

✓

INQUIRY REPORT
OF THE COMMISSION
RELATING TO BROADSHEET
LLC. (ISLE OF MAN) AND
OTHER MATTERS

BY: JUSTICE (RETD.)
SHEIKH AZMAT SAEED

22nd MARCH, 2021

Azmat Saeed

Table of Contents

Preface	i-iv
Terms of Reference No. 5 (a)	2-11
Terms of Reference No. 5 (b)	13-19
Terms of Reference 5 (c)	21-35
Terms of Reference 5 (d).....	37-40
Terms of Reference No. 5 (e).....	42-44
Terms of Reference No. 5 (f).....	46-47
Terms of Reference 5 (g & h).....	49-54
Terms of Reference 5 (i).....	56-61
Exhibits of the Inquiry Report (Volume-I)	
• Exhibits of TOR 5 (a)	
• Exhibits of TOR 5 (b)	
Exhibits of the Inquiry Report (Volume-II)	
• Exhibits of TOR 5 (c)	
Exhibits of the Inquiry Report (Volume-III)	
• Exhibits of TOR 5 (e)	
• Exhibits of TORs 5 (g&h)	



PREFACE

The Commission has been constituted vide Cabinet Division's Notification issued vide S.R.O No.130(I)2021 dated 29th January, 2021, with the following Terms of Reference (TORs):

- a) To examine the process of selection and appointment of Trouvons LLC, Broadsheet LLC, and International Asset Recovery Limited ('IAR') and execution of Agreements in the year 2000.
- b) To examine the circumstances, reasons and effect of cancellation of Agreements with Broadsheet LLC and IAR in 2003.
- c) To identify and determine the reasons and effect of settlement and payments made on behalf of Pakistan to IAR and Broadsheet LLC in 2008, and whether the payments made were justified.
- d) To identify the persons or officials responsible for making wrong payment of USD 1.5 million to the wrong person in the year 2008 which was not entitled to receive such payment.
- e) To identify as to whether the arbitration proceedings before the London Court of International Arbitration (LCIA) and subsequent appeal before the High Court of Justice in London regarding Broadsheet LLC were conducted diligently and efficiently.
- f) To determine as to whether after finalization of the Award and appellate proceedings before the High Court at London regarding Broadsheet LLC, the process of making payments to the Claimant was legal and in accordance with the prescribed rules and procedure.

5

- g) To identify the incidents and cases relating to recovery efforts and legal proceedings pursued by the Government of Pakistan since the year 1990 in foreign jurisdictions for recovery of unlawfully removed money or illegally acquired assets, but were closed, abandoned and/or withdrawn without any valid reason or justification resulting in colossal losses to the country.
- h) To identify and fix responsibility of any person, body or authority etc. which was guilty of gross negligence or misconduct or acted with mala fide motive or objective in respect of the above matters.
- i) Any other matter related or ancillary to the matters enumerated above.

Even before the Commission could become functional upon provision of office space and staff, that too after much foot dragging, the bureaucracy went into a self-preservation mode and withdrew into its shell like a threatened snail. The level of non-cooperation from the various Ministries/Divisions/Departments would have made Mohandas Karamchand Gandhi proud. Every effort was made to conceal, hide and "misplace" the relevant record in a rather obvious effort to cover up the incompetence and corruption of the present incumbents, their predecessors and political benefactors. Incidentally, the loss of record straddled more than one department and more than one Continent. The record was found missing not only in Islamabad but alas at Pakistan's High Commission in London, United Kingdom, as well. However, a part of the record consisted of correspondence which had been conducted with National Accountability Bureau (NAB). Fortunately, NAB was much more forthcoming with the provision of record, permitting the Commission to piece together the responses to the questions posed in the TORs.

In-order to proceed with reference to above said TORs, the Commission summoned 26 witnesses ('AW1' to 'AW 26') to record their statements. The witness statements are attached as **Appendix-I**. As far as the record is concerned, it was decided by the Commission that no original record would be retained / received from the witnesses / custodian of the record. Therefore, only certified copies after comparing with the original record were taken on the record of the Commission as Exhibits from the custodians of the record.

The certified copies taken on record by the Commission as Exhibits are summarized as below:

- i. Exhibits NAB-1 to NAB-101;
- ii. Exhibits OAGP-1 to OAGP-8;
- iii. Exhibits FD-1 to FD-4;
- iv. Exhibits AW 3-1, AW 3-2, AW 3-2 A & B;
- v. Exhibit AW 17-1;
- vi. Exhibits AW 18-1, 18-2 & 18-3;
- vii. Exhibit AW 22-1;
- viii. Exhibit AW 24-1; and
- ix. Exhibit AW 26-2 A to AW 26-2 N.

The individual documents forming part of the Exhibits which have been specifically referred to in the various responses have been separated and appended with the Report for the sake of convenience. While the remaining Exhibits (which are certified copies of the record) have been sealed and handed over to NAB for safe keeping in their strong room. The aforesaid certified copies of the record can always be made available from NAB.

The Commission's report is based on the witnesses' statements and record as made available to it.

It may be worthwhile to mention that, Mr. Tariq Fawad Malik gave a statement to the Arbitral Tribunal and was crossed examined. He is an absconder, and the

Interpol has issued Red Notice for his arrest. The Commission did not find it necessary to record his statement as he did not have anything worthwhile to contribute to the responses to the TORs beyond what had already been stated before the Arbitral Tribunal.

Mr. Kaveh Mousavi, is a convicted felon, who was sentenced to a term in prison. Nonetheless, he has made certain statements in the media about the several people which might or might not hold water. Under the TORs of this Commission, it cannot inquire into those. However, if the Government of Islamic Republic of Pakistan, finds it expedient it may investigate such allegations.

Parts of this report were scribed late evenings at the foot of the Margalla Hills, where I was staying. The discordant symphony of the howling jackals was a constant companion. The howling of the jackals could not distract me from the task at hand.

α

Terms of Reference No. 5 (a)

To examine the process of selection and appointment of Trouvons LLC, Broadsheet LLC, and International Asset Recovery Limited ('IAR') and execution of Agreements in year 2000.

The Asset Recovery Agreements ("ARAs") were executed during the tenure of the first Chairman National Accountability Bureau ("NAB"), Lt. Gen. Syed Muhammad Amjad since retired. In order to ascertain, assess and analyze the circumstances that led to the execution of the said ARAs, the available record pertaining to the Ehtesab Bureau and NAB including the noting portion as well as the ARAs have been examined. Lt. Gen. Syed Muhammad Amjad (Retd.) appeared as "AW 12" before the Commission on 21st February 2021. His statement was recorded in the light of his previous statements and cross examination during the Arbitration at the Chartered Institute of Arbitrators in London, United Kingdom (*CI Arb. Case No. 129120001*) (**first witness statement Page no. 1-16, second witness statement 113-145 of Exhibit NAB no. 34-A**), which were also available and examined by the Commission. The other key player in this behalf was Mr. Farouq Adam Khan, the first Prosecutor General Accountability ("PGA") of NAB. Unfortunately, Mr. Farouq Adam Khan has passed away so his statement could not be recorded by the Commission. However, the Commission had the benefit of his Affidavit and statement made before the Arbitral Tribunal (**Page no. 1-15 of Exhibit NAB no. 28**) as well as his opinions variously recorded on the noting portion of the internal minute sheet of NAB (**Page no. 341-349 of Exhibit NAB no. 22**). Some statements of the witnesses produced by the opposing side in the Arbitration proceedings have been found to be very interesting and beneficial also.

Prior to the promulgation of the National Accountability Ordinance ("NAO"), 1999 and the formation of NAB, the field was occupied by the Ehtesab Commission/ Ehtesab Bureau; which for all intent and purposes was the predecessor to NAB. The Ehtesab Commission was created by the caretaker

Government in the year 1996 which took office upon the dismissal of the Ms. Benazir Bhutto's government by the then President of Islamic Republic of Pakistan Mr. Farooq Ahmad Khan Leghari. Mr. Najam Sethi, a well know journalist was a member of the caretaker cabinet and in charge of Accountability. It appears that it was Mr. Sethi who lit the spark which set the prairie ablaze against corruption (some uncharitable people may say that in the decades that followed perhaps Mr. Sethi may have shed some of his idealism in this behalf).

Following the general elections, Pakistan Muslim League (Nawaz) [PML (N)] came into power with Mr. Mian Nawaz Sharif being elected as the Prime Minister of the Islamic Republic of Pakistan. The new Government embraced the notion of proactive accountability especially against their political opponents with a vengeance. The onslaught was orchestrated and led by the erstwhile Chairman Ehtesab Bureau, Mr. Saifur Rehman.

The record of the Ehtesab Bureau reveals that Trouvons LLC. (Worldwide Offices) ("Trouvons") through Mr. Tariq Fawad Malik and Mr. Ghazanfer Sadiq Ali of GSA Investment Corporation Limited had approached the Ehtesab Bureau canvassing the execution of ARA in favor of their principals. The record reveals that a draft ARA was circulated and the Ehtesab Bureau sought an opinion from a lawyer based in Lahore whose opinion is available on record, whereby various misgivings to the ARA were expressed and pitfalls pointed out. The said opinion is dated the 11th October 1999 (**Page no. 264-268 of Exhibit NAB no. 11**). However, the Government changed on 12th October 1999, hence the matter could not proceed any further.

With the change in Government Lt. Gen. Syed Muhammad Amjad (Retd.) was directed to take over Ehtesab Bureau and a few weeks later, NAO, 1999 was promulgated whereupon he was appointed as the first Chairman NAB. The other pivotal officer of NAB is its Prosecutor General Accountability ("PGA") who is appointed by the President of the Islamic Republic of Pakistan in consultation

with the Chairman NAB. Mr. Farouq Adam Khan a former Major of the Pakistan Army was appointed as the PGA on the recommendation of the Chairman NAB.

Not too soon thereafter, Trouvons through its representatives Mr. Tariq Fawad Malik and Mr. Ghazanfer Sadiq Ali surfaced in the record of NAB.

Lt. Gen. Syed Muhammad Amjad (Retd.), in his statement before the Commission stated that he did not recall whether it was Mr. Tariq Fawad Malik or Mr. Ghazanfer Sadiq Ali who introduced Trouvons to him/NAB.

A perusal of the record of NAB (**Page no. 341-343 of Exhibit NAB no. 22**) reveals that a note dated 26th May 2000 was initiated by Mr. Shahid Hussain Raja, Joint Secretary NAB. The said note titled "*Agreement with Trouvons for Recovery of Assets illegally held by Pakistanis Abroad*" makes for very interesting reading. It suggested that negotiations are in progress with a U.S.A. based company Trouvons for an agreement to recover assets illegally held by Pakistanis abroad. Mr. Shahid Hussain Raja further states that he has conducted negotiations as directed by Mr. Farouq Adam Khan. Various options were considered and the actions to be taken were identified as follows: that the agreement should be vetted by the Ministries of Law, Justice and Human Rights and Ministry of Finance; the Chairman NAB was requested to approve the list of persons (Targets) for handing over to Trouvons for investigation and to add or delete the names in the Target list; the Chairman NAB was requested to direct the concerned to reserve a room for establishment of office of Trouvons in NAB H.Q.; and keeping in view the sensitive nature of the operation, secrecy should be maintained and there should be no leakage by anyone to the press. The said note was marked to the PGA, who agreed with the same but expressed extreme urgency in the matter. The file was then marked to the Chairman NAB who appended his initials by way of approval.

Apparently, another meeting was conducted, which included the Chairman NAB and PGA, wherein a draft ARA was discussed. Thereafter, a note on 2nd June

2000 was prepared by one of the Legal Consultant, wherein it was recorded (para 9 of the NAB's note sheet) that the draft ARA to be sent to a corporate lawyer as suggested by the participants of the said meeting. The said note was eventually presented to the Chairman NAB who vide para 14 of the NAB's note sheet stated that the draft ARA was to be sent to anyone of the proposed corporate lawyers and the file was then marked to the PGA. The PGA noted in para 15 of the NAB's note sheet that the matter had been discussed and a draft agreement was prepared. This is followed by a note of the Legal Consultant dated 15th June, 2000 vide para 17-18 of the NAB's note sheet in which it was suggested that subject to the approval of the Chairman NAB the draft agreement be sent for vetting to the Ministry of Law, Justice and Human Rights and for financial implications to Ministry of Finance. The said note was sent to Mr. Shahid Hussain Raja, the Joint Secretary NAB, who endorsed the aforesaid course of action by getting an approval from the said Ministries. The file was marked to the PGA, who in his note mentioned in para 22 of the NAB's note sheet that "*the final draft prepared and accepted by Dr. Pepper on behalf of Broad/Trouvons. Matter need to be finalized ASAP.*"

The file was purportedly marked to the Chairman NAB but it is apparent that it was neither presented to him and nor does it bear his signatures or his initials. The File appears to have been "highjacked" (Page no. 347 of Exhibit NAB no. 22).

It appears that the ARAs were executed by the Chairman NAB with Broadsheet LLC. (Isle of Man) on 20th June, 2000 and with International Asset Recovery LLC. on 15th July, 2000.

