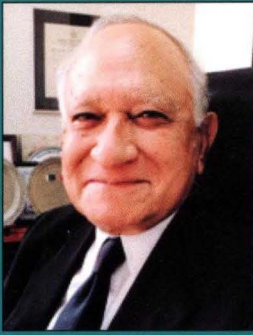


Resolving Environmental Disputes in Pakistan: The Role of Judicial Commissions

Dr. Parvez Hassan

Pakistan Law House



Dr. Parvez Hassan, Senior Advocate, Supreme Court of Pakistan and Senior Partner of Hassan & Hassan (Advocates) in Pakistan, is currently the President of the Pakistan Environmental Law Association. His educational credentials include a Bachelor of Laws from Punjab University in Lahore, a Masters of Law degree from Yale University and a Doctorate of Law from Harvard University.

Dr. Hassan has led environmental public interest litigation in Pakistan starting with the internationally-acclaimed Shehla Zia case which he successfully argued before the Supreme Court of Pakistan in 1994. He is the draftsman of the Environmental Legislation in Pakistan and served on its highest Pakistan Environmental Protection Council. He also chaired the National Environmental Quality Standards Implementation Committee.

(Continued)

Resolving Environmental
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Dr. Parvez Hassan

PAKISTAN LAW HOUSE

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First Edition 2018

Karachi

Pakistan Law House
GPO Box 90
Pakistan Chowk
Karachi-74200
Phone: (021) 3221-2455, 3263-95
E-mail: pak_law_house@hotmail.

Lahore

Ground Floor
1st Shop, Micop Centre
1, Mozang Road
Lahore
Phone: (042) 3724-2995

Islamabad

Mezzanine Floor
Shop No. 5
105, Wasil Plaza
Fazl-e-Haq Road
Blue Area
Islamabad
Phone: (051) 234-8234

ISBN: 978-969-8372-36-1

Printed at

Maqsood Press, Karachi

Price Rs. 2,500.00

Dedicated, in gratitude, to

Ms. Nighat Hassan

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Acknowledgments

I express my heartfelt appreciation to Chief Justice Syed Mansoor Ali Shah for the generosity of his remarks in the Preface.

The submission of the final manuscript for this book was handled by my colleagues at Hassan & Hassan (Advocates), Ms. Myra Khan and Mr. Umair Saleem. They went through the arduous process of proof-reading all the materials particularly the judgments and reports included here. My gratitude to them as well as to another colleague, Mr. Shujaat Umar Pirzada, who handled an earlier effort in this matter.

Several of the judgments and certain materials in this book are included in the Pakistan Legal Decisions and the Pakistan Law Journal. I thank them for their permission to use these.

My friend and publisher, Mr. Kamran Noorani, gave this effort the same special handling as he had done for my Stories of Gratitude published by the Pakistan Law House in 2016. My continuing gratitude for his friendship and support.

I want to also gratefully acknowledge the enormous support that I have received in all my pro bono work from Mr. Razak Dawood, and, more recently, his Bilquis and Razak Dawood Foundation (BARD). BARD supported the publication of Stories of Gratitude and Mr. Razak Dawood has, in many ways, encouraged the publication of this book. I am particularly grateful to these life-long friends, Bano and Razak Dawood, for allowing this book to carry the inspirational message – Our Vision and Our Profile – of BARD to transform lives. It was a pleasure and privilege for me to be a part of the founding of BARD.

Finally, as another heartfelt acknowledgment, I include in this book my tribute to Sardar Muhammad Iqbal, former Chief Justice of the Lahore High Court, who mentored me to the legal profession.

Dr. Parvez Hassan
Senior Advocate
Supreme Court of Pakistan

Lahore, 30 September 2017

Resolving Environmental Disputes in Pakistan: The Role of Judicial Commissions



Our Vision

Giving people an opportunity to realize their potential.

Create an environment, which provides an opportunity to realize the potential of every individual – be it a sportsman, a scientist or an entrepreneur. BARD Foundation is built on this dream. To transform lives by developing a spirit of adventure and the courage to dream and through hard work and grit, enable people to go beyond their circumstances.

Our Profile

BARD Foundation believes that if nurtured, commitment and passion have the power to change the world. We encourage people who want to change their circumstances and soar beyond. BARD Foundation is a venture undertaken by Bilquis and Abdul Razak Dawood to enable less fortunate individuals to realize their potential as champions in their chosen field. BARD Foundation's primary goal is people development with special focus on skills. One such venture of the BARD Foundation is DTI (Descon Technical Institute). DTI imparts vocational skills to enable individuals to change their lives for themselves and their families. The students at DTI are a reflection of what the BARD Foundation stands for; instilling a sense of “can do” into them whilst preparing them to look at challenges as opportunities to excel. Our mission is to support and nurture talented and motivated individuals. BARD Foundation's journey to help people achieve their dreams has just begun. The Foundation extends assistance to anyone who has the desire to reach for the sky and become part of this transformational journey. BARD will be the catalyst for upward social mobility within the society it operates in.

Resolving Environmental Disputes in Pakistan: The Role of Judicial Commissions

Sardar Sahib: My Mentor¹

Dr. Parvez Hassan

Sardar Muhammad Iqbal, former Chief Justice of the Lahore High Court, died on 4 May 2008. He was elevated to the Bench in 1962 following one of the most successful and charismatic law practices that this country has known. I was his junior, as we were then called, from 1961-62. In fact, when on 5 August 1962, I was leaving for a Master's Program at Yale Law School, he graciously came to the airport to see me off and confided that he had accepted to be a Judge of the Lahore High Court which would be announced in a few weeks. This gives me the distinction of being his junior most junior.

That was the beginning of a long association of an ustad and shagird². It continued till the last few weeks of his life when he instructed me to act as his lawyer and to serve some legal notices for and on his behalf. He later summoned me to the Shaikh Zayed Hospital where he had been moved to instruct on the follow up to the legal notices.

Between these almost five decades of my association, I want to capture some of my memories/snapshots with Sardar Sahib, as most of us, respectfully, called him.

The first thing that overwhelmed me about Sardar Sahib was the respect, affection and attention that he received from one and all. During the last one year of his law practice in Lahore before his elevation to the High Court when I worked with him, his chamber was the storm centre of all that was happening in the country. Any big matter in the news – whether civil, criminal or political – you could be sure that it would end up for Sardar Sahib's handling. For a young lawyer, it was fascinating to be regularly receiving clients in the office who were news celebrities. Whether it was a prominent bureaucrat who had lost his foreign wife to a General or a General's wife who was complaining of domestic violence, or a well known feudal family involved in a murder charge, they all reached out to Sardar Sahib for help.

1. This was published in The Nation, 9 May 2008, on the death of Sardar Muhammad Iqbal.

2. Urdu words for "teacher" and "student".

The other remarkable aspect of Sardar Sahib was that he was the last genuine generalist lawyer. Specializations such as in insurance, corporate and regulatory work were on the horizon but Sardar Sahib handled criminal, civil, revenue, litigation, taxation, and transport cases with consummate skills and flourish. A typical day for him would start with almost the break of dawn for his teaching at the Punjab University Law College/Civil Services Academy. He would move to several transport route or revenue cases at the Board of Revenue. Next, he would be doing an important murder case at the district courts. He would, finally, arrive in the High Court to attend to a list of at least 10 cases per day. All this by 3 p.m., then to his office at 4 Mozang Road, to recap the day and plan the next. A few hours visit to his house at White House Lane and a smiling Sardar Sahib would reappear in the office by 6 p.m. The preparation of the cases for the next day would keep him and all of us in the office well past midnight each week day – and the week-ends were equally vulnerable to his dedication to work.

Sardar Sahib was obsessive about thoroughness and no detail in the brief ever escaped him. He was meticulous in his legal research after he had fully mastered the facts. And, we juniors who helped the preparation of his cases proudly witnessed the excellence of his advocacy, his razor sharp intellect, and his fierce memory, all combining to the magic that was Sardar Iqbal. You invariably felt sorry for his adversaries. I give all these details to emphasize both his hard work and his work-ethic: the client deserves and should get the best.

The rigours, stresses and pressures on him would have affected the personality of most individuals but another hallmark of Sardar Sahib was his charm, ever-constant smile and pleasantness. This is a gift of nature and this endeared him to everybody who came in contact with him. For the entire period that I worked with him, I never saw Sardar Sahib lose his temper with any junior, staff or in his inter-actions in the court – or with anybody.

Sardar Sahib had the unique gift of making everybody he met feel special. He encouraged all who came in contact with him. As a Judge, he was known for his warmth particularly to the younger lawyers. All of us have a story about how the first time we appeared before him reinforced our self-confidence. He would overlook the legion faults or shortcomings of a young lawyer but always notice and bring up his good qualities, even if that seemed an impossible discovery.

When with other lawyers, Sardar Sahib never allowed a junior or younger lawyer to pay; the lunch, tea, dinner or cold drink was always the “privilege”, as he put it, of the Senior. His generosity with juniors was not commonplace; contrarily, it was unique at that time.

Elegance seemed his natural *forte*. He dressed well, rode good cars, lived well, spoke well, worked well and earned well. Elegance permeated both his office and home. Iffat Apa, Sardar Sahib’s charming wife, provided the ideal family setting for a man destined for success. She shared his passion for hospitality, good living and style. His offices, where we worked, were equally impressive. This was an era when the telephones, air conditioning, hospitality tea and cold drinks in the office were only for the use and enjoyment of the Senior and the visiting client. But Sardar Sahib lived and worked with a pioneering egalitarianism that was ahead of his times in that it allowed juniors equal access to these facilities.

