

NAB's Response on Resolution 5/3 of the Conference of the States Parties to the UN Convention against Corruption

Best Practices

1. National Accountability Bureau, Pakistan is functioning under a legal framework taking cognizance of acts constituting the offences of corruption and corrupt practices. The Accountability Law applies to all persons in Pakistan and is applicable to both public and private sectors' corruption. The law provides effective measures for detection, investigation, prosecution and speedy justice of cases involving corruption, misuse of authority, misappropriation of property, banking loan default, taking of bribes etc. for the holders of public offices. Sensing the increased international awareness in combating corruption through cooperation, the law mandates NAB to seek and obtain mutual legal assistance in corruption matters. The law also allows the offices of NAB to obtain information from the departments including banks and financial institutions. The enforcement powers include: issuance of arrest warrants, freezing of assets, calling for information and persons, search and joint investigations.

2. There is also mechanism for asset recovery at domestic level upon conclusion of trial and if the prosecution is able to prove the case in accordance with the requirements of substantive, procedural and evidence law, the Accountability Court may, in terms of Section 10 of NAO 1999 sentence a person and order forfeiture of assets, obtained through corruption and corrupt practices. Besides, forfeiture of assets, the court may also impose fine. The Accountability Law also provides a mechanism for voluntary return and plea bargain primarily aimed at recovering proceeds of corruption and assets derived out of corrupt practices. Section 25(a) of NAO provides an option of voluntary return, which is essentially available at an early stage of proceedings. At a subsequent stage, an accused can, however seek the benefit of plea bargain by returning the proceeds of corruption with the approval of court. A deemed Conviction and Disqualification from public office are attracted in the later case. The aforesaid concepts are special mechanism to facilitate recovery of assets without restoring to prosecution or completion of trial.

3. In order to preserve the assets, subject matter of proceedings under the Accountability Law, a prohibition to transfer property by an accused is contained in Section 23. Furthermore, under section 12, the law authorizes Chairman NAB to issue freezing order in respect of a property which is expected to be alienated by any means. Under Section 21 of National Accountability Ordinance (NAO):

“The Chairman NAB or any officer authorized by the Federal Government may request a Foreign State to do (any or all of) the following acts in accordance with the law of such State:

- a) Have evidence taken, or documents or other articles produced;
- b) Obtain and execute search warrants or other lawful instruments authorizing search for things relevant to investigation or proceedings in Pakistan believed to be located in that State, and if found, seize them;
- c) Freeze assets, by whatever processes are lawfully available in that State, to the extent to which the assets are believed on reasonable grounds to be situated in that State;
- d) Confiscate articles and forfeit assets to the extent to which the articles or assets, as the case may be, are believed to be located in that State;
- e) Transfer to Pakistan any such evidence, documents, things articles, assets or proceeds realized from the disposal of such articles or assets.
- f) Transfer in custody to Pakistan a person detained in (that) State who consents to assist Pakistan in the relevant investigation or proceedings
- g) Notwithstanding anything contained in the Qanun-e-Shahadat Order 1984 (P.O. 10 of 1984) or any other law for the time being in force all evidence, documents or any other material transferred to Pakistan by a Foreign Government shall be receivable as evidence in legal proceedings under this Ordinance (;and)
- h) Notwithstanding anything to the contrary contained hereinabove, the Chairman NAB may, on such terms and conditions as he deems fit, employ any person or organization, whether in Pakistan or abroad, for detecting, tracing or identifying assets acquired by an accused in connection with an offence under this Ordinance, and secreted or hoarded abroad, or for recovery of and repatriation to Pakistan of such assets”.

4. The proceedings nevertheless under the Accountability Law are criminal in nature and largely asset recovery would be possible as a result of forfeiture consequent to a sentencing order or return of proceeds under a plea bargain/voluntary return arrangement. Under Section 33E of Accountability Law, any fine or other sum as determined by the court can be recovered as arrears of the land revenue which covers all the aspects, to recover the illgotten amount in civil nature.