Lt. Gen. Syed Muhammad Amjad (Retd.) in his statement to the Commission stated in categorical terms that he believed that his orders had been complied with, i.e. the draft agreement had the blessing of the Ministry of Finance, vetted by the Ministry of Law, Justice and Human Rights and an independent corporate legal counsel.

There is a subsequent note by the Legal Consultant dated 3rd July 2000, after the execution of the ARAs with Broadsheet LLC. (Isle of Man) and International Asset Recovery LLC. suggesting that in-house vetting had taken place and on account of urgency, the matter had neither been sent to the Ministry of Finance, Ministry of Law, Justice and Human Rights nor to an independent corporate legal counsel.

The said note apparently snaked its way to the office of the Chairman NAB and there appears to be some initials in yellow ink, purportedly of the Chairman NAB dated 8th July 2000 on NAB's note sheet. Lt. Gen. Syed Muhammad Amjad (Retd.) in his statement before the Commission categorically stated that he only used green ink and never signed or initialed any file in yellow ink.

Both the ARAs were sent to Ministry of Law, Justice and Human Rights only for approval of the execution of the ARAs by the Chairman NAB on behalf of the President of the Islamic Republic of Pakistan. The requisite communication that sought to execute the ARAs was sent to the Ministry of Law, Justice and Human Rights with regards to Broadsheet LLC. (Isle of Man) vide letter dated 17th June 2000. Incidentally, in the said letter signed by Lt. Gen. Syed Muhammad Amjad (Retd.) (**Page no. 3 of Exhibit NAB no. 2**) it is mentioned that the suggested draft "*has been duly scrutinized and approved by the Ministry of Law, Justice and Human Rights.*" This lends credence to his statement before the Commission that he believed that his instructions in this behalf had been complied with. The Ministry of Law, Justice and Human Rights gave its authorization to sign the agreement on 19th June, 2000 (**Page no. 4 of Exhibit NAB no. 2**).

Similarly, the requisite communication that also sought to execute the ARA was sent to the Ministry of Law, Justice and Human Rights with regards to International Asset Recovery vide letter dated 15th July, 2000. The Ministry of Law, Justice and Human Rights replied on the same date that the Chairman NAB,

may sign the ARA on behalf of the President of Islamic Republic of Pakistan. Furthermore, the ARA was signed on the same day.

The record further reveals that an understanding had been reached between Lt. Gen. Syed Muhammad Amjad (Retd.) and with the Trouvons' principals [which later on became Broadsheet LLC. (Isle of Man) and International Asset Recovery LLC.] in Denver, Colorado, when he had visited there and on his return he had conveyed the following points to Mr. Farouq Adam Khan, the then PGA as mentioned in his statement (Lt. Gen. Amjad statement Page no. 1-16 and 131-145 of Exhibit NAB no. 34-A):

- a. "First, I informed him that the agreement must clearly state that the foreign companies were to deal and be concerned only with assets outside of Pakistan. This could include anywhere else in the world, but the agreement was not to relate to assets inside of Pakistan. This was very much the underlying rationale for NAB seeking external assistance. We did not need or want assistance in relation to assets that remained inside of Pakistan and we would never have agreed to give a foreign company a cut of any such assets.
- b. Second, I informed him that the foreign companies would receive a 20% share of any money or encashable material only when there was an asset recovery that was repatriated to Pakistan. This was refined in the final agreement ...
- c. As for the commission being set at 20%, this was the result of a compromise between the parties because Broadsheet had originally sought 30% and NAB had sought 10%.
- d. Third, I made it clear that NAB was not to incur any costs or spend any money except when Broadsheet repatriated assets from outside of Pakistan. Broadsheet's commission would therefore be funded

by the foreign assets which they had helped to repatriate to Pakistan.”

Lt. Gen. Syed Muhammad Amjad (Retd.) still believes that the ARAs as drafted, reflected the above. Subsequently, events reveal the misgivings and controversies arose between NAB and Broadsheet LLC. (Isle of Man)/International Asset Recovery LLC. with regards to the interpretations of the ARAs, more precisely as to the whether assets included assets within Pakistan. The second point of contention was with regards to whether Broadsheet LLC. (Isle of Man) was entitled to payment with or without its involvement, in case a recovery was made by NAB. The third point of contention was the absence of a sunset clause meaning that even after the termination of the ARAs by NAB, Broadsheet LLC. (Isle of Man) would continue to pursue the Targets in perpetuity. The fourth point of contention was whether and under what conditions can a Target once registered with Broadsheet LLC. (Isle of Man) could be withdrawn or deleted by NAB/ Government of Islamic Republic of Pakistan.

There is no escape from the fact the aforesaid controversies are germane to the wording of the ARAs as was underscored in the Arbitration proceedings.

As stated above, that the standard procedure for the execution of an international agreement which had major financial implications were short circuited when the said due process was “highjacked” by the then PGA, Mr. Farouq Adam Khan, who as mentioned in his proceeding paragraphs intervened by frustrating the directions of the Chairman NAB regarding the vetting of the ARAs by the Ministry of Law, Justice and Human Rights and reaching out to Ministry of Finance for financial implications and receiving input from an independent corporate legal counsel. The file was diverted and the ARAs were executed by the Chairman NAB under an assumption (deceptive) that his orders in this behalf had been complied with.

In the normal course of events one would have been left to guess as to the consequences if the draft ARA had in fact been vetted by the Ministry of Law, Justice and Human Rights and opinions of the Ministry of Finance and independent corporate legal counsels obtained.

However, the record reveals that when the disputes between NAB and Broadsheet LLC. (Isle of Man)/ International Asset Recovery LLC. got aggravated, the subsequent Chairman NAB reached out to the then Minister of Law, Justice and Human Rights, Barrister Shahida Jamil and also obtained legal opinions in this behalf from Mr. Justice (Retd.) Shafi ur Rehman and Mr. Fakhruddin G. Ebrahim (Sr. Advocate of Supreme Court of Pakistan) which are available in NAB's record.

Barrister Shahida Jamil in her communication dated 12th September 2001 (**Page no. 65-66 of Exhibit NAB no. 24**) expressed her extreme displeasure that she had not been permitted to examine the ARAs in detail by the then Secretary Law, Justice and Human Rights who immediately took away the files on the pretext that they were urgently required by the Chairman NAB (no such anxiety seems to be exhibited from the noting portion of the record of NAB which has been examined by the Commission). Barrister Shahida Jamil expressed dissatisfaction with the drafting of the ARAs and expressed a distinct possibility that the said ARAs could be interpreted so as include/extend to assets within Islamic Republic of Pakistan. She suggested in her note that the ARAs as framed were not in the best interest of Government of the Islamic Republic of Pakistan/NAB and should be "*got rid off*", even if some payment had to be made to the other side.

Mr. Justice (Retd.) Shafi ur Rehman in his opinion dated 2nd August 2001 (**Page no. 174-178 of Exhibit NAB no. 2**) was even more emphatic in his opinion that the ARAs would be interpreted to the financial disadvantage of the NAB and Government of Islamic Republic of Pakistan.

Mr. Fakhruddin G. Ebrahim in his opinion dated 13th August 2001 (**Page no. 181-186 of Exhibit NAB no. 2**) though expressed the possibility of ARAs were confined to assets outside Pakistan but emphasized that a painful international arbitration could not be avoided through the initiation of any legal proceedings in Pakistan.

In the above circumstances, it is clear and obvious if that the orders of the Chairman NAB had been complied with and not circumvented by Mr. Farouq Adam Khan and the standard procedures followed with the ARAs being sent for vetting to the Ministry of Law, Justice and Human Rights, financial implication sought from Ministry of Finance and an independent legal opinion obtained prior to their execution, there is no possibility that the ARAs would have survived such scrutiny without major amendments and appropriate clarifications in its most significant aspects. The ARAs would have had a greater clarity in expressing the intention of NAB/Government of Islamic Republic of Pakistan and with less unfavorable terms or would have never been executed in the first place and this Commission would not have been required to dwell into this sordid state of affairs.

The overview of the above narrated unfortunate saga revolves around the acts and omissions of Mr. Farouq Adam Khan, the then PGA of NAB. Thus, at this juncture it may be appropriate to examine the choice of his appointment as a PGA and his conduct after he relinquished his office. Lt. Gen. Syed Muhammad Amjad (Retd.) who appointed Mr. Farouq Adam Khan in his statement (**Page no. 3 of Exhibit NAB no. 34-A**) stated as follows:

“I understood that during his time in prison he had studied law and, upon leaving prison, he had entered private practice with Mr. Sardar Khan (although I was unaware as to the extent of his work as a lawyer in private practice). I thought that I might be able to work well with a person with Mr. Farouk Khan’s military experience...”

This significance is not as to what has been stated by Lt. Gen. Syed Muhammad Amjad (Retd.), as quoted above, but rather what is conspicuous by its absence. The criterion for the appointment of Mr. Farouq Adam Khan as PGA was not his legal acumen, expertise or experience in the relevant field of law. Perhaps he was not professionally equal to the task, especially with regards to drafting of international agreements with financial implications, like the ARAs.

Unfortunately, there is another aspect to the matter which cannot be ignored. Mr. Tisdale a lawyer by profession and a witness for Broadsheet LLC. (Isle of Man) in his statement before the Arbitral Tribunal stated that within a month of leaving NAB, Mr. Farouq Adam Khan was on the payroll of Broadsheet LLC. (Isle of Man). A fact that was concealed by Mr. Farouq Adam Khan from the subsequent Chairman NAB who reached out to him for support and guidance with regards to matters relating to NAB including its relationship with Broadsheet LLC. (Isle of Man)/International Asset Recovery LLC. No one really knows as to when the financial relationship between Mr. Farouq Adam Khan and Broadsheet LLC. (Isle of Man) began. However, Mr. Farouq Adam Khan in an opinion dated 1st March 2001 (**Page no. 52-53 of Exhibit NAB no. 2**) given to the principals' of Broadsheet LLC. (Isle of Man) regarding interpretation of agreement executed dated 20th June 2000 is an eye opener and quite telling as to what he says in the following few words:

“While negotiating and drafting the Agreement we were binding the GOP, acting through Chairman NAB, who represented President of Pakistan.”

The word used by him is “we”, which speaks volumes and raises the possibility that he may have been on the payroll of Broadsheet LLC. (Isle of Man), while being the PGA. Be as it may, as Lt. Gen. Syed Muhammad Amjad (Retd.) stated in his statement that he perhaps “*trusted*” Mr. Farouq Adam Khan a bit too much. Perhaps such trust was violated. One should not speak ill of the dead but the fact remains that it was also the trust of the State of Pakistan that was violated by Mr.

Farouq Adam Khan, the then PGA, NAB. An institution (NAB) cannot avoid vicarious liability of its unscrupulous PGA.

Incidentally, as per the statement of Mr. Tisdale, Mr. Sharifuddin Pirzada who at that point in time was the Ambassador at Large (1999-2000) and held various other offices and advised the Government of the Islamic Republic of Pakistan and NAB, was also on the payroll of Broadsheet LLC. (Isle of Man)/International Asset Recovery LLC.

It has been noted with interest and perhaps some disdain that one Ms. Ayesha Siddiqa, who had no direct connection or knowledge regarding the transaction with Broadsheet LLC. (Isle of Man), appeared as an expert witness on behalf of Broadsheet LLC. (Isle of Man). In Arbitration proceedings expert witnesses are usually paid. She made uncharitable statements regarding Pakistan and its affairs in the Arbitration proceedings. It appears that maligning Pakistan is a lucrative business for some so called "intellectuals".

Moral fiber and loyalty appear to be in short supply in the Islamic Republic of Pakistan.

Perhaps it was an error of judgment on the part of the first Chairman NAB, while recommending the appointment of Mr. Farouq Adam Khan as Prosecutor General Accountability, who as it later transpired was found deficient in both legal expertise and devoid of probity. Lt. Gen. Syed Muhammad Amjad (Retd.) could barely conceal his anguish, after all his trust had been violated and confidence betrayed. A fact that only came to light during the course of the Arbitration.

7

Terms of Reference No. 5 (b)

To examine the circumstances, reasons and effect of cancellation of Agreements with Broadsheet LLC. and International Asset Recovery LLC in 2003.

The backdrop of the execution of the flawed Asset Recovery Agreements (“ARAs”) dated 20th June 2000 with Broadsheet LLC (Isle of Man) and 15th July 2000 with International Asset Recovery LLC. has been set forth in detail in response to the Terms of Reference 5(a). From the very outset serious disputes with regards to the interpretation of the ARAs and as to the true import and meaning of its various clauses had reared their ugly heads. Such disputes were a direct result of the flaws in the ARAs and had far reaching consequences for both the Government of Islamic Republic of Pakistan and NAB.

Lt. Gen. Syed Muhammad Amjad (Retd.) was appointed as the first Chairman NAB on 16th November 1999 and held the post till 25th September 2000. Lt. Gen. Khalid Maqbool (Retd.) was appointed as the second Chairman NAB on 26th September 2000 and continued in office till 26th October 2001.