Indebted as I have felt to Sardar Sahib for having guided me to join the legal profession and to have nurtured my interest in it, I always looked for opportunities to reciprocate his affection. But it was a measure of his total self-reliance that he would rather always give than take. He, however, turned to me, during a lifetime of association, for only two (2) personal recommendations. One, during the elections in 1993, he came to my house early in the morning to recommend a candidate for a ticket for the National Assembly. I was then on the Parliamentary Board of the Tehrik-i-Istiqlal and it turned out that we had fewer candidates than the seats. Sardar Sahib’s recommendee automatically got the seat and, also, the gratitude of the Party. The second occasion was when, as Chief Justice of the Lahore High Court, he suggested that his son, Shahid Iqbal, work with me as I had done with him almost fifteen (15) years earlier.

I was on the popular TV Program 50 Minutes on Sardar Sahib’s last evening in this world. His family that has, over the years, lovingly included me as its own informed me that he postponed his dinner to finish watching the Program as he had found that I was in it. For an ustad to show this deference and be complimentary about a grateful shagird in his final hours will remain an important memory of my life.

Sardar Sahib was a gift to Lahore, the legal profession, and this country. I am fortunate that I was a part of his generation to have witnessed firsthand the glow and warmth of his personality and humanity.

Resolving Environmental Disputes in Pakistan: The Role of Judicial Commissions

For the past few years, I had been talking to several of Sardar Sahib's legion juniors that we should plan an evening in his honour. I knew that the light was fading and each of us had so much to acknowledge in his debt. This did not happen. I would always regret this. But I feel somewhat compensated that I had turned to him as my mentor in 2003 to dedicate the Dr. Parvez Hassan Environmental Law Centre to the Punjab University for and on my behalf. Thank you, Sardar Sahib, for enriching my life with your attention, wisdom, affection, and love.



PREFACE

The history of Environment Law in Pakistan would be incomplete without acknowledging the momentous contribution and inspiring leadership of Dr. Parvez Hassan. He planted the seed of environmental law in Pakistan, way back in the Seventies and for almost four decades has nurtured it with unrelenting commitment.

Dr. Hassan was the force behind the first environment legislation in the country in 1983. He represented Shehla Zia, an activist, in an environmental case,¹ which was to become a cause celebre for future generations. His passion for the environment took him beyond law and jurisprudence as he established, with his own resources, the first Environment Law Centre² in the country, which he endowed to the University of the Punjab, his alma mater. Dr. Hassan also spearheaded and funded the setting up of the Shaikh Ahmad Hassan School of Law (SAHSOL) at the Lahore University of Management Sciences (LUMS) and the Razia Hassan School of Architecture (RHSA) at the Beaconhouse National Univeristy, Lahore.

My association with Dr. Hassan goes back a couple of decades. As a young lawyer, I had the opportunity to work on the environment with Dr. Hassan on various occasions. From sharing mutual admiration for Justice Saleem Akhtar, who undoubtedly fathered the green jurisprudence of our country, to becoming an active member of the Pakistan Environmental Law Association (PELA), chaired by Dr. Hassan. We worked side by side in the Clean Air Commission and Solid Waste Management Committee - Commissions constituted by the Court. Dr. Hassan was a founding member of the Asia Pacific Centre

¹ PLD 1994 Supreme Court 693

² Dr. Parvez Hassan Environmental Law Centre

for Environmental Law (APCEL) at the National University of Singapore (1996) of which I am privileged to be an alumnus. As a judge, I happened to re-connect with Dr. Hassan on a number of exciting environmental initiatives. We represented Pakistan at the South Asian Judicial Roundtable on Environmental Justice, organized by Asian Development Bank (ADB) (2013-2016) and led by dynamic Ms. Irum Ahsan. I also became the founding member alongwith Dr. Hassan of the Global Judicial Institute for the Environment (2016) at the World Congress on Environmental Law, Rio under the stewardship of Justice Antonio Herman Benjamin, Supreme Court of Brazil.

The fusion of fundamental rights and international environmental law principles resulted in the development of an interdisciplinary and inquisitorial brand of justice, also referred to as environmental justice. The Courts realized that they required skills including in environmental science, economics, natural science, and technology to adjudicate upon environmental issues. The Court reached out to, none else but Dr. Parvez Hassan, to steward this new brand of justice. I had the honour of being jointly associated with Dr. Hassan on the Lahore Solid Waste Management Committee and the Lahore Clean Air Commission.

And so begins the story of the Commissions. From a mere fact-finding body, the Commissions evolved into broad-based fora comprising technical experts, government and members of the civil society to propose sustainable solutions to environmental issues. As the issues became more complex, the Commissions set out to propose multiple technical solutions. In the Lahore Air Pollution Case,³ the Clean Air Commission had to organize an international conference at Lahore to map out future strategies, which were presented as recommendations to the Court and duly acknowledged. Then came rolling review or continuing mandamus as a judicial technique to deal with environmental cases. Commissions have adapted to this change and have started closely monitoring the progress of the Court directions and the environmental agenda.

Moving from environmental justice to climate justice. In the Climate Change Commission constituted in the Asghar Leghari Case,⁴ the Commission is helping build capacity of the government in issues relating to climate change, finding pathways to effectively implement the Climate Change Policy of the Government and continuously monitoring the progress for the Court. Recently, the Court has constituted the Houbara

³ PLD 2007 Lahore 403

⁴ Writ Petition No. 25501 of 2015 at the Lahore High Court, Lahore

Bustard Commission to conduct a survey whether hunting of Houbara Bustard is sustainable activity in Punjab.⁵

What Commissions do, the Courts cannot. Commissions have, therefore, come to stay as an inevitable part of the environmental litigation. A bandwagon that takes all the stakeholders on board and ensures a win-win for the environment.

Constituting a Commission by the Court is easy but managing the Commission, harnessing the dissenting voices, building consensus and finding a sustainable solution requires ability and leadership par excellence. A Commission is as good as the Chair that heads it. Dr. Hassan and his remarkable leadership, have made these Commissions a success, which in turn have played a pivotal role in the development of our environmental jurisprudence.

This invaluable book records the journey of our environmental jurisprudence, highlighting for the first time, the role of the Commissions - the real engines of change.

Thank you Dr. Parvez Hassan!!!



Syed Mansoor Ali Shah
Chief Justice
Lahore High Court
Lahore
20th June 2017

⁵ Writ Petition No. 32 of 2014 at the Lahore High Court, Lahore

INTRODUCTION

This Compilation covers my involvement in the Commissions set up by the Supreme Court of Pakistan and the Lahore High Court in some important environmental disputes before them. It provides a complete record of the appointment of each Commission, its terms of reference, its membership, its work, its Report and how the recommendations of each Commission were factored in the final judgment of the Court.

This association with Court-appointed Commissions started with what is likely the first environmental case, the Asphalt Plants Case,¹ in which a "commission" or "expert" was appointed by Mr. Justice Khalil-ur-Rahman Khan of the Lahore High Court in 1991. Starting in 1977², I had commenced writing and speaking at public fora to "introduce" environmental protection in Pakistan and I was pleased to see this first recognition by a Court of my interest in the field in its appointing me to visit the site and make a report/recommendation to the Court. The United Nations Conference on Environment and Development - the Earth Summit - had still to take place in Brazil in 1992 but the Lahore High Court had anticipated the growing international interest in environmental protection.

This story of the superior courts of Pakistan turning to my assistance in the resolution of environmental disputes was to be repeated over the years. And this story is the subject matter of this Compilation.

In almost all the environmental cases in which I have appeared, I have always argued that the Courts must look to experts to assist them in understanding technical and policy

¹ While the relevant Chapter gives the accurate title and citation of each case covered by the Chapter, the Chapter headings and the discussion, some times, use the popular subject matter of the case.

² For the background to my interest and association with "environmental protection", see my acceptance speech on the award of the Elizabeth Haub Prize in Brussels, Belgium, in 2000, Dr. Parvez Hassan, Environment and Sustainable Development: A Third World Perspective, 2002 All Pakistan Legal Decisions, Journal, at 15-27. I had by this time filed my first environmental Writ Petition, W.P. No. 642 of 1990, Roedad Khan vs. Federation of Pakistan, in 1990 in respect of the threat to the Margallah Hills in Islamabad before the Lahore High Court, Rawalpindi Bench. For a comprehensive overview of the law, policies, institutions and case law in Pakistan on environmental protection, see Dr. Parvez Hassan, From Rio 1992 to Johannesburg 2002: A Case Study of Implementing Sustainable Development in Pakistan, (2002) 6 Singapore Journal of International and Comparative Law, 683-722. An earlier review may be found in Dr. Nasim Hasan Shah, Environment and the Role of the Judiciary, PLD 1992 Journal 21, at 27.

considerations in resolving environmental matters. Why Commissions are useful in this respect is explained in The Role of Commissions in Public Interest Environmental Litigation in Pakistan, Chapter 1.

Although I was not involved, as a party or counsel, in the Asphalt Plants Case before the Lahore High Court, the Court had directed my assistance on its own motion. My appointment, the Report I submitted to the Lahore High Court, and the resolution of the controversy in terms of the recommendations made by me are covered in Chapter 2.

