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Accountability Law & UN Convention

By Ahmer Bilal Soofi

IT was 2002 in Vienna that I took the floor while representing Pakistan during a UN ad hoc committee session mandated to draft the first comprehensive convention against corruption, and made an intervention highlighting around 10 legal features that the proposed global treaty against corruption must contain.

The G77 approached our then ambassador to Vienna, Ali Sarwar Naqvi, seeking his consent to adopt all 10 points as their demands or positions.

After 60 days of negotiations, stretching over two years, with some sessions going well past midnight, the text that finally emerged was adopted by the conference and the state parties as the present UN Convention Against Corruption (UNCAC). It is indeed very satisfying to note that most of those 10 features found their way into the text of the convention and are available now perpetually to protect the interests of the people of developing countries from where ill-gotten money is taken out and stashed in safe havens in developed countries.

As of today the UNCAC has been signed by 140 countries, most of which are developing states. Pakistan also ratified the convention in 2007. As in the case of each ratified treaty or convention, the state has to make a domestic law to implement the said treaty or convention. Likewise, Pakistan also had a legal obligation to make extensive implementing legislation that would transfer UNCAC benefits to the people of Pakistan.

The NAB ordinance as the existing law is quite inadequate when compared with the scope of UNCAC, and thus there is a need to replace the NAB ordinance with much more comprehensive legislation that properly implements UNCAC in Pakistan. That opportunity has arrived now with parliament deliberating on a new accountability law to replace the NAB ordinance. The National Assembly Standing Committee on Law and Justice has already done extensive work with some quality input given by MNA Anusha Rehman. Several committee members have legal backgrounds, including retired Justice Fakhar-un-Nisa Khokhar and retired Justice Iftikhar Ahmad Cheema. The draft is under process.

It will be a missed opportunity if, at this junction, parliament fails to profit from the jurisprudence of the UNCAC and further fails to synergise the draft law with the approach and structure of the UNCAC.

The draft law must first of all identify those offences which have been established by UNCAC. There are two sets of offences proposed by the convention. First there are eight compulsory offences that every state party to the convention must establish under its law and secondly five optional offences where the state has the option to incorporate or not to incorporate the same under its domestic law.

At the moment the draft in parliament is only confining offences to Section 9 of the NAB ordinance, whereas UNCAC authorises additional conduct which can be considered as corruption.

Furthermore, Article 34 of UNCAC permits that corruption can be the basis to administratively cancel an agreement or an international concession or license and accordingly there is a need to retain an enabling provision in the proposed draft law through which the government can retain the said power as part of implementing UNCAC measures. The accountability law will also need to incorporate obligatory preventive measures that deter corruption and which have been enlisted comprehensively in the first part of UNCAC.

The suggestion of developing states to introduce a new offence of retention of ill-gotten money as a continuing offence was accepted and now Article 24 of UNCAC contains an offence which makes continuing retention of ill-gotten money a crime, as opposed to the offence of money laundering, wherein money laundered is a one-time offence and hiding the proceeds is a consequence of the same.

Provisions relating to asset recovery in UNCAC are the most innovative ones that we managed to negotiate despite stiff resistance from the European countries in particular. They include provisions that declare recovery of ill-gotten money as the main spirit of the convention and also provide more than one legal alternative for retrieval of ill-gotten wealth from abroad. It gives different treatment to money whose title vests with the country of origin as opposed to bribery and other kickbacks where issues of title need to be proved. The convention also removes the traditional bank secrecy in cases of corruption investigations.

UNCAC contains by far the most aggressive provisions relating to mutual legal assistance because it demolishes the offence of dual criminality considerably and obliges the state to take non-coercive measures even where the act may not be a crime or an offence.

The relevant members of parliament may want to run through the text of the UNCAC because the present law being debated is actually being perceived by the international community as an implementing legislation of UNCAC. Compliance with UNCAC is also necessary because it can be mentioned as a condition to be fulfilled for the grant of aid etc. particularly by the EU.

More than 110 countries have ratified the convention and more than 140 countries have signed it. This shows that the provisions of this convention are extremely popular at the global level and it is by far one of the few conventions in international law that has attained such a degree of universality in such a short time. It has already become a global regime and it will be prudent if members of parliament choose to become part of this global regime by making a comprehensive domestic accountability law.

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