Lt. Gen. Khalid Maqbool (Retd.) appeared before the Commission on 21st February 2021 and recorded his statement as “AW 11”. He stated before the Commission that it was the understanding of NAB that the said ARAs pertained to properties/assets situated outside Islamic Republic of Pakistan only and not with reference to any property within the territory of the state of Pakistan. Secondly, he also stated that Broadsheet LLC. (Isle of Man) and International Asset Recovery LLC. would only be entitled to their share of the money when and if any recovery from overseas was effected and the funds repatriated to Islamic Republic of Pakistan. However, despite NAB’s very clear views as aforesaid having been communicated on multiple occasions, perhaps the two companies had a different point of view and understanding of the said ARAs.

He went on to state that in November/December 2000, the former Prime Minister Mr. Mian Nawaz Sharif and his family left Pakistan for Saudi Arabia, suddenly.

The decision in this behalf was not made by NAB but by the Government of the Islamic Republic of Pakistan. Nonetheless, the sudden departure of the former Prime Minister Mr. Mian Nawaz Sharif and his family coupled with the induction of Mr. Aftab Ahmad Khan Sherpao in the Federal Cabinet, caused concern and panic with Broadsheet LLC. (Isle of Man)/International Asset Recovery LLC., because they were registered Targets and these companies voiced the same through various communications, which were all duly responded by NAB.

At that time of termination of the ARAs, the Chairman NAB was Lt. Gen. Munir Hafiez (Retd.). He served as the Chairman NAB from 1st November 2001 to 31st October 2005.

Lt. Gen. Munir Hafiez (Retd.) appeared before the Commission on 20th February 2021 as “AW 10” and recorded his statement. In his statement before the Commission, he stated that on taking over as the Chairman NAB, he was informed in briefings given to him that there were already two pre-existing ARAs with two foreign companies, namely International Asset Recovery LLC. and Broadsheet LLC (Isle of Man). In his statement, he stated that NAB inter alia had an Overseas Wing, Financial Crimes Wing and Prosecution Wing. He took briefings from all of them with regard to the ARAs and discovered that there were problems in them.

He said that the primary problem appeared to be with regards to the interpretation of the compensation clause of the ARAs. It was the view of International Asset Recovery LLC. and Broadsheet LLC. (Isle of Man) that the said ARAs were not limited to foreign assets but included assets situated within the territory of the state of Pakistan and recoveries thereof by NAB. It was also Broadsheet LLC. (Isle of Man) and International Asset Recovery LLC's view that even if any recovery was made, especially in Pakistan without any help or assistance by the Asset Recovery Companies, they would still be entitled to their share of 20% from such recoveries and the bonus.

He went on to state that it was NAB's understanding that the ARAs were limited to foreign assets which were required to be traced, recovered and repatriated to Islamic Republic of Pakistan by International Asset Recovery LLC. and Broadsheet LLC. (Isle of Man) as per the ARAs, and had nothing to do with assets within the territory of the state of Pakistan. Secondly, International Asset Recovery LLC. and Broadsheet LLC. (Isle of Man) would be entitled to 20% share of the amount recovered only from abroad in accordance with the said ARAs. The said ARAs, as per his understanding was on a contingency basis thus meaning: no recovery no payment. Furthermore, the tracing, recovery and repatriation of foreign assets would be done by International Asset Recovery LLC. and Broadsheet LLC. (Isle of Man) from their own resources without any financial burden on NAB or the Government of Islamic Republic of Pakistan.

Lt. Gen. Munir Hafiez (Retd.) told the Commission that he was also informed in the briefing by the officials of NAB that International Asset Recovery LLC. and Broadsheet LLC. (Isle of Man) were not fulfilling their obligations under the ARAs. No tangible effort in this behalf was available on NAB's record. Even prior to his taking over, the efforts to persuade and cajole International Asset Recovery LLC. and Broadsheet LLC. (Isle of Man) to fulfill their obligations under the ARAs had proved unsuccessful.

He gave an example of former Admiral Mansur ul Haq's case, in which the requisite share was given to Broadsheet LLC. (Isle of Man) as a gesture of good faith on part of NAB. He went on to clarify that in the case of former Admiral Mansur ul Haq it was no coincidence that no assistance was given by Broadsheet LLC. (Isle of Man). He went on to explain that in fact, the former Admiral Mansur Ul Haq, during the course of his extradition proceedings volunteered to come back to Pakistan and subsequently after some hesitation entered into a plea bargain with NAB and voluntarily repatriated the money from abroad. Even though Broadsheet LLC. (Isle of Man) may not have been very helpful but as a token of good faith and to show NAB's integrity and desire to continue with a

fruitful relationship with the Asset Recovery Companies for mutual benefit, NAB agreed to pay the stipulated 20% share. He stated that Broadsheet LLC. (Isle of Man) demanded 28% inclusive of an 8% bonus as apparent from the letter dated 26th December 2001 (**Page no. 417-418 of Exhibit NAB 1**). However, only a payment of 20% was made.

He further clarified that there was also an issue raised by Broadsheet LLC (Isle of Man)/ International Asset Recovery LLC. that NAB was not providing the requisite information with regard to the persons in question which was factually incorrect. He said that one of the representatives of Broadsheet, Mr Tariq Fawad Malik, had been given office space (where he brought in his own staff) in the NAB H.Q. at Islamabad and all record as required under the ARAs were made available to him as representative of Broadsheet LLC. (Isle of Man) and International Asset Recovery LLC.

One of the other Targets registered initially with Broadsheet LLC. (Isle of Man) was Mr. Aftab Ahmad Khan Sherpao. Broadsheet LLC. (Isle of Man) had helped NAB to trace his account which was in a name of a Trust in Bailiwick of Jersey ("Jersey"), one of the Channel Islands, which is a British Crown Dependency. Broadsheet LLC. (Isle of Man) had asked NAB to make a formal request to the Jersey authorities to issue a Freezing Order in respect of its claim and the court in Jersey froze his account(s). Nonetheless, he became the Minister for Water and Power in the year 2002 and remained in the office till 2004. He later went on to become the Minister of Interior from 2004 to 2007. This too had caused concern to Broadsheet LLC. (Isle of Man)/ International Asset Recovery LLC.

Lt. Gen. Munir Hafiez (Retd.) stated that he repeatedly informed Broadsheet LLC. (Isle of Man) and International Asset Recovery LLC. about their failings including and their inability to provide regular progress reports as required by the ARAs, which was reflected in the letter dated 12th January 2002 (**Page no. 141 of Exhibit NAB 05**). However, NAB despite all this was still hopeful that the relationship with Broadsheet LLC. (Isle of Man) and International Asset

Recovery LLC. would be mutually beneficial and fruitful and went on to honour its obligations.

He further stated that contrary to what NAB had hoped for, things did come to a pass and the desired results were not forthcoming from Broadsheet LLC. (Isle of Man)/ International Asset Recovery LLC. At that time, he along with NAB's team travelled to London at the behest of Broadsheet LLC (Isle of Man)/ International Asset Recovery LLC. in an effort to iron out the differences and air NAB's grievances. A detailed meeting was held on 21st September 2002 in which the minutes were recorded (**Page no. 128-132 of Exhibit NAB 05**). He further stated that one of the issues that cropped up and is reflected in the minutes of the meeting, stemmed out of the departure of Mr. Mian Nawaz Sharif and family, who were listed targets with Broadsheet LLC. (Isle of Man)/ International Asset Recovery LLC., regarding which the said companies had serious reservations. However, he instructed them to continue with their investigations into tracing the assets of Mr. Mian Nawaz Sharif and family and NAB issued a Power of Attorney on 2nd November 2002 (**Page no. 249-250 of Exhibit NAB 62**) in this behalf.

Lt. Gen. Munir Hafiez (Retd.) further stated that at that time it was quite unfortunate, that there was total inactivity by Broadsheet LLC. (Isle of Man)/International Asset Recovery LLC. and the promises made and reflected in his meetings with them as referred to above were never fulfilled. He said that it had become apparent that things were not going as one had hoped and expected. Since performance of the both the companies was abysmal, NAB decided to get in touch with their solicitors in London, namely Kendall Freeman who sent their representatives to Islamic Republic of Pakistan. Before such meeting, NAB brought the entire matter to the notice of Government of Islamic Republic of Pakistan. They had a meeting with the then Attorney General for Pakistan and Secretary Law, Justice and Human Rights, where the minutes were also recorded (**Page no.164-166 of Exhibit NAB 1**).

Subsequently, on 6th & 7th of August 2003, detailed discussions were held with the solicitors retained by NAB namely Kendall Freeman as mentioned above, who had come to Pakistan and the minutes of the meeting were recorded (**Page no. 249-253 of Exhibit NAB 15**). NAB's solicitors suggested termination of the contract and even prepared a draft letter of termination as is mentioned in the said minutes. It was also decided that the said draft would be circulated amongst the Attorney General for Pakistan and Secretary Law, Justice and Human Rights before final approval. Thereafter, a formal legal opinion was received from NAB's solicitors, Kendall Freeman, dated 12th August 2003 in which they advised that the Agreements be terminated (**Page no. 167-170 of Exhibit NAB 01**). In the above context, a meeting was convened on 18th October 2003 with the Attorney General for Pakistan, Secretary Law, Justice and Human Rights and others by NAB in which the future of the relationship with Asset Recovery Companies was discussed. Eventually, there was a consensus to terminate the ARAs with an option to seek a negotiated settlement, if possible with the said companies, the minutes were recorded (**Page no. 152-154 of Exhibit NAB 05**).

Lt. Gen. Munir Hafiez (Retd.) said that the efforts at negotiation at that stage did not prove very fruitful. The draft letter of termination dated 28th October 2003 with certain amendments as suggested was sent to our solicitors Kendall Freeman through letter dated 22nd October 2003 (**Page no. 113 of Exhibit NAB 05**). Eventually, after waiting for a few days, the letter of termination of contract was issued to Broadsheet LLC. (Isle of Man) and International Asset Recovery LLC. by NAB solicitors, Kendall Freeman through a letter dated 28th October 2003 (**Page no. 351-359 of Exhibit NAB 15**). The termination letter clearly mentions that the termination was a consequence of non-performance and gross misrepresentation.

He further stated that despite having issued the notice of termination, NAB did not close its doors for negotiation and continued to explore the possibility of a settlement. In this behalf, there was a meeting held on 7th November 2003

convened at the offices of NAB's solicitors, Kendall Freeman, in London between him and representatives of Broadsheet LLC (Isle of Man)/ International Asset Recovery LLC. NAB even offered that Broadsheet LLC (Isle of Man)/ International Asset Recovery LLC. should accept termination and as NAB could recommence the relationship on a case to case basis, on fresh terms and conditions. Unfortunately, the said meeting did not bear fruit, its minutes were recorded (**Page no. 378-386 of Exhibit NAB 49**). He stated further that thereafter, everything went quiet till the end of his tenure though he believes thereafter a notice of arbitration was served by International Asset Recovery LLC.

It is obvious from the statements and evidence referred to hereinabove that the relationship between NAB/Government of Islamic Republic of Pakistan and Broadsheet LLC. (Isle of Man)/ International Asset Recovery LLC. for all intents and purposes had broken down. In the above perspective, the termination of the ARAs appeared to be inevitable. The then Chairman NAB Lt. Gen. Munir Hafiez (Retd.) obtained a legal opinion from NAB's Solicitor in London, United Kingdom, Kendall Freeman which was shared with the Ministry of Law, Justice and Human Rights and Attorney General for Pakistan; such opinion recommended termination of the ARAs and was concurred by the Ministry of Law, Justice and Human Rights and the Attorney General for Pakistan. On instructions, a notice of repudiation was drafted by the Solicitors, Kendall Freeman and after vetting by the Ministry of Law, Justice and Human Rights and Attorney General for Pakistan, such notice was issued to the two asset recovery companies. Even after such termination, efforts were made to settle the matter out of court. In this behalf, meetings were held between NAB and asset recovery companies at the offices of Kendall Freeman in London but to no avail. The above is reflected in detail in the files of NAB Exhibited on record and reflected in detail in the statement of Lt. Gen. Munir Hafiez (Retd.).

Though ARAs were no doubt defective and their termination perhaps inevitable, yet there can be no escape from the fact that a list of Targets (financially/politically corrupt persons sought to be investigated qua their ill-gotten wealth) was provided to both Broadsheet LLC. (Isle of Man)/ International Asset Recovery LLC. by NAB and before the ink was dry a major Target (Mr. Mian Nawaz Sharif and family), was flown out of Pakistan in the dead of the night. When the expediencies of politics collides with the impetus for accountability, it is the former that always triumphs and when a foreign country is involved the sovereignty of the State is always compromised.

or

Terms of Reference 5(c)

To identify and determine the reasons and effect of settlement and payments made on behalf of Pakistan to IAR and Broadsheet LLC. in 2008, and whether the payments made were justified.