The landmark Shehla Zia case, PLD 1994 SC 693, in which I appeared as counsel to the petitioner, changed, jurisprudentially, the environmental landscape of the country. In a judgment that has resonated eloquently since 1994³, the Supreme Court of Pakistan found that the right to the enjoyment of a clean and healthy environment is included in the constitutionally-protected right to life guaranteed by Article 9 of the Constitution of Pakistan and the right to dignity guaranteed by Article 14 of the Constitution. The outcome of the Shehla Zia case was influenced, I believe, by Pakistan's leadership, as Chair of Group 77, at the 1992 Earth Summit in Brazil⁴ and by my first hand report to the Court about such leadership. The reliance of the Supreme Court on the technical experts appointed by it is the story detailed in Chapter 3.

Mr. Justice Saleem Akhtar who wrote the judgment in the Shehla Zia case (in the Full Bench presided by the Chief Justice, Dr. Nasim Hasan Shah, and including Mr. Justice Manzoor Hussain Sial) soon captured national and international prominence with his pioneering and activist interpretation of the right to life⁵. He was unstoppable after that⁶.

³ Dr. Parvez Hassan, Shehla Zia vs. WAPDA: Ten Years Later, 2005 All Pakistan Legal Decisions, Journal, at 48- 57.

⁴ Dr. Parvez Hassan, (1) U.N Summit on Environment: The Rio Declaration, The Nation, 25 May 1992; (2) Rio '92- Prospects and Challenges, The Nation, 9 June 1992; (3) Environment: Time for Action, Dawn, 24 August 1992; and (4) The Rio Summit: An Assessment, The Nation, 25 August 1992.

⁵ Dr. Parvez Hassan and Azim Azfar, Securing Environmental Rights through Public Interest Litigation in South Asia, in 22.3 Virginia Environmental Law Journal 216-236 (2004)). See also Dr. Parvez Hassan, (1) Changing Global Order: Role of Courts and Tribunals in Pakistan in Environmental Protection, 2014 Pakistan Law Journal (Journal), at 25-40, and (2) keynote address, Human Rights and the Environment: A South Asian Perspective delivered at the 13th Informal ASEM Seminar on Human Rights, at Copenhagen, Denmark, on 21-23 October 2013 and published, with Mr. Azim Azfar, in 5(2) Journal of Human Rights and the Environment (2014), at 192-212.

⁶ My tribute to Mr. Justice (R) Saleem Akhtar at the UNEP Judges Symposium (attended by the Chief Justices and senior judges from all over the world) that preceded, back to back with, the World Summit on Sustainable Development, Johannesburg, South Africa, in 2002, will be found in Judicial Activism Toward Sustainable Development in South Asia, 2003 Pakistan Law Journal (Magazine), at 39-41.

He moved fast to appoint a Commission to be headed by me in the Salt Miners Case, 1994 SCMR 2061. The five (5) members of the Commission traveled to Khewra, inspected the site and held public hearings to make specific recommendations to the Supreme Court. This narrative is covered in Chapter 4.

In 2002, an Intra Court Appeal was filed before the Lahore High Court, City District Government vs. Muhammad Yousaf, ICA No. 798 of 2002, involving land degradation and solid waste disposal issues around Lahore's solid waste disposal site, Mahmood Booti. The evolving pattern of my work, including site visits, technical experts, and public hearings came in full play in the work of the Lahore Solid Waste Management Committee. The appointment and work of this Committee is included in Chapter 5.

In 2003, an application was filed before the Lahore High Court in Syed Mansoor Ali Shah vs. Government of Punjab, Writ Petition 6927 of 1997, for the appointment of a Commission in respect of the growing air pollution in Lahore. Mr. Justice Sair Ali appointed me as the Chairman of the Lahore Clean Air Commission with the Advocate General Punjab, as co-Chair. The Commission, on my recommendation, included relevant senior government officials, Deputy Attorney General of Pakistan, representatives of academia, civil society organizations and technical experts. Syed Mansoor Ali Shah, the petitioner and the spirit behind the appointment of the Commission, was appointed Facilitator/Co-ordinator of the Commission. Chapter 6 covers the contribution of the Lahore Clean Air Commission in the final judgment of the Lahore High Court.

I was directed by the Supreme Court of Pakistan, in 2003, to assist it as an amicus curiae in Dr. Amjad Bokhari vs. Federation of Pakistan, Constitutional Petition 45 of 2003, in respect of the greatest marine environmental disaster in the history of Pakistan caused by the oil spill on the grounding and splitting into two of the oil tanker, MV Tasman Spirit, off the coast of Karachi. Suits in the matter were earlier also filed in the Sindh High Court (Karachi) and the attention of the Sindh High Court was soon drawn to the filing of the Constitutional Petition in the Supreme Court. But this case did not develop to my meaningful association as the case did not progress before the Supreme Court. However, in 2003, I had proposed, in my written submissions to the Supreme Court, the formation of a Commission to guide on the technical and policy issues of oil spills. These written submissions are included in Chapter 7. The counsels in the Suits in the Sindh High Court supported my recommendation to the Supreme Court about the appointment of the Commission.

In 2011, I was in the Supreme Court of Pakistan for another professional matter when the Lahore Canal Bank tree cutting case, Cutting of Trees for Canal Widening Project, came up before a Bench headed by Mr. Chief Justice Iftikhar Muhammad Chaudhry. The Chief Justice directed me to mediate the dispute. The narrative leading to the judgment of the Supreme Court in this case, 2011 SCMR 1743⁷, is covered in Chapter 8.

The Islamabad High Court directed me, in 2015, to head the Islamabad Environmental Commission. This effort is included in Chapter 9.

In 2015, Justice Syed Mansoor Ali Shah of the Lahore High Court constituted the Climate Change Commission with me as its Chairman. Its progress is covered in Chapter 10.

The Houbara Bustard Commission, with me as its Chairman, was appointed in 2017 by (now) Chief Justice of the Lahore High Court, Syed Mansoor Ali Shah. Its work has just started with its first meeting on 15 July 2017. The Court Order of the appointment of the Commission, the minutes of its first meeting and the Court Order dated 27 July 2017 on its preliminary recommendations, are included in Chapter 11.

A word about my appointment in most of the above cases. When the environmental matters were raised in some of the above cases, the Court initially directed my appearance as an amicus curiae.⁸ On such initial appearance, I would suggest to the Court the desirability of setting up a broad-based Commission to include all decision makers and stakeholders. My first recommendation would be the representation of the Government at the highest level as it was through the Government that the recommendations of the Commission would ultimately be implemented. This explained the inclusion of the Secretary, Health, Government of Punjab, District Nazim (Mayor), Lahore, District Co-ordination Officer (DCO), Lahore, and Director General, Environment Protection Department, Lahore, in the Lahore Solid Waste Management Committee. The Lahore Clean Air Commission included the District Nazim, Lahore,

⁷ For a fuller discussion of the "public trust" basis of this judgment, see, generally, Dr. Parvez Hassan and Ahmad Rafay Alam, Public Trust Doctrine and Environmental Issues before the Supreme Court of Pakistan, 2012 Pakistan Law Journal (Magazine), at 44-71.

⁸ Anjum Irfan vs. Lahore Development Authority, PLD 2002 Lahore 555, was the first environmental case in which I was appointed an amicus curiae. In this case, the Court passed detailed orders for the implementation of the national environmental laws "in letter and spirit".

DCO, Lahore, Director General, Environment Protection Department, Lahore, and the Deputy Inspector General (DIG) Traffic Police. The Lahore Canal Mediation Committee included the Commissioner, Lahore, and worked with the Director General, Lahore Development Authority. The Islamabad Environmental Commission included the Secretary, Cabinet, Secretary, Climate Change, and the Chairman, Capital Development Authority (CDA). The Climate Change Commission includes a roster of the top civil servants in the Federation and the Punjab Government. Members of the Provincial Assembly (Lahore Solid Waste Management Committee) or the National Assembly (Lahore Canal Road Mediation Committee and the Islamabad Environmental Commission) with a geographic or background nexus to the matter in dispute were also included in the Commissions. Technical experts from hospitals with respect to the handling of hospital wastes also provided valuable guidance in the Lahore Solid Waste Management Committee and the Islamabad Environmental Commission. Expertise from Universities and academia added to the value of the Commissions. Representation from credible civil society organizations with proven dedication to environmental matters such as the Worldwide Fund for Nature-Pakistan (WWF-Pakistan), the International Union for Conservation of Nature and Natural Resources-Pakistan (IUCN-Pakistan), and the Sustainable Development Policy Institute (SDPI) was also included.

Membership of the Climate Change Commission includes the heads of all relevant federal and provincial Ministries/Departments/Authorities, civil society organizations, academics, and media. In fact, the key players in the country are included in the Commission: the Federal Secretaries of Finance, Food, and Water and Power, the Chairman of the National Disaster Management Authority, the Chairman of the Planning & Development Department, Government of Punjab, Provincial Secretaries of Irrigation, Forest and Health, and heads of the major environmental think tanks in the country.

It is gratefully acknowledged that the Courts fully supported my recommendations for the memberships of the Commissions.

