



May 8, 2009.

Mr. Babar Awan
Minister for Parliamentary Affairs,
Government of Pakistan,
Islamabad.

**Subject: Transparency International Pakistan Comments
on the proposed Holders of Public Offices (Accountability) Act 2009.**

Dear Sir,

Transparency International Pakistan refers to your press conference of 12th April 2009 inviting suggestions from all stake holders on the proposed Holder of Public Office(Accountability) Act, 2009.

First of all, we want to point out that Corruption has eaten away the very foundation of our Country. Though, father of the nation Quaid-i-Azam Mohammad Ali Jinnah in his first address to the Constituent Assembly of Pakistan on 11th August 1947, said that ,
“One of the biggest curses from which India is suffering.....– I do not say that other countries are free from it, but I think our condition is much worse – is bribery and corruption. That really is a poison. We must put that down with an iron hand and I hope that you will take adequate measures as soon as it is possible for this Assembly to do so.”

As a civil society organization, and the only International Coalition against Corruption, Transparency International Pakistan would like to submit suggestions to include in the proposed Act. in the best interest of Pakistan. It is also to state that NAB Ordinance 1999 was not a bad law, but as also been admitted by the political parties in the Charter of Democracy that it was misused for political aims, “ to replace politically motivated NAB with an independent Accountability Commission”.

It is now widely accepted that corruption is the ‘cancer’ which has deprived Pakistan Rule of Law since last 60 years, limited the economic growth, hampered investment, and reduced the effectiveness of development programs, while diverted the important, and scarce public resources, towards private gains, dictatorial rule of military and civilian rulers, which spreaded illiteracy, poor became poorer, breakdown of democratic and administrative institutions. This has caused militancy, which is now threatening the very existence of the state.



Transparency International Pakistan **request** the parliament to immediately form the Independent Commission, as committed by all parties to the Nation to stop “the abuse of public office for private gain”, and the new Commission shall also include the Local Government elected members like Nazim, Councilors, Government officers, Armed forces officers and judiciary.

Pakistan has legal obligation to abide by International Conventions it has signed and ratified.

Pakistan has ratified United National Convention Against Corruption UNCAC on 11th August 2007. If Pakistan violates UNCAC, it will amount to halting the anti corruption drive and practically ousting the accountability agenda from government priorities. **In such situation the donor agencies, including friends of Pakistan may refuse to support funding for Pakistan, as Pakistan would have defaulted on Anticorruption actions it has agreed to take on 11th August 2007.** In compliance to the UNCAC, the Act for establishing Accountability Commission as substitute agency of National Accountability Bureau shall cover following responsibilities;

- i). The HOPA Act shall be applicable for all “Public Officers”, i.e. elected parliamentarians, elected local government representatives, civilian and military officers and Judiciary.
- ii) Under Article 2, “Public official” shall mean: (i) any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person’s seniority;
- iii) Under Article 5 , The Accountability Commission shall also be responsible to establish and promote effective practices aimed at the prevention of corruption, and shall also be empowered to take administrative measures to prevent and fight corruption.
- iv) Under Article 17, Accountability Commission shall be empowered to deal money-laundering cases in consultation with State Bank of Pakistan.
- v) Under Article 6 , The Government of Pakistan has also committed to inform the Secretary-General of the United Nations of the name and address of the authority that may assist other States Parties in developing and implementing specific measures for the prevention of corruption, which presently is the National Accountability Bureau.
- vi) Provincial Anticorruption Agencies, and Federal Investigation Agency FIA never had competent staff in past which is evident from their success rate of prosecution. According to TI Pakistan knowledge, in past 62 years hardly any



prosecution of FIA has been successful in the Supreme Court of Pakistan. Secondly, these agencies have no experience or expertise in Awareness and Prevention against corruption, which are essential activities for rooting out corruption.