In response to the TORs 5(a) and 5(b) the process of the award of the Asset Recovery Agreements (“ARA”) as well as their termination thereof have been discussed in detail, however for purposes of continuity and to give context to the response to the above Terms of Reference (“TORs”) i.e. 5(c) and 5(d) suffice it to say that the Government of the Islamic Republic of Pakistan/National Accountability Bureau (“NAB”) executed two separate “ARAs” with two foreign companies namely International Asset Recovery LLC (“IAR”) incorporated in Gibraltar and Broadsheet LLC. incorporated in the Isle of Man. The agreement with the IAR was executed on 15th July 2000, while the agreement with Broadsheet LLC. (Isle of Man) was earlier executed on 20th May 2000. Both the said agreements were executed during the tenure of office of the first Chairman NAB, Lt. General Syed Muhammad Amjad, since retired. The background and the thought process both obvious and as discovered later have been set out in great detail in TOR 5(a). The flaws in the ARAs have also been highlighted as well as the rather strange circumstances which followed their execution and as a consequence whereof the misgivings and misunderstandings inter-se the parties were aggravated till the relationship eventually broke down and Government of the Islamic Republic of Pakistan/NAB was constrained to terminate both the ARAs on 28th October 2003. The circumstances under which such decisions were taken and implemented have also been set forth in response to the earlier TOR. At this juncture, however, it may be added that the Government of the Islamic Republic of Pakistan in fact did not really benefit from the aforesaid two ARAs and no serious recovery and repatriation of foreign assets resulted from any direct effort of either of the two companies. Be that as it may, unfortunately, the ARAs

contained Arbitration clauses whereunder such proceedings of Arbitration were to be conducted under the auspices of the Chartered Institute of Arbitrators, London. Venue and seat of such Arbitration was designated outside Pakistan. The idea of an expensive foreign arbitration, especially in pursuance to a flawed and perhaps disadvantageous ARA was not very appetizing to the Government of the Islamic Republic of Pakistan/NAB who explored the possibility of avoiding the same. Initially, some post-termination negotiations were undertaken but the matter remained inconclusive.

Subsequently, the issue qua Broadsheet LLC. (Isle of Man) went dormant, however, IAR continued to agitate the matter and in this behalf notices for Arbitration were served upon Government of the Islamic Republic of Pakistan/NAB. This process of formal notices was commenced on 9th December 2005 (**Page no. 128-133 of Exhibit NAB 21**). It appears yet again, a decision was taken and perhaps rightly so to avoid litigation/arbitration and to yet again explore the possibility of an out of court settlement with IAR. Negotiations in this behalf commenced which were slow and long drawn. In the meanwhile, the situation with respect to NAB was very fluid and eventually upon the departure of its last uniformed Chairman, coupled with the changing of the guards in the corridors of power, the strength of NAB was depleted. A large number of its personnel both from the armed forces and from the civilian bureaucracy were repatriated with only a skeleton staff remaining. There was no Prosecutor General Accountability ("PGA") and such vacancy was not filled. In the foregoing backdrop, a lawyer with a history of working with NAB, Mr. Ahmer Bilal Soofi, was appointed as a Legal Consultant to spearhead its legal effort including the negotiations with IAR. Such negotiations were conducted both inside and outside Pakistan including with the IARs local counsel, Mr. Khawaja Ahmed Tariq Rahim, Senior ASC. It may be pertinent to reiterate that such negotiations with Mr. Khawaja Ahmed Tariq Rahim were with reference only to IAR as the complaint if any by Broadsheet LLC. (Isle of Man) against termination of its Agreement had not

surfaced. Incidentally in the course of such negotiations, Mr. Ahmer Bilal Soofi in a letter dated 21st March 2007 addressed to Mr. Khawaja Ahmed Tariq Rahim **(Page no. 209 of Exhibit NAB 18)** suggested that the matter with respect to Broadsheet LLC. (Isle of Man) be also settled. It appears that Mr. Soofi repeated this idea of a settlement with both AR companies during the course of further negotiations and raised this issue with Government of the Islamic Republic of Pakistan/NAB also. No doubt the two ARAs had inter-se connection but were nevertheless two separate companies. The silence on behalf of Broadsheet LLC. (Isle of Man) was not out of love for NAB, as it later transpired that unknown to the Government of the Islamic Republic of Pakistan/NAB, Broadsheet LLC. (Isle of Man) had become insolvent and the winding up order had already been passed in the first week of March 2005. This fact was actively concealed from NAB. The representatives of IAR in their correspondence subsequent to the letter dated 21st March 2007 kept insisting that the matter of IAR be settled first and then they would be prepared to discuss the issue of settlement with Broadsheet LLC. (Isle of Man) and also represented that they were authorized to act on behalf Broadsheet LLC. (Isle of Man).

Be that as it may, a settlement with IAR appeared to be in sight which would involve payment to the said company and an illusion was created by Mr. Ahmer Bilal Soofi that such a settlement was also possible with Broadsheet LLC. (Isle of Man). The matter as required by law was placed before the Ministry of Law, Justice and Human Rights and eventually before the Cabinet and the then Prime Minister through summary dated 10th May 2007 **(Page no. 62-L to 62-P of Exhibit NAB 18)**. The then Prime Minister granted in principle approval for financial settlement with IAR. However, it was mentioned in the said summary moved by the then acting Chairman NAB that negotiations were also continuing with Broadsheet LLC. (Isle of Man). On the said summary, a committee under the Chairmanship of the then Minister of Law, Justice and Human Rights was formed, which deliberated upon the matter, recorded its minutes and a fresh

summary dated 12th November 2007 (**Page no. 62-S to 62-X of Exhibit NAB 18**) for settlement was re-presented to the then Prime Minister, who approved the same (**Page no. 62-K of Exhibit NAB 18**). It stood decided that as a full and final settlement and by way of absolute closure with no future liabilities, IAR may be paid a sum of USD 2.25 million (which was later reduced through negotiations to USD 2.20 million). Such amount was in fact paid and the matter currently stands closed. In lieu of the foregoing more particularly the legal opinions of the then Law Minister and others such payment to "IAR" appeared to be inevitable, to avoid any further financial repercussions.

With regards to Broadsheet LLC. (Isle of Man) it was decided that a sum of USD 1.5 million be paid as a full and final settlement with no future liability, subject to Broadsheet LLC. (Isle of Man) providing details of the expenses incurred for purposes of quantification under the ARA. It is clear and obvious that the consent of the then Prime Minister for payment of USD 1.5 million (subject to conditions) was to Broadsheet LLC. (Isle of Man).

Mr. Ahmer Bilal Soofi was instructed to reach out to Broadsheet LLC. (Isle of Man) for implementation of the decision of the Prime Minister referred to above, more particularly with regard to obtaining documents, quantifying the expenditures allegedly incurred by Broadsheet LLC. (Isle of Man). In fact, in his statement before this Commission, Mr. Soofi made a great effort to emphasize that he had been initially engaged for this purpose. The record reveals that Mr. Soofi reached out to Mr. E Jerome James ("Mr. Jerry James") who had represented that he acted on behalf of Broadsheet LLC. (Isle of Man) as its purported Chairman.

It is claimed by Mr. Ahmer Bilal Soofi that he made the magic discovery that in fact Broadsheet LLC. (Isle of Man) was under winding up during a telephonic conversation with Mr. Jerry James in early February 2008. Such has been asserted by him also before this Commission. The record of NAB reveals that an email dated 14th February 2008 (**Page no. 315-316 of Exhibit NAB 23**) was sent by

Mr. Ahmer Bilal Soofi to the acting Director Overseas Wing, NAB and copied to the concerned desk officer, Mr. Hassan Saqib Sheikh. This email which started the ball rolling at NAB is about two pages and makes for very interesting reading. The main emphasis of the email is to expedite settlement and almost as a postscript, it scribed "*In the present case, the BS matter, there is a slight change in facts. BS went into winding-up but before that through a notarized assignment deed it assigned its present claim over Government of the Islamic Republic of Pakistan to a new company. In our agreement and affidavits etc. we have to cover indemnification of this eventuality. We are working on that and shall send you the said documents shortly*".

The legal health of Broadsheet LLC. (Isle of Man) was *sine qua non* for the execution of any Settlement Agreement with it by Government of the Islamic Republic of Pakistan/NAB. The fact that the company was under winding up as represented by Mr. Soofi, totally changed the circumstances (in fact by that point of time, Broadsheet LLC. (Isle of Man) had already been liquidated and dissolved on 2nd April 2007). Be that as it may, even taken at face value, Mr. Soofi sounds like a matchmaker informing the bridegroom's family that there has been a slight change in facts as the bride to be is slightly pregnant. There is a reference made to an alleged assignment by Broadsheet LLC. (Isle of Man) in favour of Steeplechase LLC. ("Steeplechase") projected as a conclusive solution to the "slight change in facts". Mr. Soofi during his statement before the Commission conceded that he had not seen the alleged assignment till a few days later, and had made the aforesaid assertion on the sole representation of the opposite side, i.e. Mr. Jerry James. It is pertinent to note that Mr. Jerry James was neither the Chairman of Broadsheet LLC. (Isle of Man) nor a shareholder in it.

On the basis of the said email, Mr. Hassan Saqib Sheikh initiated a note (**Page no. 1-2 of noting sheet of Exhibit NAB 23**) in which everything under the sun was mentioned except that Broadsheet LLC. (Isle of Man) was under winding up. During his statement before the Commission, Mr. Hassan Saqib Sheikh stated

that the said email as Paper Under Consideration (“PUC”) was attached for all to see, but eventually conceded that this aspect of the matter was critical (**Page no. 315-316 of Exhibit NAB 23**) and ought to have been specified in his initiating note.

Further examination of the file reveals that there is a great emphasis laid on the need for an immediate and urgent need for settlement with Broadsheet LLC. (Isle of Man) with no reference or mention to the obvious fact that the said company was at least under winding up, if not already dissolved. The then Chairman NAB, Mr. Nawid Ahsan stated before the Commission that he did not recall reading the PUC (email dated 14th February 2008), and was never informed in writing or verbally either by Mr. Soofi or his staff that Broadsheet LLC. (Isle of Man) was under winding up and proceeded in the matter on the unrebutted assumption that Broadsheet LLC. (Isle of Man) was alive and in good health as a company.

Mr. Soofi was entrusted with the drafting of a “Settlement Agreement” with Broadsheet LLC. (Isle of Man). He in fact drafted the Settlement Agreement as is not only reflected in the record (**Page no. 5 of noting sheet and AW-8 of Exhibit NAB 23**) but stated by him before the Commission. It appears that a draft Settlement Agreement was prepared by Mr. Soofi and submitted to NAB, as is obvious from the note in the minute sheet dated 09-04-2008 (**Page no. 5-6 of noting sheet of Exhibit NAB 23**). Such note has been scribed by Mr. Hassan Saqib Sheikh. It was also decided by the then Chairman NAB that the Ministry of Law, Justice and Human Rights be taken into the loop and the said draft Settlement Agreement be sent to it for vetting, as is evident from the note dated 10th April 2008 (**Page no. 6 of noting sheet of Exhibit NAB 23**).

Incidentally, the said draft Settlement Agreement was dispatched by Mr. Hassan Saqib Sheikh under covering letter dated 15th April 2008 (**Page no. 280-304 of Exhibit NAB 23**) which is addressed to Mr. Ghulam Rasool, Joint Secretary, Ministry of Law & Justice. In the normal course of business, such communications are addressed to the Secretary of Law, Justice and Human

Rights. During his statement before the Commission, Mr. Hassan Saqib Sheikh could not give any plausible explanation as to why this communication had been addressed to Mr. Ghulam Rasool, Joint Secretary, Ministry of Law & Justice. It is important to mention here that Mr. Ghulam Rasool in his statement before the Commission did not claim to be the acting Secretary or even holding the charge of an acting Secretary of the said Ministry at that point in time. The aforesaid covering letter addressed to Mr. Ghulam Rasool, Joint Secretary, Ministry of Law & Justice was not only appended with the draft Settlement Agreement but also Affidavits and other documents including proposed minutes which would require signing and execution to consummate the deal with Broadsheet LLC. (Isle of Man). Both the said covering letter dated 15th April 2008 and its appendices referred to above are on **(Pages no. 280-304 of Exhibit NAB 23)**. The draft Settlement Agreement is purportedly to be executed inter-se Government of the Islamic Republic of Pakistan/NAB on the one hand and various other parties on the other. The primary party as identified is "Broadsheet LLC". The place of its incorporation is left blank, so too are the details of the resolution authorizing Mr. Jerry James to act on behalf of the said company. Thus the identity of the entity with which the Government of the Islamic Republic of Pakistan/NAB was entering into the Settlement Agreement was unknown and could not be deciphered from the draft Settlement Agreement. The said draft Settlement Agreement which had obvious financial implications was not routed through the Ministry of Finance or for that matter the Ministry of Foreign Affairs and the Office of the Attorney General for Pakistan. It is also obvious from the Settlement Agreement that the other parties including Steeplechase in whose favour an alleged assignment by Broadsheet LLC. (Isle of Man) had taken place. Mr. Soofi was confronted with the document of alleged Assignment **(Page no. 322 of Exhibit NAB 23)** which was signed by Mr. Jerry James both for the assignee and the assignor. Mr. Soofi does not claim to have seen or examined any Articles of Association/Organization of either the assignee or the assignor company or any authority executed in favour of Mr. Jerry James by either the assignee or assignor.