The Compilation offers a potential role that Commissions and experts can play in the resolution of complex environmental disputes before the Courts of Pakistan. It has been a success story as the courts in each case described in this Compilation almost fully "owned" and decided the cases in terms of the recommendations of the Commission. In fact, in the Lahore Clean Air case, Chapter 6, the Lahore High Court appointed a Standing Body of the Commission headed by me (Paragraph 16 of the Judgment) to implement the decision of the Court based on the recommendations of the Lahore Clean Air Commission. The

Islamabad High Court directed the appointment of an Implementation Committee for the recommendations of the Islamabad Environmental Commission (Chapter 9). The periodic reports of the Climate Change Commission have been the basis of several Orders of the Lahore High Court. Climate Change Order-19 is included, as an example, in Section E. of Chapter 10. The interim recommendation of the Houbara Bustard Commission for a survey of the migratory bird in four (4) districts of the Punjab has been included in the order of the Lahore High Court (Chapter 11).

Finally, a word of gratitude and appreciation for all the support and co-operation that I received from all the members of all the Commissions that I headed. Each of them, like me, worked on a pro bono basis and prioritized his or her attendance of the Commission meetings. In spite of the fact that all the members of the Commission were busy, each of them invariably attended all or most of the meetings of the Commission (mostly at my office), even on short notice. I like to think that this may have had to do with the realization that all of us were collectively trying to promote and improve, in a small way, the general good of the society that we are a part of.

Since this book went into printing, certain developments bear on its contents. These have been referenced, briefly, in the Epilogue.

CHAPTER 1

THE ROLE OF COMMISSIONS IN PUBLIC INTEREST ENVIRONMENTAL LITIGATION IN PAKISTAN

A. Constitutional Foundations of Fundamental Rights

B. Growth and Development of Public Interest Environmental Litigation

C. Strengthening Environmental Law through PIEL

D. Limitations of PIEL in Environmental Protection and the Role of Commissions

E. My Experience as Chair of Commissions

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CHAPTER 1

THE ROLE OF COMMISSIONS IN PUBLIC INTEREST ENVIRONMENTAL LITIGATION IN PAKISTAN*

A. Constitutional Foundations of Fundamental Rights

The Constitution of the Islamic Republic of Pakistan, 1973 (the “Constitution”), includes a catalogue of “Fundamental Rights” for the enjoyment and protection of which any person can directly approach the High Courts under its Article 199. The Constitution affirms that this justiciable character of fundamental rights “shall not be abridged” (Article 199(2)). The fundamental rights include Article 9 which deals with the right to life and Article 14 that provides for the dignity of man:

9. Security of person. No person shall be deprived of life or liberty save in accordance with law.

14. Inviolability of dignity of man etc. (1) The dignity of man and, subject to law, the privacy of home, shall be inviolable....

Article 184(3) of the Constitution even empowers the Supreme Court of Pakistan to directly take up matters involving the enforcement of any of the fundamental rights if it considers that such enforcement involves a question of public importance.

There is no Article in the Constitution that frames the “right to the environment” as a fundamental right. The reference to “environmental pollution and ecology” in Item 24 of the Concurrent Legislative List enabled both federal and provincial legislative

* This Chapter has been developed from, and updated, a paper presented at the 4th National Judicial Conference organized by the National Judicial Policy Making Committee on 22-24 April 2011 at the Supreme Court Building, Islamabad, and published, as co-authored with Ahmad Rafay Alam, in *PLD 2011 Journal* 78-89. The author has benefited from his earlier presentation on “The Role of the Judiciary and Judicial Commissions on Sustainable Development Issues in South Asia”, at the Second International Elizabeth Haub Symposium in Murnau, Germany, on 20-22 September 2006 (the article is published in 37 *Environmental Policy and Law*, no. 2 (2007); 185-193). The author acknowledges, gratefully, the research assistance of Ms. Maham Naqshband in the preparation of this paper.

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competence. But the Concurrent List was deleted under the 18th Constitutional Amendment (the “18th Amendment”) passed by the Parliament in 2010 (the Constitution (Eighteenth Amendment) Act, 2010) leaving environmental matters almost solely within provincial domains.

B. Growth and Development of Public Interest Environmental Litigation

The Pakistani judiciary has, in the past three decades, developed a dense jurisprudence of public interest environmental litigation (“PIEL”) to enforce the constitutionally-protected Fundamental Rights of the public¹. The pioneering judgments in Benazir Bhutto vs. President of Pakistan² and the Darshan Masih³ cases recognized the limitations of the “Anglo-Saxon outgrowth”⁴ our system of adversarial litigation represented and sought to provide new procedural mechanisms to ensure substantial justice for large segments of society. More recently, the Supreme Court has taken suo motu notice of public interest issues as varied as the privatization of Pakistan Steel Mills Corporation Limited⁵, the New Murree Development case⁶ and loan write-offs⁷.

The need, rationale and justification for developing the PIEL jurisdiction has been explained by Mr. Justice Tassaduq Hussain Jilani in State vs. M.D. WASA:

¹ For a detailed survey of public interest litigation in Pakistan, see Werner Menski, Ahmad Rafay Alam and Mehreen Raza Kasuri, Public Interest Litigation in Pakistan (Pakistan Law House, 2000), Mansoor Hassan Khan, The Concept of Public Interest Litigation and its Meaning in Pakistan, PLD 1992 Journal 84, and Parvez Hassan, Judiciary Leading the Way (1998) 15(1) The Environmental Forum 48. For a general review of trends, in respect of public interest litigation, in the region, see Dr. Parvez Hassan and Azim Azfar Securing Environmental Rights Through Public Interest Litigation in South Asia, (2004) 22 Virginia Environmental Law Journal 215. Jona Razzaque, Public Interest Environmental Litigation in India, Pakistan and Bangladesh (Kluwer 2004) provides a seminal over-view of this subject.

² PLD 1988 Supreme Court 416.

³ PLD 1990 Supreme Court 513.

⁴ Supra note 2, at p.488 per Muhammad Haleem, CJ. In “Hardship to Litigants and Miscarriages of Justice Caused by Delay in Courts”, PLD 1991 Journal 103, Mr. Justice Ajmal Mian went as far as to say that the adversarial system was an “inherited evil”.

⁵ Wattan Party vs. Federation of Pakistan, PLD 2006 Supreme Court 697.

⁶ Suo motu Case No. 10 of 2005, 2010 SCMR 361.

⁷ Suo motu Case No. 26 of 2007.

The rationale behind public interest litigation in developing countries like Pakistan and India is the social and educational backwardness of its people, the dwarfed development of law of tort, lack of developed institutions to attend to the matters of public concern, the general inefficacy and corruption at various levels. In such a socio-economic and political milieu, the non-intervention by Court in complaints of matters of public concern will amount to abdication of judicial authority.⁸

Development in the principles of PIEL has seen the rise of a remarkable number of PIEL “tools.” These tools, which are in fact a relaxation of the otherwise strict rules of the adversarial litigation system, can be understood as a means to promote the goals of PIEL. Examples of these tools are the widening of the scope of locus standi; softening the law of limitation,⁹ precedent¹⁰ and procedure¹¹; and the transformation of the nature of proceedings from adversarial to inquisitorial. All these tools are geared towards achieving the goals of PIEL as set out in the words of the Chief Justice, Ajmal Mian, of the Supreme Court of Pakistan in Pakistan Tobacco Company Ltd. vs. Federation of Pakistan:

We are inclined to hold that the question whether a particular [public interest litigation] petition is maintainable is to be examined not on the basis as to who has filed the same, but the above question is to be determined with reference to the controversy raised in the Constitution petition, and if the controversy involves a question of public importance with reference to the enforcement of any of the Fundamental Rights the same will be sustainable. (emphasis added)¹²

Thus in PIEL cases, the subject matter of the PIEL petition dictates the procedure of the Court¹³ and the function of the Courts is to provide a forum for democratic debate and to find “consensus” solutions to public issues.

⁸ 2000 CLC 471 (Lahore).

⁹ See Ghulam Ali vs. Ghulam Sarwar, PLD 1990 Supreme Court 1, where the Court refused to accept a plea that a female petitioner’s arguments had become time-barred.

¹⁰ Inayat Bibi vs. Isaac Nazir Ullah, PLD 1992 Supreme Court 385.

¹¹ Khalil-uz-Zaman vs. Supreme Appellate Court, Lahore, PLD 1994 Supreme Court 885.

¹² 1999 SCMR 382, and see Menski, Alam & Kasuri, *supra* note 1.

¹³ See Dr. Faqir Hussain, “Public Interest Litigation in Pakistan,” PLD 1993 Journal 72.

C. Strengthening Environmental Law through PIEL

In the landmark PIEL decision in Shehla Zia vs. WAPDA¹⁴, the Supreme Court of Pakistan held that the right to a clean and healthy environment was part of the Fundamental Right to Life guaranteed by Article 9 and the Right to Dignity guaranteed by Article 14 of the Constitution. In this case, the Supreme Court also introduced the Precautionary Principle of environmental law, as enshrined in the Rio Declaration¹⁵, into Pakistani jurisprudence.

Subsequent to the Shehla Zia case, the Pakistan Environmental Protection Act, 1997 (“PEPA”) was passed by the Parliament and became the environmental law of the land, repealing the earlier Pakistan Environmental Protection Ordinance, 1983. But, in 2010, Pakistan responded to the demands of the provinces to bring about major changes in the constitutional arrangements with respect to the competence and the jurisdiction of the provinces in certain fields. The provinces were seeking more powers and autonomy under the federal scheme and the 18th Amendment enabled the devolution of powers from the federation to the provinces in some fields. Prior to the 18th Amendment, many subjects were within the federal as well as provincial jurisdictions as included in a Concurrent List. The federal law-making powers enjoyed primacy in the subjects listed in Concurrent List in case the provinces also legislated in the same area. The 18th Amendment has abolished the Concurrent List and the result is that the matters of “environment and ecology” which were originally included in the Concurrent List have been eliminated. In effect, now the environment is a provincial subject and the federal government lacks the competence to deal at a national level in this important field. PEPA, however, continues to apply to the Islamabad Capital Territory under Article 142(d) of the Constitution.