Approaches and Practical Experiences

5. There is generally a lack of responsiveness from developed countries to the request for exchange of information, bank accounts and records. Various obstacles to asset recovery identified by working group under following three heading needs to be addressed:-

- a. General Barriers and Institutional issues.

It means lack of a comprehensive, sustained and concerted policy or strategy to identify asset recovery as a priority and to ensure alignment of objectives, tools, and resources to this end. The general barriers also include the lack of

adherence to and enforcement of anti-money laundering (AML) measures as a means to prevent and detect the proceeds of corruption in the first place.

b. Legal Barriers and Requirements.

The legal barriers are onerous requirements to the provision of mutual legal assistance (MLA); excessive banking secrecy; lack of non-conviction based asset confiscation procedures; and overly burdensome procedural and evidentiary laws, including the need to disclose information to asset holders during investigations. Removing the legal barriers is obviously essential. Absence of a clear and sound legal framework, asset recovery becomes, in a best-case scenario, arduous and, in worst case scenario, impossible.

c. Operational Barriers and Communication issues.

Operational barriers – impediments involving processes and communication between parties. Communication issues dominate: difficulties in identifying focal points to make MLA requests, challenges in maintaining contacts and coordinating asset recovery. Actions, delays in processing and responding to MLA requests, and deficiencies in the drafting of the requests all impede the provision of assistance.

Other important operational barriers include difficulties in identifying owners of bank accounts because of lack of centralized bank data, as well as failure to manage and preserve assets that have been restrained during the recovery process before a formal confiscation occurs. There is a need to strengthen confidence and trust between requesting and requested States in order to encourage spontaneous disclosure.

6. Following are the recommendation to overcome barriers for effective asset recovery:-
- a) Adopt and implement comprehensive strategic plans targeting stolen misappropriated asset and its recovery and provide sufficient resources and training.
 - b) Adopt policies and operational procedures to cultivate mutual trust and improve communications among like minded organizations.
 - c) Introduce legislative reforms that support authorities' capacity to restrain and confiscate stolen assets.
 - d) Effectively apply Anti-Money Laundering measures.
 - e) Provide a sound legal basis for a wide range of Mutual Legal Assistance.
 - f) Allow for the rapid tracing and temporary freezing or seizing of assets before receiving and implementing a formal MLA request.
 - g) Encourage, pursue, and maintain all methods of informal assistance before initiation of a formal MLA request.

- h) Experienced asset recovery jurisdictions should mentor and train practitioners in less experienced jurisdictions.

7. Pakistan delegation floated proposal during the Open-ended Intergovernmental Working Group on Asset Recovery held on 30-31 August 2012:-

The Member states should cooperate with each other proactively in responding effectively to the requests for exchange of information related to proceeds of crime, property, equipment or other instrumentalities referred to in Article 31 of UNCAC, situated in the territory of the requested State party. Member states should also develop appropriate mechanisms to overcome obstacles that may arise out of the application of their bank secrecy laws with Special reference to the financial hubs/havens to share information voluntarily on individual investments of abnormal volumes, with the origin country. The proposal was read out before the house and was approved discussions.

8. The need to fast track asset seizure, freezing and confiscation procedures can first of all be addressed through training of law enforcement, prosecution and judiciary officials in asset recovery best practices. States agreement to setting up accelerated response by teams of experts in asset forfeiture may be sought. The designated focal points or asset recovery facilitators may be trained and provided technical assistance for this purpose.

Sharing of experience/information

9. Pakistan has been very forthcoming in sharing information. However, response to the information sought by Pakistan has not been encouraging. For instance, request in one case regarding fraud was denied by a country on the grounds that since the crime was committed after the accused had obtained the citizenship of that country, no action could be taken against him. In another instance, accused persons were arrested/extradited and assets worth millions surrendered to two countries. In yet another case related to money laundering, certain assets were identified in Pakistan on the request of another country and an officer of NAB also appeared as witness in that country.