Incidentally, the ARA with Broadsheet LLC. (Isle of Man) dated 20th May 2000 contained a specific stipulation that rights under the said Agreement could not be assigned without the written consent of the opposite party. Admittedly, no consent by Government of the Islamic Republic of Pakistan/NAB for assignment of any right under the ARA by Broadsheet LLC. (Isle of Man) in favour of Steeplechase was ever given or even sought. It is interesting to note that the assignor is "Broadsheet LLC". The place of its incorporation is conspicuous by its absence, leaving the identity of the so called assignor in doubt. During his statement before this Commission, Mr. Soofi conceded that it was perhaps not safe to rely upon such document of Assignment.

At three different places, in the following Agreement there is a reference to a company called "Broadsheet LLC. Gibraltar", allegedly under winding up. There is and never was such a company called "Broadsheet LLC. Gibraltar", with which Government of the Islamic Republic of Pakistan/NAB had any privity of contract. In fact no such company ever existed. Mr. Soofi in his statement before this Commission said that the word "Gibraltar" was actually a typographical error and what was intended was "Isle of Man". His alibi for such glaring typographical errors is that IAR had been registered at Gibraltar and the ARA therewith had already been drafted by him and executed. During his cross examination when he was asked the same, he said that Broadsheet LLC. Colorado had to go into the blank spaces as Broadsheet LLC. (Isle of Man) was dissolved.

As Broadsheet LLC. (Isle of Man) after winding up had been reincorporated as Broadsheet LLC. Colorado. When pressed further, he conceded that he had not seen any document evidencing such "reincorporation", nor was he aware of any law that permitted such a reincorporation. He made a similar statement before the arbitrator and his cross examination in this behalf makes for a very interesting reading. The relevant excerpts whereof are reproduced hereunder: **(Page no. 548-607 of Exhibit NAB 44)**

“Broadsheet LLC. (Isle of Man) (In Liquidation) v Government of the Islamic Republic of Pakistan/NAB

Cross-examination of Mr. Ahmer Bilal Soofi held on 27th January 2016 by the counsel of Broadsheet LLC. (Isle of Man)/Sir Anthony Evans (Arbitrator)

Mr NEWBERGER: Just picking up on the point made by Sir Anthony, to which Broadsheet were you intending to refer when you drafted this document; Isle of Man, Gibraltar or Colorado? Which one?

A. Colorado was out, there was no such thing as Colorado --

Q. I'm going to have to stop you there, when you say no such thing as Colorado?

A. No, there was no such thing as Gibraltar.

Q. You meant there was no such thing as Gibraltar.

A. Yes.

Q. I wanted to be clear about that because you just said a minute ago that your understanding was this was Broadsheet Colorado, correct?

A. There is some confusion here.

Q. Yes, I know. I am trying to clear that up.”

There can be no escape from the fact that in the draft Settlement Agreement which was transmitted to the Ministry of Law, Justice and Human Rights with such glaring errors and said omissions (blanks) shockingly was returned back with some grammatical changes to NAB under a covering letter signed purportedly on behalf of Section Officer Law II, Mr. Muhammad Kaleem Khan, **(Page no. 246-261 of Exhibit NAB 23) dated 29th April 2008.**

Mr. Kaleem Khan is a judicial officer who is currently serving as a Judge of the Anti-Terrorism Court ("ATC") Sahiwal, and was examined as "AW-9". He stated that the letter in question had been signed by somebody else for him. At the relevant point in time, on 29th April 2008, he was not the Section Officer Law II, and even otherwise had gone to People's Republic of China on an official tour and perhaps when he returned back to Pakistan that very same day, an Office order may have been issued. He also confirmed after examining the so-called vetted Settlement Agreement that the grammatical modifications therein were not in his hand. This undue haste was perhaps to avoid any awkward questions from a trained judicial officer.

Mr. Ghulam Rasool, the then Joint Secretary, Ministry of Law & Justice since retired was summoned and appeared as "AW-15" and confirmed the statement of Mr. Kaleem Khan. However, he admitted that the corrections made in the Settlement Agreement were in his hand. He conceded that the Settlement Agreement had blanks and he did not revert back to NAB seeking any clarification as to how such blanks were to be filled. He also conceded that he did not seek any documents from NAB for identifying the authorization of the said Settlement Agreement with Steeplechase and others nor confirmed whether NAB had examined such documents of authorization. He also conceded that he neither reached out to the Ministry of Finance nor sought any confirmation in this regard from NAB. No underlying documents supporting the draft Settlement Agreement were sought, obtained or examined by Mr. Ghulam Rasool. One is left to wonder whether "vetting" of official documents by Ministry of Law, Justice and Human Rights that too with financial implications is limited to corrections of grammatical errors akin to the efforts of a fifth class village schoolmaster.

To add insult to injury, the said so called Settlement Agreement along with its blanks and appendices, were dispatched by Mr. Hassan Saqib Sheikh to Mr. Abdul Basit, the Deputy High Commissioner of Pakistan to London, United

Kingdom vide a covering later dated 14th May 2008 (**Page no. 210-244 of Exhibit NAB 23**). The said letter does not contain any instructions as to how the blanks in the Settlement Agreement were to be filled out

Mr. Abdul Basit, the then Deputy High Commissioner of Pakistan to United Kingdom was summoned and appeared as "AW-13". He acknowledged the receipt of the letter from Mr. Hassan Saqib and stated that the Settlement Agreement which he received contained blanks and was executed by Mr. Jerry James in his presence at his office in London. He also stated that he read the said agreement and the appendices thereto prior to the execution.

Mr. Basit stated that he did not reach back to Pakistan, neither to NAB nor to the Ministry of Foreign Affairs to seek instructions as to how the blanks in the Settlement Agreement, which went into the heart of the matter, i.e. the identity of the legal entity in whose favour the document was to be executed were to be filled and no explanation, plausible or otherwise, in this behalf was offered. However, he did concede that he has never signed any blank agreements or documents on behalf of the State of Pakistan, other than the Settlement Agreement. Mr. Basit also conceded that he did not seek or sought any legal authority of Mr. Jerry James to execute the Settlement Agreement.

Mr. Basit as required obtained a photocopy of the passport of Mr. Jerry James for the purposes of identification. A copy of the said passport is available on record as (**Page no. 201 of Exhibit NAB 23**) which includes the signature of Mr. Jerry James thereupon. Mr. Basit conceded that the signatures which were purportedly appended by Mr. Jerry James on the Settlement Agreement remotely and some of the other appendices did not match the signatures on his passport.

The payment under the Settlement Agreement dated 20-05-2008 was admittedly required to be made in two tranches to Broadsheet LLC. (Isle of Man). The record reveals that the first tranche of roughly 320,622.55 GBP (equivalent to USD 654,070) was by way of a cheque dated 20-05-2008 drawn on United National

Bank, London, U.K. on account of High Commission of Pakistan in the United Kingdom. The said cheque has been signed by one Mr. Shahid Ali Baig, Director (Audit and Accounts) for the High Commission. The said cheque is at **(Page no. 202 of Exhibit NAB 23)**. The second tranche for the balance amount was made through a wire transfer also from the same account at United National Bank, London, U.K. for an amount of USD 845,928.

The record reveals that the preference for the wire transfer was expressed by Mr. Jerry James and communicated by him through Mr. Ahmer Bilal Soofi to NAB as is reflected in the "AW-8". The account, the routing number and the bank in question where the amount was to be sent was communicated to NAB by Mr. Soofi on behalf of Mr. Jerry James as is conceded by him in his statement before the Commission. **The title of the account was conspicuous by its absence.** Thus till such title was supplied, the wire transfer could not be made. The record reveals that the wire transfer in fact was made to the account of Broadsheet LLC, Colorado with the routing number and account of Compass Bank, Northglenn, Colorado as is apparent from the document at **(Page no. 58 of Exhibit NAB 17)**. Such transfer was effected by Mr. Shahid Ali Baig, the then Director (Audit and Accounts) PHC London, who has since retired and is living in London, U.K. and who was examined via video conference as "AW-21". At the time of his statement, Mr. Hassan Ali Zaigham, the present Head of Chancery proudly proclaimed that the relevant record, i.e. the noting portion regarding the wire transfer and issuance of cheques has been lost. However, some documents consisting of correspondence were available. Mr. Shahid Ali Baig stated that the wire transfer had been made to Broadsheet LLC, Colorado on the instructions in writing of Mr. Jerry James which are available on record as **(Page no. 95 of Exhibit NAB 99)**. (The said document along with copies of other documents were transmitted to the Commission at its request during the course of the hearings and prior to the recording of the statement of Mr. Shahid Ali Baig.)

Mr. Shahid Ali Baig conceded that there were no instructions from Government of the Islamic Republic of Pakistan/NAB that the payment should be made to Broadsheet LLC Colorado. No plausible explanation in this behalf was offered. At this juncture, it may be pertinent to re-emphasize that the approval of the Prime Minister as stated above was for payment to Broadsheet LLC. (Isle of Man). Thus the payment to Broadsheet LLC. Colorado as stated above was without the sanction of the Prime Minister and Government of the Islamic Republic of Pakistan.

Incidentally, for the payment of the first tranche as referred to above a cheque had been issued which on examination reveals that the cheque signed by Mr. Shahid Ali Baig is in favour of Broadsheet LLC Gibraltar. Yet, even this payment on the face of it had been made to a legal entity that did not exist and was contrary to the sanction of the Prime Minister and Government of the Islamic Republic of Pakistan. When confronted on this aspect of the matter, Mr. Shahid Ali Baig, struggled to offer any coherent explanation. He attempted to refer to a letter issued by the then Director Finance, NAB Mr. Shehzad Anwar Bhatti, dated 19-05-2008, which seems to be copied to Broadsheet LLC. Gibraltar. The said letter is on record at **(Page no. 205 of Exhibit NAB 23)** which is addressed to the then High Commissioner of Pakistan to the U.K. However, Mr. Shahid Ali Baig conceded that the aforesaid letter did not contain any specific instructions that payment should be made to Broadsheet LLC., Gibraltar. Interestingly, the subsequent letter dated 29-09-2008 also issued by Mr. Shehzad Akbar Bhatti pertaining to the wire transfer which is on record as **(Page no. 156 of Exhibit NAB 23)** also appears to be copied to Broadsheet LLC. Gibraltar but the wire transfer was made in the circumstances referred to above by Mr. Shahid Ali Baig to Broadsheet LLC. Colorado. Thus the excuse offered by Mr. Shahid Ali Baig becomes even more incoherent.

In order to discover why these two letters dated 19-05-2008 and 29-09-2008 were copied to Broadsheet LLC. Colorado by Lt. Col. Shehzad Anwar Bhatti (Retd.)

former Director (Finance), he was summoned by the Commission and appeared as "AW-19". Lt. Col. Shehzad Anwar Bhatti (Retd.) categorically stated that no instructions in writing had been issued to the High Commission in the U.K. that any payment should be made to Broadsheet LLC. Gibraltar or Broadsheet LLC. Colorado. Shehzad Anwar Bhatti had also indicated that perhaps the copies of the two letters dated 19-05-2008 and 29-09-2008 referred to above had in fact been dispatched to Broadsheet LLC., Gibraltar. The Diary Register of the Overseas Wing now referred to as International Cooperation Wing (ICW) of NAB of the relevant period was taken on record as **(Exhibit AW 24-1)** examination whereof reveals that there is no mention of Broadsheet LLC., Gibraltar. He suggested that perhaps the letter was purportedly copied to Broadsheet LLC., Gibraltar by his juniors who had drafted the letter, perhaps on information supplied by the PGA wing. Incidentally at that point of time, there was no PGA, but the matter was being handled by Mr. Ahmer Bilal Soofi, and there can be no escape from the fact that there is a reference to Broadsheet LLC. Gibraltar, not once, but thrice in the Settlement Agreement drafted by him. It appears from the record that there may have been a realization that payment had not been made in accordance with law to a person or entities that were not authorized to receive such payments under the Settlement Agreement. Apparently in the above context through some communication in 2009 the Pakistan High Commission in London sought explanation from NAB and Lt. Col Shehzad Anwar Bhatti (Retd.), responded vide letter dated 25th November 2009 **(Page no. 114 of Exhibit NAB 23)** implying that the Government of the Islamic Republic of Pakistan had given instructions to make payments to Broadsheet LLC., Gibraltar. When confronted the said gentleman could not offer any explanation whatsoever. Admittedly, no such instructions were ever issued or given, perhaps his sense of self preservation came into play in view of the errors made by him.

This entire saga has an interesting twist which needs to be highlighted at this stage. As already stated above, the record of this transaction and the payment is

missing from the Pakistan's High Commission in London, U.K. as stated by the present Head of Chancery.

The current Secretary, Ministry of Law, and Justice, Mr. Raja Naeem Akbar was summoned and appeared as "AW 5" and frankly conceded that the entire record pertaining to Broadsheet LLC. (Isle of Man) was missing. He specifically stated that the file pertaining to the vetting of the Settlement Agreement had probably been stolen. Similarly, the Secretary, Ministry of Finance appeared as "AW 6" and had been asked to produce the record including the documents and noting portion pertaining to the transaction in question. Yet again, the record was found missing.