Post 18th Amendment, the four Provinces of Pakistan, Balochistan, Punjab, Sindh, and Khyber Pakhtunkhwa, have each enacted Provincial Environmental Protection Acts¹⁶ (“EP Acts”) that generally mirror the provisions of PEPA. Each of the EP Acts has, similarly, established an Environmental Protection Agency (“EP Agency”) in the

¹⁴ PLD 1994 Supreme Court 693.

¹⁵ The Rio Declaration on Environment and Development was adopted at the 1992 United Nations Conference on Environment and Development.

¹⁶ Balochistan Environmental Protection Act, 2012, Punjab Environmental Protection Act, 2012, Sindh Environmental Protection Act, 2014, and Khyber Pakhtunkhwa Environmental Protection Act, 2014.

Province. The transition to the EP Acts was facilitated by Article 270AA (6) of the Constitution as amended by the 18th Amendment.¹⁷

The PEPA and the EP Acts incorporate the Precautionary and other Principles of the Rio Declaration. Violations of the PEPA and the EP Acts are punishable with a wide array of penalties, including fines and imprisonment. Persons aggrieved of pollution or of violations of the PEPA and the EP Acts have been provided an opportunity to file their complaints before the federal or provincial Environment Protection Agencies set up under the PEPA and the EP Acts. If complaints are not dealt with to the satisfaction of the complainant, recourse to Environment Protection Tribunals is also afforded.

Despite the statutory framework provided by the PEPA and the EP Acts and the alternative fora they provide, the superior courts of Pakistan (that is the Supreme Court and the High Courts) have taken up a number of environmental cases in their Constitutional jurisdiction, both on petition and suo motu, regarding the protection of the environment and the enforcement of the provisions of PEPA. These cases include the Lahore Canal Road case¹⁸, New Murree Development Authority case¹⁹ and Doongi Ground case²⁰.

In its suo motu jurisdiction, the Supreme Court has been able to take up high-profile environment issues and, by doing so, protect their outcome from political intervention. This has been the significant contribution of the Supreme Court to the enforcement of environmental rights.

D. Limitations of PIEL in Environmental Protection and the Role of Commissions

Violations of PEPA and the EP Acts result in litigation before the High Courts and the Supreme Court of Pakistan that would otherwise have been conducted at the level of the Environmental Protection Tribunals between the aggrieved, the EP Agency and the alleged violators. Particularly because of the authority of the Supreme Court, the receipt of a suo motu notice in any matter is of serious concern to the PEPA and the EP Agencies and these agencies tend to adopt a “wait-and-see” approach to the issue under

¹⁷ See also Industrial Relations Advisor Association vs. Federation of Pakistan, PLD 2010 Karachi 328.

¹⁸ In the matter of Cutting of Trees for Canal Widening Project, Lahore, 2011 SCMR 1743.

¹⁹ Supra note 6.

²⁰ Shehri-CBE vs. Lahore Development Authority, PLD 2012 Lahore 362

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consideration. This results in a suffocation of the capacity of the EP Agencies, which would otherwise have gained from the exposure to the issue.

Another limitation to the PIEL and suo motu proceedings with respect to the environment and violations of PEPA and the EP Acts is that the issues brought forward for consideration are often of highly technical and complicated matters. Without the benefit of precedent and previously decided cases, the superior courts of Pakistan have adopted a unique and innovative approach of appointing Commissions to investigate the issues and to make recommendations. This pioneering corpus of practice has come mostly from the vision of Justices Saleem Akhtar, Tassaduq Hussain Jillani and Muhammad Sair Ali (we environmental lawyers call them “green” Judges). In a recent case, in 2011, the Chief Justice of Pakistan, Mr. Justice Iftikhar Muhammad Chaudhry, led a bench of the Supreme Court to endorse the practice of looking to Commissions/Committees for mediating environmental disputes. And, in a yet more recent case, in 2015, Mr. Justice Mansoor Ali Shah, the Green Judge of the Lahore High Court, got international attention when he appointed a Climate Change Commission to facilitate the implementation of the national climate change policy.

The eloquent story of PIEL in Pakistan, from 1991 to date, has unfolded to the following details:

1. The Asphalt Plants Case (1991)

The first appointment of a Commission in the field of environment in the country in a public interest litigation was most probably in United Welfare Association, Lahore vs. Lahore Development Authority (Writ Petition No. 9297 of 1991) before Mr. Justice Khalil-ur-Rahman Khan of the Lahore High Court. The intervention of the court was sought for getting certain asphalt plants removed from the Petitioners’ sites in Lahore on account of serious health hazards the plants were posing for the residents. Dr. Justice Nasim Hasan Shah comments on this case:

The anxiety felt by the Court on hearing this complaint is manifest from the order it passed on 15 October 1991. Herein after noticing the contention of the petitioner it not only called upon the Lahore Development Authority to answer the allegations contained in the petition but also requested a renowned

environmentalist namely Dr. Parvez Hassan, Advocate to visit the area “to verify the complaint made and then suggest to the Court the measures to be adopted”.²¹

I visited the area, with scientific support from the Pakistan Council of Scientific and Industrial Research (PCSIR), and reported to the Lahore High Court that:

The air-borne pollutants, from the operational activity of the plant, are dispersed over a large area. ... [and that these pollutants were emitting] toxic substances like sulphur dioxide, nitrogen oxides, hetrocyclic compounds and hydrocarbons besides colossal quantities of air-borne fine dust emitted through the crush unloading at the site and during its processing at the plant.

I recommended to the Court that:

The continued operation of these plants is inconsistent with the rights of the adjoining residential areas to a clean and healthy environment. The residents are continually exposed to the obnoxious fumes and the potential health hazards unleashed by these asphalt plants. These should be removed from the site and relocated in areas where there is no danger to the environment. Even at the reallocated sites, the activities of the plants should be monitored with a view to minimize the impact of their environmental degradation.

As a result of this report, the Director General, Lahore Development Authority, passed orders for the shifting of the asphalt plants.

2. The Shehla Zia Case (1994)

In the Shehla Zia case, the Supreme Court was presented a unique petition when some residents of a residential area of Islamabad had approached the Court regarding the construction of a high voltage grid station by the Water and Power Development Authority (WAPDA). The residents, led by Ms. Shehla Zia, apprehended that the electro magnetic radiation of the grid station could be harmful for their health.

In adjudicating this case, the Supreme Court pioneered the use of judicial commissions in Pakistan to tackle complex environmental issues and to present suitable options. In its

²¹ Environment and the Role of the Judiciary, PLD 1992 Journal 21, at 27.

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order, the Supreme Court gave significant relief to the petitioners by staying the construction of the grid station until further studies were done to establish the nature and extent of the threat posed by electro-magnetic radiation emitted by power plants. Drawing on the experiences of the Indian courts, the Supreme Court set up a commission of experts to study the technical dimensions and to submit a report in this respect:

16. In the problem at hand the likelihood of any hazard to life by magnetic field effect cannot be ignored. At the same time the need for constructing grid stations, which are necessary for industrial and economic development, cannot be lost sight of. From the material produced by the parties it seems that while planning and deciding to construct the grid station WAPDA and the Government Department acted in a routine manner without taking into consideration the latest research and planning in the field nor any thought seems to have been given to the hazards it may cause to human health. In these circumstances, before passing any final order, with the consent of both the parties we appoint NESPAK as Commissioner to examine and study the scheme, planning, device and technique employed by WAPDA and report whether there is any likelihood of any hazard or adverse effect on health of the residents of the locality... as suggested above (emphasis added).²²

The public utility concerned was also directed to make a public-friendly administrative approach a norm in its future work. The *Shehla Zia* case unleashed a new paradigm in public interest litigation on environmental issues in Pakistan as the superior courts grew more receptive to appointing Commissions to progress environmental rights.²³

3. The Salt Miners Case (1994)

In 1995, the Supreme Court appointed a Commission in *General Secretary, West Pakistan Salt Mines Labour Union (CBA) Khewra, Jhelum vs. Director, Industries and Mineral Development, Punjab, Lahore*²⁴, to visit the site of extensive mining activity and to recommend remedial measures. The Supreme Court directed:

²² *Supra* note 14, at 715.

²³ See generally Parvez Hassan, *Shehla Zia vs. WAPDA: Ten Years Later*, *PLD 2005 Journal* 48, also published in *International Environmental Law Committee Newsletter of the American Bar Association's Section on Environment, Energy and Resources* 13-19 (May 2005).

²⁴ 1994 SCMR 2061.

6. In view of the above discussion:-

(i) P.C.C. is directed to shift within four months, the location of the mouth of mine No. 27A at a safe distance from the stream and small reservoir in such a manner that they are not polluted by mine debris, carbonized material and water spilled out from the mines to the satisfaction of the Commission consisting of the following members:-

(a) Dr. Parvez Hassan, Advocate, Lahore (Chairman).

(b) Dr. Tariq Banuri.

(c) Director, Industries and Mineral Development, Lahore.

(d) A member nominated by PMDC (Pakistan Mineral Development Corporation).

(e) A member co-opted by the aforestated members of the Commission.

