments need to address these requirements on priority.

5. NACTA should take measures to finalize the National TF Risk Assessment report on priority basis so that relevant authorities could be pursued to take action against identified TF networks, sources, channels and terrorist organizations. NACTA should take measures to reactivate the Multilateral MoU for interagency coordination to ensure initiation of wide range wide range TF investigations.
6. At the policy level, Pakistan needs to revisit its policy and relationship with Iran and Afghanistan in terms of getting to a shared understanding vis-à-vis no allowance for any terrorist group to exploit their borders or land for harboring terrorists or terrorism financing related activities. Most of the TF related MLA requests from Pakistan have been directed towards these countries but with no or less positive response. A distinct and decisive clarity is very crucial to our success in fight against terrorism in the country.

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