The Ministry of Foreign Affairs was also reached out to, but the Head of Chancery in the video conference stated that the noting portion regarding the Settlement Agreement was not available. Furthermore, the Secretary from the Office of the Attorney General for Pakistan, along-with the custodian of the record appeared as "AW-4", "AW-16" respectively, but no record pertaining to the Settlement Agreement was neither found nor made available to the commission.

The only office where some of the record was discovered and examined and formed the basis of the findings of this Commission is the NAB, reference to such documents as made above.

The above events, which are both tragic and farcical had far reaching consequences; to say that as a consequence of absence of due diligence, a sum of USD 1.5 million had been paid to a wrong person or entity would be a misstatement. In fact the State of Pakistan has been swindled out of USD 1.5 million. I wish the damage to the State of Pakistan had been limited only to USD 1.5 million. The Settlement Agreement formed the basis of the resurrection of the dissolved company, Broadsheet LLC (Isle of Man). In the ensuing arbitration, the Settlement Agreement was held to be an acknowledgment of liability by the

Government of the Islamic Republic of Pakistan/NAB in favour of Broadsheet LLC. (Isle of Man) as was held by the Arbitrator who also considered it to be an acknowledgment for extension of period of limitation for a claim which had become time barred. Furthermore, the said Settlement Agreement and the legally infirm premises thereof blighted the defence to be taken by the Government of the Islamic Republic of Pakistan/NAB in the Arbitration proceedings. In fact the dye had been cast and the disaster that followed was inevitable.

d

Terms of Reference 5(d)

To identify the persons or officials responsible for making wrong payment of USD 1.5 million to the wrong person in the year 2008 which was not entitled to receive such payment.

Mr. Ahmer Bilal Soofi

We have now reached the stage of our journey when in order to fulfill the mandate, the Commission must highlight the names of those who carry the burden, and the blame for the debacle. As detailed above, being without the benefit of a Prosecutor General Accountability or fully functional Prosecution Wing, NAB was perforced to depend upon one Legal Consultant, Mr. Ahmer Bilal Soofi who had an on and off relationship stretching over years with NAB. The Settlement Agreement admittedly was drafted by Mr. Ahmer Bilal Soofi. The said agreement was *ex facie* based on certain legal premises which were rather strange and Mr. Soofi upon being questioned, wilted. The lynchpin of the Settlement Agreement both in its genesis as well as in its form was the alleged Assignment in favour of Steeplechase. Mr. Soofi conceded in his statement that for obvious reasons mentioned in the preceding paragraphs, it was not safe to rely on the said Assignment. The second basis for the Agreement as is apparent therefrom was the alleged "reincorporation" of Broadsheet LLC. (Isle of Man) in Denver as "Broadsheet LLC., Colorado", yet again when specifically queried he immediately accepted that he had seen no document to justify such "reincorporation", nor was aware of any Law which permitted such "reincorporation". Thus, the Settlement Agreement even on a stand-alone basis, could not withstand the scrutiny, elemental, obvious and rudimentary principles of applicable law, leaving any reader of the said Agreement at a loss for words. The Commission is no exception. We can also not lose sight of the fact that the said Settlement Agreement contained blanks and dispatched on its journey by Mr. Soofi without any instructions as to how such document was to be completed. It was also noticed that Broadsheet LLC. (Isle of Man) admittedly was in winding up, but Mr. Soofi did not raise any alarm in this behalf but deliberately

underplayed this fact. Broadsheet LLC. (Isle of Man) was dormant and it was Mr. Soofi who suggested during the course of the settlement with IAR that the matter with Broadsheet LLC. (Isle of Man) be also settled. The record also reveals that a new so-called legal entity as stated above "Broadsheet LLC. Gibraltar", was introduced into the Settlement Agreement. Mr. Soofi claimed that this was a result of a typographical error but the said purported legal entity is mentioned not once but thrice in the Settlement Agreement. How can we forget that it was Mr. Soofi who communicated to NAB the routing number and the bank details for the wire transfer, without the title of the account, which was later on supplied by Mr. Jerry James to the Pakistan's High Commission in London, U.K. Had the title of the account been disclosed, it would have been too obvious to ignore that the payment was being made in violation of the sanction and approval of the Prime Minister of Pakistan. To characterize the conduct of Mr. Soofi as merely, callous, improper, grossly negligent, devoid of legal acumen and lacking drafting skills and probity would perhaps be an understatement.

Mr. Hassan Saqib Sheikh

A civil servant by profession, Mr. Sheikh was the Deputy Director and Desk Officer of Broadsheet LLC. (Isle of Man) for NAB at the relevant point of time. He appears to have allowed, permitted and connived with Mr. Soofi. He was the first official in NAB to be informed of the winding up of Broadsheet LLC. (Isle of Man), but hid this information in plain sight from NAB and its Chairman as is obvious from the record referred to above. Any person with an iota of common sense would have raised the alarm bells so as to preempt the execution of an agreement in respect of a company which is under winding up without involving the liquidator. He received the Settlement Agreement with blanks, sought no explanation in this behalf, sent it for "vetting" through a communication addressed to a particular officer of the Ministry of Law, Justice and Human Rights (Mr. Ghulam Rasool) rather than to the Secretary Law, Justice and Human Rights and later dispatched the Settlement Agreement to the Deputy High

Commissioner, London, U.K. again with the blanks without any instructions as to how the document was to be completed prior to its execution. The conduct of this officer does not appear to be above board.

Mr. Ghulam Rasool

Mr. Ghulam Rasool the then Joint Secretary, Ministry of Law, Justice and Human Rights admitted to have received and vetted the Settlement Agreement. His endeavours were limited to effecting grammatical changes of the most pedestrian nature, without addressing any of the host of obvious legal infirmities floating on the surface including the blanks with regards to the legal entity in whose favour the Agreement was to be executed. The absence of consent of the Ministry of Finance and Ministry of Foreign Affairs are all adverting to the self-evident legal questions which have been referred to above while dealing with the conduct of Mr. Ahmer Bilal Soofi. If this is the quality of vetting by the Ministry of Law and Justice of the Islamic Republic of Pakistan, then may God help us. Furthermore, the conduct of Mr. Ghulam Rasool leaves much to be desired.

Mr. Abdul Basit

The conduct of Mr. Basit, a seasoned diplomat who had the privilege of serving as a High Commissioner to various countries including India, and almost became the Foreign Secretary, was very disappointing. He made diplomatic history by signing and executing a document with obvious financial implications in blank. He did not even bother to check the signatures of Mr. Jerry James so as to ascertain whether the same matched with his passport. The Commission is at a loss for words to comprehend the magnitude of such behaviour. One is left to wonder that if a white man that too with an American accent walks into the room, the capacity to reason and analyse is paralyzed. After more than seventy years of freeing ourselves from Colonial rule, our bureaucrats are yet to rid themselves of a Colonial hangover and continue regarding the words of a white man as the gospel truth.

Mr. Shahid Ali Baig

Mr. Shahid Ali Baig, Director (Audit and Accounts) Pakistan's High Commission, London, U.K. at the relevant point in time, appears to have had the singular privilege of holding such foreign posting for almost eight years. The elemental processes for safeguarding expenditure of which Mr. Shahid Ali Baig was entrusted with suddenly evaporated, he admitted that he had no instructions from back home to issue a cheque either in favour of "Broadsheet LLC. Gibraltar", or make a wire transfer in favour of "Broadsheet LLC. Colorado". Further, later he appears to have taken instructions from Mr. Jerry James and not his employer, the Ministry of Foreign Affairs of Pakistan. The said transfer of funds was in direct conflict with the instructions and not in conformity with the decision of the Prime Minister of Pakistan whereunder the payments were being made. His conduct also defies description, but was certainly not above board. The fact that the record, i.e. the noting portion had disappeared, also does not help matters.

At this juncture it may be appropriate to mention that the record for all the Ministries concerned regarding the aforesaid transaction has either been lost, misplaced or stolen; certainly not made available to the Commission. As stated in the preceding paragraphs, Mr. Hassan Ali Zaigham, the present Head of Chancery of the Pakistan's High Commission, London, U.K. happily informed the Commission that the noting portion of the record was missing. The Secretary, Ministry of Law and Justice frankly conceded that the relevant file, pertaining to the Settlement Agreement had been stolen from his record. The Secretary, Ministry of Finance also did not furnish any such record in this behalf. The Secretary from the Office of the Attorney General for Pakistan also could not make available the relevant record regarding the Settlement Agreement, which should have been in his office. The response from the Ministry of Foreign Affairs was no different. Fortunately, the National Accountability Bureau had some of

the corresponding record which has been referred to in great detail and forms the basis of the findings.

The loss of a record in one department can be an accident, two departments a coincidence, but five departments, is perhaps a conspiracy. Had such record been made available, the roles of the protagonists of this debacle would have come into sharper focus and more names would have surfaced. Perhaps the greatest mystery of all is as to how an insolvent and dissolved company Broadsheet LLC. (Isle of Man), suddenly finds the funds for its revival, payment to the Arbitrator and its lawyers. Off the record and in hushed tones, some gossip in this behalf came to the attention of the Commission, but the mandate is to find the facts and not base its findings on rumours.

The documents of indemnity have been obtained in favour of the Government of the Islamic Republic of Pakistan/NAB regarding payments under the settlement agreement from Mr. Jerry James and Mr. Tariq Fawad Malik. We believe that such indemnity with regards to Mr. Jerry James has been invoked and legal proceedings have been initiated against his estate. We see no reasons why proceedings in this behalf can also not be commenced against the properties of Tariq Fawad Malik in Pakistan.

Mr. Malik is an absconder. We believe that his property has been attached under Section 87 of Code of Criminal Procedure, 1898. The matter can always be pursued further, with the properties being auctioned, and the proceeds going to the Government of the Islamic Republic of Pakistan through NAB on the basis of the indemnity. This aspect of the matter needs to be seriously explored.

The matter at hand pertaining to the missing record and the unbecoming conduct of the aforementioned persons cannot be made subject of internal inquiries only, this would amount to brushing the misdemeanors under the carpet. The obvious needs to be done for this Government to show its seriousness, perhaps a Criminal Investigation may be initiated.

Terms of Reference No. 5 (e)

To identify as to whether the Arbitration proceedings before the London Court of International Arbitration (LCIA) and subsequent appeal before the High Court of Justice in London regarding Broadsheet LLC were conducted diligently and efficiently.

In order to explore as to whether the arbitral proceedings before the Chartered Institute of Arbitrators, London, United Kingdom and the appeal that followed regarding Broadsheet LLC. (Isle of Man) vs. Islamic Republic of Pakistan/National Accountability Bureau (CI Arb case No. 12912001) were conducted in the best possible manner; it was considered appropriate to first seek a response from International Disputes Unit at the Office of the Attorney General for Pakistan, so as to take advantage of their expertise, knowledge and information, as they were at the vanguard of the Liability and Quantum stage of the Arbitral Proceedings. In the above perspective, a set of obvious questions that had floated to the surface from the examination of the record were communicated on 24th February 2021 by the Commission to Mr. Ahmad Irfan Aslam (Head of International Disputes Unit). These were responded to by International Disputes Unit vide their communication dated 3rd March 2021.

In order to further clarify the situation and bring the matters into sharper focus, it was considered expedient to summon and examine Mr. Ahmad Irfan Aslam, Head International Disputes Unit, under Oath. Consequently, he was summoned by the Commission and his statement was recorded on 10th March 2021 as "AW 25". After stating his educational qualifications and experience, he stated that he has been occupying his present post since 1st February 2018 and was associated with the Broadsheet LLC. (Isle of Man) (in liquidation) Arbitration at the stage of Quantum hearing. He categorically stated that he was aware that the original venue and seat of Arbitration was Dublin, Ireland and had been shifted with the consent of National Accountability Bureau ("NAB")/Government of Islamic Republic of Pakistan to London, United Kingdom. As per the record which was

available with his office, no basis or reason regarding consent for the shifting the venue of Arbitration from Dublin to London could be ascertained. He further confirmed that had such change of venue not been effected, the challenge to the award would have been made before the Irish Courts. It was his understanding that the Irish Courts are perhaps a little more liberal in entertaining and adjudicating upon challenges to awards. In his opinion, the decision to agree to a change of venue from Dublin to London had not been properly thought through.

The witness further stated that no doubt the Liability Award could have been challenged but Government of Islamic Republic of Pakistan/NAB were advised by their lawyers Allen & Overy, not to do so as it would be counter-productive and adversely affect the Quantum award to the detriment of the financial interests of Government of Islamic Republic of Pakistan/NAB. Such legal advice given in writing though not available in his office should be available with NAB (**Page no. 268 of Exhibit NAB 87**).

The witness also confirmed that Government of Islamic Republic of Pakistan /NAB had not reacted to the notice of Arbitration especially with respect to appointment of the Arbitrator with promptitude and Sir Anthony Evans was appointed as Arbitrator in default.