The Commission shall have power of inspection, recording evidence, examining witnesses including the powers as provided by Order XXVI of the Civil Procedure Code. If, on the report of the Commission, it transpires that shifting of the mine mouth is not possible, then the case shall be placed before the Court for further consideration including the question whether the operation of mine No. 27A should be completely stopped; (at p. 2073-74) (emphasis added).²⁵

The Commission visited the site in Khewra, Jhelum, held public meetings and made several recommendations which were adopted by the Commission by consensus to their acceptance by the Supreme Court²⁶.

²⁵ Id. at 2073.

²⁶ Order of the Supreme Court dated 8 July 2002 in HRC No. 120 of 1993 included the direction that:

.... recommendations of the Commission shall be complied with in letter and spirit by the lease holder of the mines and no violations shall take place on the respective sites.

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As counsel of the petitioners in the Shehla Zia case, and the Chairperson of the Commission appointed in the Salt Miners case, I had a hand in shaping the orientation of the Pakistani courts towards the use of judicial commissions in public interest environmental litigation. The basic approach that was followed was to recommend to the court how commissions, in other countries, have helped provide science/technology-based solutions which lie outside the expertise of the Courts. Apart from providing the court expert guidance, the other limb of this approach was to highlight the importance of a non-adversarial, public-private partnership model for handling the most intractable civic problems.

The pattern of appointing expert commissions with broad participation of the stakeholders and involving site visits and public hearings and “consensus” recommendations adopted in this case was to imprint on the future environmental commissions in the country.

4. The Solid Waste Management Committee (2003)

In 2003, in an intra-court appeal, City District Government vs. Muhammad Yousaf²⁷, challenging the use of a site for dumping solid wastes, a Division Bench of the Lahore High Court comprising Justices Tassaduq Hussain Jillani and Bashir Mujahid of the Lahore High Court appointed the Solid Waste Management Committee to review the suitability of Mahmood Booti as a site for solid waste disposal. The Court also directed the Committee to advise on the optimal environmentally appropriate manner for the disposal of solid wastes in Lahore as well as to recommend other sites for the disposal of solid wastes as per Lahore’s requirements.

I was appointed the Chairman of the Committee comprising, on my recommendation, a broad section of representatives from both the public and private sectors. This roundtable included government officials and city administrators including the District Nazim (the Mayor of Lahore), the District Co-ordination Officer, the Director, Solid Waste

In April 2015, the Supreme Court, through its order dated 7 April 2015 in HRC No. 120 of 1993, appointed another Commission to verify the implementation of the recommendations of the earlier 1994 Commission.

²⁷ I.C.A No. 798 of 2002 filed before the Lahore High Court.

Management, Government of Punjab, Director General, EPA, Punjab, Secretary, Health, Punjab, academics and scientists, parliamentarians, specialists, environmentalists, and members of civil society (representatives of IUCN Pakistan and WWF-Pakistan). The Committee set up a sub-committee for hospital waste disposal under the Provincial Secretary, Health, who is in charge of all the public sector hospitals. It is also a reflection of the public-private sector partnership and harmonious working of the Committee that it persuaded the City District Government Lahore to arrange and finance the Environmental Impact Assessment ("EIA") of Mahmood Booti by NESPAK, a consultancy firm chosen by the Committee.

As in the Salt Miners case, the Committee was successful in orchestrating a consensus of the members of the Committee in their recommendations which were accepted by the High Court.²⁸

On 23 March 2005, Lahore inaugurated the construction of its first integrated compost and landfill plant at Mahmood Booti and the plant was commissioned one (1) year later with private sector participation on a build, operate and transfer basis. According to The News, "Lahore's first compost plan will transform around 20 percent of the city's solid waste into 250 tonnes of organic fertilizer on a daily basis".²⁹ The Solid Waste Management Committee moved with dedication and resolve to provide a model environmentally appropriate solid waste disposal regime for Lahore, hopefully to be replicated in other parts of the country.³⁰

5. The Lahore Clean Air Commission (2003)

In Syed Mansoor Ali Shah vs. Government of Punjab³¹, Mr. Justice Muhammad Sair Ali of the Lahore High Court appointed, in July 2003, a Lahore Clean Air Commission, also chaired by me and co-chaired by the Advocate General, Punjab, to recommend measures for the improvement of Lahore's air quality. This Commission, on my request, similarly

²⁸ Order of the Lahore High Court dated 25 January 2005 in I.C.A No. 798 of 2002.

²⁹ Aoun Sahi, The News on Sunday (9 April 2006).

³⁰ It was a measure of the gratitude of the city of Lahore for the work and role of the Solid Waste Management Committee that the speakers at the commissioning of the Plant acknowledged the pivotal role of the Committee in forging a science-based consensus on an acrimonious issue and thereby avoiding long years of litigation and appeals.

³¹ Writ Petition No. 6927 of 1997 filed before the Lahore High Court.

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included representatives from both the private and public sector including the City District Government Lahore. It set up sub-committees with respect to (1) clean fuel, (2) rickshaws, (3) public transport and (4) coordination with local councils. The Rickshaws sub-committee, for example, worked under the chairmanship of the Provincial Secretary, Environment, and the Clean Fuel sub-committee worked under the chairmanship of the District Coordination Officer, Lahore. Syed Mansoor Ali Shah, the coordinator of both this and the Mehmood Booti Commission, chaired the sub-committee on public transport and held public hearings at the City Government conference room. All the oil companies were invited by the Clean Fuel sub-committee to assist the work of the Commission.

The Lahore Clean Air Commission similarly finalized its Report on 26 May 2005 with a developed consensus of all stakeholders including the manufacturers and users of public transport and rickshaws. These recommendations, including toward four stroke engines for rickshaws and CNG use, were filed in the Lahore High Court. In 2006, the Secretary, Transport, Government of Punjab, joined in supporting the recommendations of the Commission before the Lahore High Court.

The Lahore High Court adopted the recommendations of the Commission. It went further. In order to ensure the implementation of the recommendations of the Commission, Mr. Justice Hamid Ali Shah directed that:

16. Standing body of the Commission, comprising of Dr. Parvez Hassan, Advocate (Chairman); Syed Mansoor Ali Shah, Advocate/Petitioner (Facilitator & Coordinator), District Coordination Officer (DCO), Lahore, Hammad Naqi, Director (Environment Pollution Unit), World Wide Fund for Nature (WWF), Lahore and Nihal Asghar, SEAL, Lahore is constituted to remain operational till the accomplished [sic] of the Commission, approved herein above from Lahore. The Transport Department and the City District Government Lahore shall regularly report their progress to the Standing Body and keep them involved in their deliberations and plans. In case the Standing Body is of the view that the recommendations are not being followed or are being deviated from, they are free to approach this Hon'ble Court for appropriate orders.³²

In this manner, the Court also provided a means for ensuring compliance and enforcement of PIEL judgments.

³² PLD 2007 Lahore 403, at 422.

6. The Lahore Canal Road Mediation Committee (2011)

In May 2006, the Traffic Engineering and Planning Agency (“TEPA”) of the Lahore Development Agency began preparations to cut down trees along the Lahore Canal Road in order to widen it for the purposes of reducing congestion. The move was resisted by a civil society organization by the name of the Lahore Bachao Tehreek (“LBT”). LBT’s activism secured an EIA of the road widening project. The LBT challenged the approval given to the EIA by the EPA, Punjab, but the case remained pending in the Lahore High Court. In 2009, when the provincial government sought to proceed with the road widening project, the Supreme Court took suo motu notice³³ of the environmental harm that would result in the felling of trees. On 14 February 2011, the Supreme Court appointed me as the mediator between the LBT and the Government of Punjab with powers to associate others for the purposes of the mediation.

By now, I had developed a successfully-experienced criteria for the appointment of Commissions/Committees. One, it must include the highest level Governmental functionaries who will ultimately be responsible for the implementation of the proposals of the Commission. Two, a member of the Provincial or National Assembly elected from the area under consideration by the Commission adds to the focus of the Commission. Three, experts must be included from Universities or with well-recognized specializations. Four, representation from civil society organizations active in the field help the work of the Commission in their respective fields. I have always included IUCN Pakistan, WWF-Pakistan, Sustainable Development Policy Institute (SDPI) and LEAD Pakistan in most Commissions that I head. I have held leadership positions in each of these organizations in the past and receive utmost co-operation and support from them. Five, a well-regarded member of the media helps in disseminating the work of the Commission. But above all is the consideration that each member of the Commission must bring unchallenged integrity to his work in the Commission.

Accordingly, eight (8) eminent citizens, elected representatives and government officials, representing the cross-section of stakeholders were requested to participate as a Committee. The Mediation Committee comprising Dr. Parvez Hassan (Chairman), Syed Babar Ali (a nationally well-respected business man and philanthropist), Mr. Sartaj Aziz (a former Foreign/Finance Minister and Vice Chancellor, Beaconhouse National University), Ms. Mira Phailbus (former Principal, Kinnaird College), Mr. Arif Hassan

³³ Suo motu Case No. 25 of 2009.

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(Urban Planner), Mr. Javed Jabbar (IUCN), Mr. Abid Qaiyum Suleri (SDPI), Mr. Ayaz Sadiq (Member of National Assembly), Mr. Nadeem Hassan Asif (Commissioner, Lahore) and Mr. Ahmad Rafay Alam (Secretary) worked closely with Mr. Ahmer Bilal Soofi, counsel of the LBT, and Mr. Salman Aslam Butt, counsel of the Government of Punjab. The constructive role of the two (2) counsels of the parties was found as critically helpful in the deliberations of the Committee.