Mega scams in the form of Cooperative Societies Fraud, Illegal Housing Societies, sham forex companies, Double Shah Tactics resulted in colossal losses to the general public. The volume, nature and complexities of such cases would have further aggravated the plight of innocent victims if action under the NAO had not been initiated. Recovery and compensation in this regard has helped in mitigating the difficulties of the public. It is unfortunate that no such mechanism is envisaged in the proposed bill. The ineffectiveness of ACE's & FIA in the past would again be a norm for such cases.

vii) The involvement of FIA and ACEs will open flood gates of blackmailing by officers on their own or under political victimization, as has been seen in past 60 years of their performance. We would like to point out that banks, financial institutions and other bodies associated with financial or commercial activities referred cases of fraud, breach of trust & willful loan default are being dealt under NAO in a well defined mechanism to report and handle default cases under the supervision of State Bank of Pakistan. Cases involving fraud and other illegal acts concerning banks are to be dealt in a professional manner, not to deter investors dealing with public financial institutions, for risk of being blackmailed by FIA lower staff. The NAO was also amended to give confidence to investors that unless State Bank of Pakistan approve, no loan default case can be initiated by NAB. It would therefore imperative to further strengthen the financial crimes investigation expertise under guidance of State Bank of Pakistan, and dealt by the Accountability Commission.

viii) The proposed Holder of Public Office Act instead of being independent, is proposed to be under the Ministry of law and Justice. TI Pakistan suggest that the new organization, which is to replace NAB has to be an **Independent Commission** which shall function independently as required under UNCAC, and be accountable either to the **Parliament** or **Judiciary**.

ix) Pakistan may adopt the Singapore's Corrupt Practices Investigation Bureau (CPIB), or Hong Kong Independent Commission Against Corruption (ICAC), which are the two most successful Anticorruption Commission models in the World, and amongst the TI Corruption Perception Index, Singapore is rated 4th cleanest country and Hong Kong as 12th cleanest country in the World, much above USA, UK, Belgium, Japan and Germany and 165 other countries. Their resilient economy which even sustained the current global financial meltdown, is a proof of the benefits of cleaner countries.



x) The 3 year time frame for trial/investigation is discriminatory and against the fundamental right under the Constitution of Pakistan. According to section 24 no public office holder shall be prosecuted after 3 years of the expiry of his term in office. **Instead of providing constitutional immunity against corruption after 3 years of expiry of the term**, provision may be made for trial to be completed in 30 days, as was provided in the Ehtisab Ordinance 1996. The new law may provide relief that after 30 days of trial, if prosecution can not get conviction from the court of trial, the case will be deemed to be closed.

With best Regards,

Syed Adil Gilani

Chairman

Copies forwarded for consideration of,

1. Mr. Farooq H. Naek, Chairman, Senate, Senate Secretariat, Islamabad.
2. Chaudhry Nisar Ali Khan, Opposition Leader, National Assembly, Islamabad
3. Mr. Agha Rafiq Ahmed, Secretary, Ministry of Law % Justice, Government of Pakistan, Islamabad.
4. Begum Naseem Akhtar Chaudhary, Chairperson, Standing Committee on Law & Justice, National Assembly Secretariat, Islamabad
5. Justice (R) Fakhar-un-Nisa Khokhar, Member SCL& J
6. Mr. Abudl Ghafoor Chaudhry, Member SCL& J
7. Syed Zafar Ali Shah, Member SCL& J
8. Mr. Muhammad Ijaz Virk Advocate, Member SCL& J
9. Dr. Azra Fazal Pechuho, Member SCL& J
10. Mr. Tariq Shabbir, Member SCL& J
11. Mrs. Shakeela Khanam Rashid, Member SCL& J
12. Mr. Zahid Hamid, Member SCL& J
13. Mr. Justice (R) Iftikhar Ahmed Cheema, Member SCL& J
14. Mrs. Anusha Rahman Khan Advocate, Member SCL& J
15. Mrs. Saira Afzal Tarar, Member SCL& J
16. Mr. Riaz Fatyana, Member SCL& J
17. Engineer Amir Muqam, Member SCL& J
18. Mr. Muhammad Raza Hayat Hiraj, Member SCL& J
19. Ms. Kishwer Zehra, Member SCL& J