The witness stated that the fact that Ms. Judith Gill of Allen & Overy who had been conducting the case on behalf of Government of Islamic Republic of Pakistan /NAB left Allen & Overy and the matter was inherited by a less experienced lawyer not acquainted with the case, which did not help matters. Mr. Ahmad Irfan Aslam further clarified that as the bulk of properties as mentioned in the award were located in U.A.E. and Saudi Arabia, an expert on Saudi and U.A.E. law was produced before the Arbitrator by the Government of Pakistan/NAB. However, no such expert was produced by the opposite side.

With regards to the enforceability of the decision of the Accountability Court and Joint Investigating Team ("JIT") Report in England, Mr. Ahmad Irfan Aslam

stated that a specific issue was raised before the Arbitrator who side-stepped the same. Such ground was not taken before the court in the appeal as the lawyers of Government of Islamic Republic Pakistan/NAB, Allen & Overy, advised to the contrary.

Mr. Ahmad Irfan Aslam also clarified that his department was chronically undermanned and in spite of a specific decision to raise the strength of the office to ten Consultants, the matter remains in the doldrums in view of "*procedural delays*" by the concerned Ministries/Divisions.

It is not too difficult to perform a post mortem on a cadaver so as to ascertain the cause of death and lay the blame at the feet of the doctors. Such a course of action, in the present circumstances, though tempting must be avoided in order to ensure fairness.

There can be no escape from the fact that prior to the commencement of the Arbitration, the reaction to the Arbitration Notices and for the appointment of the Arbitrator was quite lethargic resulting in an appointment of an Arbitrator by default without concurrence or consent by Government of Islamic Republic of Pakistan/NAB. Such inaction is beyond comprehension.

There is also no explanation for the consent for the change of venue and seat of Arbitration from Dublin to London. No decision making process or application of mind appears to be discernable from the record. Had such change of venue not been consented to, the challenge to the award would have been made before the Irish courts, which in the opinion of Mr. Ahmad Irfan Aslam may have been more receptive.

Certain grounds which may have been available more particularly with reference to recoveries from U.A.E. and Saudi Arabia and "*enforcement*" of the order of the Accountability court and JIT Report in England perhaps could have been agitated more emphatically before the High Court of Justice (Commercial Court) London, England and Wales in appeal.

Perhaps again with the benefit of hind-sight, the aforesaid comments have been offered but what cannot be said with certainty that if a different course of action as suggested above had been adopted, the result would have been different. Be that it may, we did not put our best foot forward.

However, what can be said without any fear of contradiction that the capacity and expertise to deal with International Arbitrations desperately requires to be enhanced especially as a series of disputes are already pending and many more are in the pipe-line. It appears that the Government of Islamic Republic of Pakistan has in fact sanctioned the increase in number of personnel for International Disputes Unit, Office of the Attorney General for Pakistan but such appointments have not been made because the Secretaries of various Ministries/Divisions involved are deliberately delaying matters by indulging in farcical bureaucratic games reminiscent of the erstwhile British Comedy called "*Yes Minister*". The Secretaries who strut about like inflatable "*Prima Donnas*" with the sole purpose of finding ways to ensure that no worthwhile work gets done for the benefit of the State and its people except to provide comic relief. This quotation from "*Yes Minister*" appears to be very apt to the case at hand: "*We don't measure our success by results but by activity and the activity is considerable and productive.*" It is for the Government of Islamic Republic of Pakistan to decide whether such state of affairs can be allowed to continue. Any further financial liabilities through International Arbitration will be the responsibility of such Secretaries. A

Terms of Reference No. 5 (f)

To determine as to whether after finalization of the Award and appellate proceedings before the High Court at London regarding Broadsheet LLC, the process of making payments to the Claimant was legal and in accordance with the prescribed rules and procedure.

As stated above, the Arbitral proceedings launched by Broadsheet LLC. (Isle of Man) against Government of Islamic Republic of Pakistan/National Accountability Bureau ("NAB") unfortunately resulted in a Part Final Award (Liability Issues) dated 1st August 2016 followed by a Part Final Award (Quantum) dated 17th December 2018, both against the Government of Islamic Republic of Pakistan . The Quantum Award was challenged before the High Court of Justice (Commercial Court) England and Wales, which too failed and the judgment was released on 12th July 2019. It is the understanding of the Commission that the adjudicatory process has been finalized and no further challenge is available to the Government of Islamic Republic of Pakistan and NAB.

The only issue that was left was the satisfaction of the Award, the interest accrued thereupon and obviously the cost thereof. The further Part Final Award (Costs) in respect of such was handed down on 10th October 2019. The Ministry of Foreign Affairs on 3rd April 2020 confirmed service of both the Judgment and Awards on 10th March 2020. The Prime Minister was apprised of the matter and he formed a Committee headed by the Minister for Law and Justice to deal with the issue of Broadsheet LLC. (Isle of Man) Award.

It also appears from the record that for purposes for the satisfaction of the Award(s) a "*Third Party Debt Order*" was passed on 23rd June 2020 against the account of the High Commission for Pakistan in London, United Kingdom; such account apparently did not have Sovereign Immunity.

Mr. Kamran Ali Afzal, Secretary, Ministry of Finance, appeared before the Commission on 18th February 2021 as “AW 6”. He stated that as a standard procedure, funds including Foreign Exchange are released by the Ministry of Finance. Such release is made to the concerned recipient Department or Institution. It is the responsibility of such recipient department or institution to transmit the funds. The record reveals that such procedure was followed for the payment for the satisfaction of the Award in the Broadsheet LLC. (Isle of Man).

Mr. Khadim Hussain, Deputy Director (Finance) NAB, appeared before the Commission on 9th March 2021 as “AW 23”. He stated that there were several accounts that are maintained and operated by the High Commission of Pakistan in London, United Kingdom. He further stated that out of those accounts, two accounts are for the exclusive use of the NAB but are operated by the High Commission of Pakistan in London, United Kingdom on their behalf. It was suggested that said accounts had been in operation for decades, perhaps since the days of the Ehtesab Bureau. He further stated that before funds were released, the amount was allocated by the Economic Coordination Committee (“ECC”) duly ratified by the Federal Cabinet. Before submission of the Summary to the ECC, Finance Division’s concurrence to release of funds was also received. Finance Division also authorized foreign exchange before the release of amount through the State Bank of Pakistan. NAB in the normal course of events transmitted the money a sum of USD 26,153,411.21 million towards the satisfaction of the award(s). Since the said account was used for commercial purposes in the past, including for payment of the Settlement Award and the Legal Fees, we were informed that it did not enjoy Sovereign Immunity and hence, was exposed to a Third Party Debt Order. It also appears that a Third Party Debt Order was enforced against another account operated by the High Commission for Pakistan in London, United Kingdom in respect of the balance liability. It is the case of the High Commission of Pakistan in London, United Kingdom, however, that this account enjoyed Sovereign Immunity and there was a dereliction of duty on

behalf of United National Bank, U.K. by not resisting the third party debt order. Apparently, proceedings against the bank are under contemplation by the High Commission for Pakistan in London, United Kingdom. This Commission is confident that the High Commission for Pakistan in London, United Kingdom shall obtain sound and proper advice with regards to proceeding further in the matter, after taking appropriate instructions from the Ministry of Foreign Affairs, Office of the Attorney General for Pakistan and NAB.

The award carried interest. There was a grace period given to the Government of the Islamic Republic of Pakistan/NAB to satisfy the liability under the award. The filing of the appeal did not stop the clock ticking for the interest accruing. As usual the bureaucratic lethargy came into play and the sanction of the release of funds for the satisfaction of the award was delayed resulting in the accrual of interest and further loss to the exchequer was due to depreciation in Pakistan's currency. One cannot help but notice the lack of promptitude for payment of the award. The Ministry of Finance that controls the purse strings of the national exchequer needs to explain the aforementioned delays that caused further loss to the exchequer.

Terms of Reference 5(g)

To identify the incidents and cases relating to recovery efforts and legal proceedings pursued by the Government of Pakistan since the year 1990 in foreign jurisdictions for recovery of unlawfully removed money or illegally acquired assets, but were closed, abandoned and/or withdrawn without any valid reason or justification resulting in colossal losses to the country.

Terms of Reference 5(h)

To identify and fix responsibility of any person, body or authority etc. which was guilty of gross negligence or misconduct or acted with *mala fide* motive or objective in respect of the above matters.

Over the years and certainly since 1990s, the State of Islamic Republic of Pakistan and its institutions have made efforts to identify, recover and repatriate funds and properties stashed abroad which were purportedly proceeds of corruption and corrupt practices committed in Pakistan. Some of such efforts are in the public domain and in the public knowledge. One of the most high profile endeavours were proceedings in Switzerland in respect whereof, the Government of the Islamic Republic of Pakistan had successfully applied and got impleaded as an interested third party. Subsequently, an application was filed by the then Attorney General for Pakistan, Mr. Malik Muhammad Qayyum on the instructions of the then Prime Minister of the Islamic Republic of Pakistan, Mr. Yousaf Raza Gillani to withdraw this Application. The Supreme Court took notice and directions were issued to take back the letter of withdrawal. The Government knowingly delayed matters on one pretext or the other, resulting in initiation of proceedings for contempt of court against the then Prime Minister who was eventually convicted and was deprived of his seat in Parliament and of the Office of Prime Minister. It appears that his successor, Mr. Raja Pervez Ashraf, then complied with the directions of the Supreme Court of Pakistan and a letter was subsequently issued,

adhering to the directions of the Supreme Court. However, by the time the letter was sent, it was too late as the period provided by the Swiss Authorities to Pakistan to change its mind had lapsed, and the request for withdrawal of the earlier letter proved to be an exercise in futility. During the course of the above proceedings, a report was submitted before the Supreme Court of Pakistan in which vociferous exception was taken that all efforts for reaching out to foreign governments and Authorities for recovery of proceeds of corruption can only be undertaken by the Office of the Attorney General for Pakistan (and not by the Ehtesab Commission/Bureau as had happened in the said case).

Therefore, our first port of call to obtain the relevant record of all proceedings initiated by the State of Pakistan for recovery of the proceeds of corruption stashed abroad was the Office of the Attorney General for Pakistan. The incumbent Secretary to the Attorney General for Pakistan, Mr. Khalid Khan Niazi, appeared as "AW-4", and to the horror of the Commission, expressed his inability to produce any record worth mentioning. A jumbled up sheaf of papers pertaining to a jewelry case of late Mohtarma Benazir Bhutto was all that was available. The final order in such proceedings taken in Switzerland was conspicuous by its absence, rendering the documents totally worthless and irrelevant in responding to the Terms of Reference (TORs). Various queries pertaining to the whereabouts of the other record of the period were responded to with a helpless and sardonic smile. Obviously the record of the 1990s in this behalf is missing or has been deliberately concealed from this Commission. So much so even the record of the aforesaid letter by Mr. Malik Muhammad Qayyum (a copy of the letter was subsequently discovered from the record provided by the Ministry of Law and Justice) and orders of the Swiss Authorities was not available. This Commission is, however, unable to say whether this is a deliberate concealment of record or an act of callous negligence or corruption. Whatever may be the case, this aspect of the matter cannot be ignored and appropriate action needs to be taken by the Government of the Islamic Republic of Pakistan.

In the aforementioned circumstances, the Commission sought and successfully obtained, some information from the National Accountability Bureau (“NAB”). However, before proceeding further, two aspects of the matter must be adverted to; firstly that the proceedings initiated by NAB were by and large under United Nations Convention Against Corruption (“UNCAC”) 2004, ratified by Pakistan in 2007. The Mutual Legal Assistance (“MLAs”) sought under the convention inhibits the undue disclosure of details of the proceedings referred to above that may have been initiated at the behest of the NAB/Government of Islamic Republic of Pakistan to any third party due to the element of confidentiality. Similarly, prior thereto and thereafter independent of the multilateral convention of 2007, further requests for initiation of proceedings for recovery and MLAs have been made by NAB, but such requests are also circumscribed by the need for confidentiality, even otherwise by and large both sets of such requests are still pending and it would be premature to state that they have not borne fruit.

Many of such requests for initiation of proceedings and MLAs were with respect to Targets which had been registered with Broadsheet LLC. (Isle of Man) and /International Asset Recovery LLC. (“IAR”). The list of such targets comprised of persons against whom there was and still is the common perception of having committed acts of corruption. This perception is widespread among the people of Pakistan. A List of persons in respect of MLAs have been filed is appended in response to this TOR under a sealed cover (**Annex-A**). It is for the Government of the Islamic Republic of Pakistan to decide whether to release these names or not, hopefully after taking proper legal advice from the Office of the Attorney General for Pakistan the Minister for Law and Justice and the Prosecutor General Accountability.

Nevertheless the list makes for very interesting reading: Regardless of who is in power, political or otherwise, it is the members of the same Target list or some of them, who are either in power or can be seen wandering in the corridors of power.

Their first names may change but the surname always remains the same. The process is akin to reshuffling a torn deck of cards.