The Committee held its four (4) meetings in an open and informal manner at the Beaconhouse National University ("BNU") and the Lahore University of Management Sciences ("LUMS") in Lahore to enable their students and faculty to participate in a dispute resolution effort impacting on the city of Lahore. Resultantly, the participants at these meetings included students and faculty members not only from LUMS and BNU, but also from Kinnaird College, Lahore and the Lahore School of Economics. Comments from the public were also invited. Mian Amer Mahmood, a former Nazim (Mayor) of Lahore, participated in the public hearings. Moreover, the Committee made a site visit which extended from Jallo Mor on the Canal to Thokar Niaz Beg so as to give the Committee members an opportunity to view and appreciate the entire stretch of the Canal.

The Committee involved the following experts in its work:

- (1) Dr. Khalid Hamid Sheikh, former Vice Chancellor, Punjab University, Lahore
- (2) Mr. Karamat Ullah Chaudry, former Managing Director, NESPAK
- (3) Dr. S. Gulzar Haider, Dean, School of Architecture, BNU
- (4) Dr. Rizwan Naseer, D.G. Punjab Emergency Services (Rescue 1122)
- (5) Mr. Khushal Khan, former Managing Director, TEPA
- (6) Mr. Umar Farooq, Director, Planning & Development Consultants (Private) Limited
- (7) Dr. Nasir Javed, Director, Urban Unit, Government of Punjab
- (8) Mr. Mustafa Kamal, Horticultural Group

Dr. Khalid Hamid Sheikh and Mr. Mustafa Kamal helped the Committee in developing the understanding of the botanical and horticultural characteristics of the natural environment along the Canal. Dr. Rizwan Naseer emphasized the importance of response time in emergencies and traffic safety. Mr. Karamat Ullah Chaudhry particularly highlighted the international standards of road safety. Dr. S. Gulzar Haider submitted that slow, progressive and steady efforts should be made to permanently reduce the traffic

load along the Canal. Mr. Khushal Khan assisted the Committee in identifying the factors that had brought traffic congestion to the present state and made recommendations about reducing traffic. Mr. Umar Farooq placed the Lahore Canal Widening Project in the context of the historical trends of urban planning for Lahore while Dr. Nasir Javed addressed the Committee on the issues that had prompted the need for the widening of the Lahore Canal Road.

The Report of the Committee was finalized on 14 May 2011. The Committee approached its mandate with a view to protecting and sustaining the heritage of the Lahore Canal. The Committee felt responsible for preserving this heritage for future generations. It was mindful of the jurisprudence of the superior courts wherein the Doctrine of Public Trust³⁴ has been applied to public spaces and was inspired by the experiences of protecting public spaces in other jurisdictions. The Committee held up the common man as the centrepiece of its concerns and attention in order to promote social equity. The “consensus” Report had eighteen (18) recommendations, the most important of which included the declaration of the Lahore Canal area as a Heritage Urban Park, re-engineering of the junctions along the Canal Road, ecosystem preservation and people-centric planning. The Committee also proposed a draft of the Lahore Canal (Heritage Urban Park) Act, 2011. The Supreme Court accepted the entire recommendations of the Committee and directed:

60. In view of what has been discussed above and keeping in view the stance of the Government of Punjab that they have accepted the report of the Mediation Committee in entirety, we hold and direct as under:--

- (i) The Bambawali-Ravi-Bedian (BRB) Canal and the green belt on both sides of the Canal Road (from Jallo Park till Thokar Niaz Beg) is a Public Trust. It shall be treated as Heritage Urban Park forthwith and declared so by an Act to be passed by the Assembly as undertaken by the respondent-Provincial Government;
- (ii) Widening of the road on both sides of the Canal Bank shall be in accord with the report submitted by the Mediation Committee;

³⁴ See, generally, Sindh Institute of Urology and Transplantation vs. Nestle Milkpak Limited, 2005 CLC 424 (Karachi) and Muhammad Tariq Abbasi vs. Defence Housing Authority, 2007 CLC 1358 (Karachi).

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- (iii) Necessary corrections/modification of some of the underpasses on the Canal Road shall be carried out as suggested in the report of the Mediation Committee;
- (iv) Proper Traffic Management Program shall be made and given effect to;
- (v) Further improvement in public transport system shall be ensured;
- (vi) Where needed and as recommended by the Committee, re-engineering of the junctions along the Canal Bank would be undertaken;
- (vii) The service roads along certain parts of the Canal Road shall be constructed/improved;
- (viii) Report of the Mediation Committee shall be implemented as agreed by the respondent-Provincial Government in letter and spirit;
- (ix) Respondent-Provincial Government and TEPA shall ensure that minimum damage is caused to green belt and every tree cut would be replaced by four trees of the height of 6/7 feet and this replacement when commenced and completed shall be notified through press releases for information of general public, copies of which would be sent to the Registrar of this Court for our perusal; and
- (ix) Elaborate measures/steps be taken to ensure that the Canal is kept clean and free of pollution. The steps should inter alia include throwing of litter and discharge of any pollutant in the Canal a penal offence. The Chief Secretary, Government of Punjab shall ensure that a comprehensive action plan is prepared in this regard by the concerned department and report is submitted to the Registrar of this Court within six weeks of the receipt of this judgment.³⁵

Pursuant to the recommendations of the Committee, the Lahore Canal Heritage Park Act, 2013, was passed by the Punjab Assembly on 7 January 2013.³⁶

³⁵ *Supra* note 18, at 1801.

³⁶ PLD 2013 Supp II, Punjab Statutes, 295.

The Government of Punjab moved the Supreme Court in 2012, by filing a CMA No. 3221 of 2012 in the *Suo motu* Case No. 25 of 2009, for widening some other portions of the Lahore Canal Road. This was allowed as consistent with the earlier 2011 Judgment of the Supreme Court and the recommendations of the Lahore Canal Road Mediation Committee.³⁷

7. Islamabad Environmental Commission (2015)

In 2011, several writ petitions were filed before the Islamabad High Court in respect of the environment in Islamabad in which grievances relating to the inaction and non-performance of the statutory duties by the federal EP Agency and the Capital Development Authority (the “CDA”) were raised. It was contended in the petitions that certain actions and omissions of the federal EP Agency and the CDA had adversely affected the environment of Islamabad.

On 20 February 2015, the Islamabad High Court³⁸ constituted the Islamabad Environmental Commission, and appointed me as the Chair of this Commission to investigate the grievances raised in the petitions and make recommendations to prevent the further “destruction” and “degradation” of the environment of Islamabad. I was also given powers to associate others in the Commission. Accordingly, the government officials, representing the cross-section of stakeholders, civil society organizations, public representatives, representatives from the media and the academic/scientific community were requested to become members of the Commission. The thirteen (13) member Commission comprised Dr. Parvez Hassan (Chair), Mr. Arif Ahmed Khan (Secretary, Climate Change) (Vice Chair), Mr. Raja Hasan Abbas (Secretary, Cabinet), Mr. Maroof Afzal (Chairman, CDA), Dr. Muhammad Khurshid (Director General, Pakistan Environmental Protection Agency), Mr. Zulfikar Haider (Chief Commissioner, Islamabad Capital Territory), Mr. Mahmood Akhtar Cheema (IUCN-Pakistan), Mr. Hammad Naqi Khan (WWF-Pakistan), Ms. Saima Amin Khawaja, Advocate/environmentalist, Dr. Abid Qaiyum Suleri (SDPI), Mr. Asad Umar (Member of National Assembly), Syed Talat Hussain (Geo News), and Professor Dr. M. A. Baig (National University of Sciences and Technology (NUST)).

³⁷ *Lahore Bachao Tehrik vs. Dr. Iqbal Muhammad Chauhan*, 2015 SCMR 1520.

³⁸ Order dated 20 February 2015 in *Shiraz Shakeel vs. CDA*, Writ Petition No. 1276 of 2011.

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The Commission held six (6) meetings. It formed six (6) sub-committees to look at the various environmental and regulatory issues, including air and water pollution, encroachments, solid waste management and legal and regulatory framework. The sub-committees were enabled to co-opt members from in and outside the Commission.

Inasmuch as the major complaints related to changes in the Master Plan of Islamabad, the Commission turned to the expert guidance of the nationally-prominent urban planner, Mr. Arif Hasan, and requested his presence as a “special invitee” at one of the meetings of Commission. On the aspect of the major issue of hospital waste, the Commission benefited from the guidance of another “special invitee”, Dr. Javed Akram, Vice Chancellor, Pakistan Institute of Medical Sciences (“PIMS”), the largest hospital in Islamabad.

The Commission also requested the comments of the public and announced a public hearing for which a public notice was issued. The Commission received various comments and suggestions from the public in response to the public notice for such comments. A public hearing was also held by the Commission at the Pak China Center, Shakarparian, Islamabad, on 17 June 2015, which was attended by over 150 persons. The matters raised in the public hearing included the implementation of laws, encroachments, housing societies, including public participation in decision making and safeguarding the sanctity of the Master Plan of Islamabad. The Commission also received specific recommendations of Green Force through Dr. Dushka H. Saiyid, who attended the public hearing, and from Dr. Anis-ur-Rahman, Chairman, Islamabad Wildlife Management Board. Certain sites were also visited by the members. The visit to the sites was arranged by the CDA and included the F/9 Park, Steel Industry, Marble Industry wastes/effluents, site for dumping of solid wastes in Sector E-12, and PIMS.