Several of the MLAs and other procedures outside Pakistan did bare fruit, and documents of presumptive evidence were transmitted to Pakistan which were produced before various Accountability Courts. The origin of such documents included inter alia Switzerland, United Kingdom (U.K.), Poland and some other countries. Many of the cases failed in the Trial Court and appeals are pending in the Appellate forums, therefore they may not qualify as failures and closures, taking them outside the ambit of the TOR being responded to. Even otherwise, it is not appropriate to comment on matters that are *sub judice* before the Courts.

It has also been noticed that especially in high profile cases, a pattern is very obvious; when the accused in a particular reference comes to power through the revolving door policy, the References tend to evaporate, the witnesses disappear or resile from their earlier statements and more interestingly, the record received from abroad through the MLAs disappears. How the latter can result in an acquittal needs further legal scrutiny, as loss of record of a court case opens the door for attempts at reconstruction thereof, not necessarily termination of proceedings.

A glaring example which substantiates the foregoing contention is the curious instances of two voluminous sets of documents which went missing, which traced their origins in the U.K. and Switzerland. With regards to the U.K. documents, the same were obtained through the assistance of Solicitors engaged in this behalf who may very well have copies thereof. The possibility of contacting such Solicitors to obtain the documents can be explored. Insofar as the Swiss documents are concerned, they were apparently retrieved from the Swiss lawyers and transmitted to the High Commission of Pakistan in the UK. All this was done under the glaring eyes of media. We all remember the box loads of documents being rolled in a trolley to be shoved into a conspicuous white van. A great hue

and cry followed. Pursuant to an order of the Supreme Court, a NAB team was dispatched to London to retrieve such documents.

This Commission guided by Mr. Zahir Shah (the incumbent Director General Operations) examined the strong room of NAB and discovered twelve sealed diplomatic canvas bags with diplomatic identification; the Commission was told that they contained the infamous twelve boxes of documents. The photographs were taken which are appended herewith as **Annex-B**.

The Commission was informed by Mr. Zahir Shah that an inventory signed by the then Prosecutor General Accountability (PGA), NAB and some Pakistani diplomats was also available and which has since been translated by NAB through Alliance Francaise. The certified copies of the inventory in French and its translation in English is attached herewith as **Annex-C1** and **Annex-C2** respectively. It is for NAB to determine whether the contents of these boxes are of any use for initiation of fresh proceedings or are relevant in any pending appeal. However, we believe that even otherwise the common citizens of Pakistan have a right to know the contents of the documents as they encompass the magnitude of the corruption committed.

The NAB officials produced a list (incomplete) in respect of cases of matters that were closed and terminated, the list is attached herewith as **Annex-D1** and **Annex-D2** respectively. In the absence of the complete relevant record, this Commission was unable to enumerate each and every proceeding that failed or identify the specific causes thereof. With the little scraps of evidence that were available, a pattern can be deciphered that the States capacity, legal expertise and commitment for recovery and repatriation of proceeds of corruption from outside Pakistan is very limited and desperately needs to be strengthened.

The few successes in this behalf have resulted primarily through plea bargains when the corrupt persons were arrested or detained inside or outside Pakistan.

The key to such repatriation and recovery lies within Pakistan, dependent upon its investigation and judicial system, which also leaves much to be desired. There is an obvious pattern that by and large such proceedings are undertaken against the party in Opposition. Such proceedings are not necessarily fictitious, but with the change of Government, they tend to evaporate as the party in power can successfully manipulate the system to its advantage.

There are a host of other reasons why MLA requests are not responded to or refused by foreign countries. These are as follows:

- a) The requirement of the principle of dual criminality;
- b) The lack of evidence or the absence of money trail, as white collar crime are extremely complex in nature and the funds of proceeds of crime are usually routed from Islamic Republic of Pakistan through Middle Eastern countries or a country not recognized by the Islamic Republic of Pakistan;
- c) The lack of political will and economic interests of the foreign countries; and
- d) The issue of so called human rights since it is claimed that most of the people against whom the requests are sent are politically exposed persons and the foreign countries employ the excuse that even those criminals accused of white collar crimes of other countries (India) are also not taken to task with regards to proceeds of crime especially in United Kingdom. However, it would be expedient to point out that certain powers have been conferred upon the Crown Prosecution Service to inquire as to the source of *prima facie* illicit funds in the United Kingdom. Perhaps this new power can be explored.

Having said all this, one is still optimistic that one day there will be a realization that corruption cannot and should not be tolerated regardless of the fact as to who is the beneficiary of such nefarious activity. a

After all is said and done, it is clear and obvious that at a certain period of time in NAB's history when in all high profile cases especially involving illicit foreign assets, prosecutions were conducted halfheartedly but more importantly appeals against acquittals were either not filed or deliberately allowed to become time barred. NAB's a darkest hour in this regard was from mid-2011 to the end of 2017. **A pliant, passive and subservient Chairman NAB, beholden to the political parties in power is a guarantee for failure of Accountability.** †

Terms of Reference 5(i)

Any Other matter related or ancillary to the matters enumerated above

The Commission observed during its proceedings that the circumvention of the Government's systems and procedures was common, which led to serious lapses and caused financial loss and damage to the reputation of the country. If the Government's rules and procedures had not been circumvented, these lapses could have been avoided. This would have saved Government of Pakistan from damages in terms of loss to the exchequer and the country's reputation. The glaring omissions that led to the fiasco and the remedial measures that could have been taken at that time, have been identified hereunder:

1. Ensuring adherence to the instructions contained in the Rules of Business, 1973

- a) Political expediency and undue pressure for execution of Orders usually leads to wrong decisions by the officials thus damaging the country's interests at the national and international forums. The procedures described in the Rules of Business, 1973 are well established and should therefore be taken as sacrosanct by any political government and/ or any Ministry/ Division/Department/ Autonomous body in order to safeguard the interests of the Islamic Republic of Pakistan.
- b) A Federal Ministry/Division must undertake consultative process as per Rules (12) and (13) of the Rules of Business, 1973 with the Ministry of Finance (if there are matters affecting directly or indirectly the finances of the Federation) and Ministry of Foreign Affairs, before sending an International or Commercial Agreement / Contract to Ministry of Law and Justice for legal opinion and vetting. Matters relating to International Arbitration (Clauses) will invariably be referred to the Office of the Attorney General for Pakistan by Ministry of Law and Justice.

- c) No Attached department or autonomous body should be allowed to get the International Agreement/Contract vetted on its own through its legal team or Legal Advisor. They must undertake a consultative process as per Rules (12) and (13) the Rules of Business, 1973 i.e. consultations with Ministry of Finance (if there are matters affecting directly or indirectly the finances of the Federation) and Ministry of Foreign Affairs, through their relevant administrative Ministry, before finalizing the Agreement/contract and its subsequent vetting by its legal team/counsel.
- d) The above principle of consultations must be applicable in case of agreements with International or local NGOs, whereby, Economic Affairs Division and Ministry of Interior must also be consulted by the Concerned Ministries/Divisions. In the case of Attached department or autonomous body, such consultations will be through their concerned administrative Ministry/Division.
- e) The role of Ministry of Law and Justice with regard to vetting of International Agreements/ Contracts, Investment treaties etc. and those of Legal Counsels/Advisors in the Attached departments/ autonomous bodies and the consultations required with the relevant Ministries need to be further elaborated in the Rules of Business, 1973 for which an amendment in the Rules of Business, 1973 must be made by the Cabinet Division, keeping in view appropriate timelines for completing the vetting exercise without compromising on the quality of legal drafting/vetting.
- f) The desk officers while putting up cases on office files should follow instructions contained in the Secretariat Instructions, 2004 in true letter and spirit. The noting portion of the office file should contain description of the "Receipt"/Paper Under Consideration ("PUC"), highlighting the critical aspects mentioned in the Receipt/PUC, any precedents and rule position on the subject, and

clear proposal for informed decision making by the competent authority.

- g) It has to be ensured that all verbal instructions given by an Ministry/ authority/ Public Office Holder/Government functionary are reduced in writing on the note portion as per Rule 5, Sub Rule 11 A of the Rules of Business, 1973, so that such verbal instructions remain on file record, for future reference.

2. Ensuring Safe Custody of Important Government Record

It has shockingly transpired that the Ministries / Divisions / Attached departments / Autonomous bodies do not maintain and protect record of crucial matters particularly pertaining to the International Agreements/Contracts/Arbitrations. The Commission experienced extreme difficulties in getting access to record during its proceedings.

- a) The Cabinet Division through Establishment Division needs to issue Instructions to all Ministries/ Divisions/Departments/Autonomous bodies' for proper maintenance of the office record as per the Secretariat Instructions. The International and commercial contracts / agreements / arbitrations etc. have to be marked as a permanent record by each Ministry / Division / autonomous body and should be kept in a safe vault and archived properly.
- b) Ministry of Law and Justice and Office of the Attorney General for Pakistan have to ensure proper handing over and taking over of records by each officer who takes over charge or relinquishes the charge of an office. The same should also be ensured for each legal consultant posted in the Ministry of Law and Justice/ Office of the Attorney General for Pakistan and for safe keeping a backup of the record should also be kept.

- c) Ministry of Foreign Affairs and Pakistan's Foreign Missions must be directed to keep the complete record of International Agreements/Contracts in safe custody and properly archived.

3. Capacity Building

The manner in which the vetting of the Asset Recovery Agreements ("ARAs") was carried out and the way it was executed speaks volumes about the lack of capacity within the government organizations relating to International Law. The recommendation are as follows:

- a) There is a lack of capacity and understanding of International and Commercial law matters both at Ministry of Law and Justice and the Office of Attorney General for Pakistan. We understand that an **International Disputes Unit** has already been established by the Office of the Attorney General for Pakistan but the same is chronically short of manpower. The hiring of Human Resource for this unit should be done on war footing basis.
- b) Similarly, capacity building of Ministry of Law and Justice is required by hiring of competent lawyers having International Law and commercial law experience of at-least 5-10 years. The Federal Government has already facilitated the Ministries/Divisions/ government organizations to hire skilled manpower on market based salary (0.5 million-2.0 million per month) through introduction of Special Professional Pay Scale (SPPS) Policy 2019. The Cabinet Division must instruct Ministry of Law and Justice to hire competent International and Commercial Law experts for the Federal Government.
- c) International Law and Commercial Law must be included as subjects in the training programs of the Civil Services Academy and the specialized training programs. Further, the officers have to be

further acquainted with the Contract Law and case studies related to International and commercial agreements during their mid-career management, senior management and national management courses, for which instructions must be issued by Establishment Division.

4. Due Diligence Requirements for Hiring of International Consultancy Services and placing restrictions on the role of Private Consultancy firms

Due diligence in the hiring of Assets Recovery Companies was strangely found lacking which was one of the factors, which is responsible for the current predicament faced by the country. Accordingly,

- a) Due diligence requirements need to be ensured for hiring of Consultancy services particularly of international companies being hired for specialized tasks. In the case of International Companies, Cabinet Division may issue instructions to the Ministry of Foreign Affairs to conduct due diligence of the international companies through their Foreign Missions including checking Certificate of Registration/ incorporation, Companies' location with contact numbers, Board of Directors, Certificate of good faith (Financial strength and Market reputation), and whether the company is involved in any litigation or liquidation proceedings etc.
- b) The practice of allowing open access to the representatives of international private agencies/ private consultancy organizations into the government offices should be discouraged as it dilutes security protocols in respect of official records/information. These tactics are often used to bring the public officials either under duress or influence them in-order to extract official information/documents to serve their own or some third party's vested interests.

5. Ensuring that there is No Conflict of Interest of the Public Office Holder

- a) Public Office Holders should not have any "Conflict of Interest" in case of dealings with Private Sector firms/parties who are awarded contracts. They have to submit a "No Conflict of Interest" Statement on Oath. If found to be fraudulent at any stage, the Public Office Holder should be debarred from holding any office for certain period of time till the cause creating the Conflict of Interest ceases, proof of which is to be provided by the Public Office Holder.

The Commission has identified the above weaknesses with the hope that the remedial actions will be taken by the Government but alas actions in the past tell us that nothing will be done.

The French economic journalist Frederic Bastiat, best known for his work, '*The Law*', and the '*Parable of the broken windowpane*', in the mid 1800s wrote as follows:

"When plunder becomes a way of life for a group of men living together in society, they create for themselves, in the course of time, a legal system that authorizes it and a moral code that glorifies it"

The above quotation is uncanny in its applicability in present day Pakistan. Corruption has infected every institution in the country. All four pillars of the state are afflicted with this malaise but perhaps what is worse is that the most blatant acts of corruption, even those without the benefits of a fig leaf, are not only condoned but also applauded. Histrionics are mistaken for heroics.

As a nation, we must dismantle the structures that give rise and protection to corruption. Corruption gnaws away at the scaffolds that support state structure and polity; the state must not tear the scaffolds that support its existence.

The apologists of corruption, are dime a dozen. I wonder whether this phenomenon reflects some perverted form of ancient tribalism, moral bankruptcy, or such persons are simply standing there with their mouths open, tails wagging hoping for some crumbs from the table. Whatever it may be, as somebody said and I quote:

“When I saw corruption, I was forced to find truth on my own. I couldn’t swallow the hypocrisy.”



Justice (Retd.)

Sheikh Azmat Saeed

Chairman of the Commission