Along with some members of the Commission, I also met with the representatives of several hospitals, including Dr. Javed Akram, Vice Chancellor, PIMS, in Islamabad on 6 October 2015 at the Ministry of Climate Change. Valuable feedback was received during this meeting which helped in the formulation of recommendations, particularly regarding hospital waste management in Islamabad.

The Report of the Islamabad Environmental Commission was finalized on 19 October 2015. The Report contained as many as twenty-three (23) recommendations with the developed consensus of all the members and stakeholders. These recommendations, including safeguarding the Master Plan of Islamabad, solid and hospital waste

management, and better co-ordination of environmental agencies, were filed in the Islamabad High Court on 20 October 2015.

The Islamabad High Court directed the appointment of an Implementation Committee to implement the recommendations of the Islamabad Environmental Commission. The Islamabad High Court was strongly inclined to my appointment as the Chairman of the Implementation Committee but the Federal Government acted well to appoint an Islamabad-based Implementation Committee. The appointment of the Implementation Committee has been notified.

8. Climate Change Commission (2015-)

In Asghar Leghari vs. Federation of Pakistan³⁹, the Lahore High Court was approached by the petitioner for the enforcement of his fundamental rights under Articles 9 and 14 of the Constitution. The petition contended that the increased heat trapping of carbon dioxide (CO₂) and other greenhouse gases in the atmosphere is increasing the global temperature which, in turn, is adversely affecting the climate of Pakistan. The petition further submitted that to combat the threat of climate change in Pakistan, the Government of Pakistan, through the Ministry of Climate Change, had introduced the National Climate Change Policy, 2012 (the “Policy”) and the Framework for Implementation of Climate Change Policy (2014-2030) (the “Framework”), but that no implementation of the Policy and the Framework has taken place.

On 14 September 2015, the Lahore High Court constituted the Climate Change Commission and appointed me as the Chair of this Commission with powers to associate others and to facilitate the effective implementation of the Policy and the Framework. As the Lahore High Court enabled the Commission to co-opt other members, the Commission exercised this power to draw from governmental Ministries, Departments and Agencies, civil society organizations, representatives from the media and the academic/scientific community.

Accordingly, the thirty (30) member Commission⁴⁰ comprised Dr. Parvez Hassan (Chair), Mr. Arif Ahmed Khan, Secretary, Climate Change (Vice Chair), and several

³⁹ Writ Petition No. 25501 of 2015.

⁴⁰ The representation of the Government in this Commission, as in all Commissions/Committees, is on an ex officio basis. This means, for example, that the Secretary, Climate Change, Mr. Arif Ahmed Khan, was replaced by his successor Secretary, Climate Change, Syed Abu Ahmad Akif.

Federal Secretaries (including of Finance, Water and Power, and Planning, Development and Reform) and Secretaries, Government of Punjab (including of Irrigation, Agriculture, Food, Forest, Health, and Environment Protection), civil society organizations, Universities and media representatives. These included Mr. Mohammad Younus Dagha, Dr. Waqar Masood Khan, Mr. Yousaf Naseem Khokhar, Capt. (Retd) Saif Anjum, Mr. Muhammad Sheheryar Sultan, Dr. Pervez Ahmed Khan, Capt. (Retd) Jahanzeb Khan, Mr. Jawwad Rafique Malik, Mr. Iqbal Muhammad Chauhan, and Mr. Seerat Asghar. The Ministry of Foreign Affairs was represented by Mr. Asim Iftikhar Ahmed, Director General (Foreign Office, UN). The Ministry of Law, Justice and Human Rights was represented by Barrister Azra Perveen Qureshi, Joint Secretary. The National Disaster Management Authority (NDMA) was represented by its Chairman, Maj. Gen. Asghar Nawaz while Mr. Ali Anan Qamar, Director, represented the Provincial Disaster Management Authority (PDMA). Dr. Ghulam Rasul, Director General, represented the Pakistan Meteorological Department while Mr. Absar Alam, Chairman, was required to represent Pakistan Electronic Media Regulatory Authority (PEMRA). Planning & Development Department, Government of Punjab, was also represented by its Chair, Mr. Mohammad Irfan Elahi, and his successor, Mr. Muhammad Jahanzeb Khan. Mr. Muhammad Irfan Tariq, DG, Climate Change, served as the Secretary of the Commission. Mr. Anwar Hussain, Assistant Advocate General, Punjab, was also a member of the Commission. The representatives of civil society organizations and media included Mr. Ali Tauqeer Sheikh (LEAD Pakistan), Mr. Hammad Naqi Khan (WWF-Pakistan), Mr. Mahmood Akhtar Cheema (IUCN-Pakistan), Dr. Abid Qaiyum Suleri (SDPI), Mr. Malik Amin Aslam (IUCN-Pakistan), Ms. Khawar Mumtaz (National Commission on Status of Women), Ms. Saima Amin Khawaja (Advocate), Mr. Mansoor Usman Awan (counsel of the petitioner), and Mr. Iftikhar Ahmad (Dunya News). Mr. Uzair J. Kayani, Assistant Professor, Shaikh Ahmad Hassan School of Law, Lahore University of Management Sciences (LUMS), was invited to the meetings to support the work of the Commission.

The Commission held six (6) meetings. The Framework specifies strategies for the implementation of the Policy which are time-bound as follows:

- (1) Priority Actions (within 2 years);
- (2) Short term (within 5 years);
- (3) Medium term (within 10 years); and
- (4) Long term (within 20 years).

I proposed, at the outset, that the best course of action for the Commission would be to focus on the Priority Actions because if these are implemented in their entirety, a substantial part of the Framework would have been implemented and will also serve to form the foundation of the other Short Term/Medium Term/Long Term Actions.

During its second meeting on 17 October 2015, the Commission appointed the following Implementation Committees to review the implementation of the Priority Actions under the Framework:

(1) Water Resources Management

- (a) Mr. Ali Tauqeer Sheikh, LEAD Pakistan (Chair)
- (b) Secretary, Ministry of Water and Power
- (c) Secretary, Irrigation, Punjab
- (d) Representative of IRSA
- (e) Water Management, Punjab
- (f) Planning Commission, Islamabad
- (g) Planning & Development Department, Punjab

(2) Agriculture

- (a) Dr. Abid Suleri, SDPI (Chair)
- (b) Secretary, Agriculture & Livestock and Food Department
- (c) Food and Agriculture Organization of the United Nations (FAO)
- (d) National Agriculture Research Centre (NARC)
- (e) Secretary, Irrigation, Punjab
- (f) Representative of Ministry of National Food Security & Research

(3) Forestry, Biodiversity, and Wildlife

- (a) Mr. Hammad Naqi Khan, WWF-Pakistan (Chair)
- (b) Inspector General (Forests)
- (c) Ministry of Climate Change
- (d) Secretary, Forest and Wildlife
- (e) Ministry of Foreign Affairs
- (f) Mr. Mahmood Akhtar Cheema, IUCN

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(4) Coastal and Marine Areas

- (a) Mr. Mahmood Akhtar Cheema, IUCN (Chair)
- (b) Secretary, Ministry of Ports and Shipping
- (c) National Institute of Oceanography (NIO)
- (d) Pakistan Maritime Security Agency (PMSA)
- (e) Ministry of Defense
- (f) Mangroves for the Future (MFF)
- (g) Ministry of Climate Change
- (h) Representative from WWF-Pakistan

(5) Disaster Risk Management

- (a) Ms. Saima Amin Khawaja (Chair)
- (b) Chairman, NDMA
- (c) DG, PDMA
- (d) Pakistan Meteorological Department
- (e) Global Climate Impact Studies Centre (GCISC)
- (f) Punjab Meteorological Office
- (g) Federal Flood Commission
- (h) Punjab Irrigation Department
- (i) Child Protection Cell
- (j) Ministry of Information

(6) Energy

- (a) Secretary, Ministry of Water and Power (Chair)
- (b) Mr. Mansoor Usman Awan
- (c) Energy Conservation Centre (ENERCON)
- (d) Alternative Energy Development Board (AEDB)
- (e) Punjab Energy Department

The Chair of each of the Implementation Committees was enabled to co-opt other members from within or outside the Commission.

The Climate Change Commission, largely facilitated by the work of its Implementation Committees, finalized its Report on 16 January 2016. The Report contained sixteen (16)

recommendations which had the consensus and backing of all stakeholders. These recommendations, among others, included climate change awareness and monitoring, financial allocation, food security and protection of ecologically sensitive habitats and species.

The Lahore High Court accepted all the recommendations of the Commission and to ensure the effective implementation of these recommendations, Mr. Justice Syed Mansoor Ali Shah, on 18 January 2016, directed that:

3. I have gone through the Findings and Recommendations of the Commission. The Commission has done wonderful work and each member of the Commission has meaningfully contributed under the able leadership of the Chairman. It is clear that the Policy, as well as, the Framework were almost untouched till the Commission was constituted by this Court, resulting in mobilizing the government machinery. Since then there has been modest progress in achieving the objectives and goals laid down under the Policy and the Framework. The Report submitted by the Commission deals with priority actions under the Framework and reveals that the priority actions which were to be achieved by 31st December, 2015, have not yet been fully achieved.

4. The Commission shall ensure that the priority items under the Framework, as far as the Province of Punjab is concerned, are achieved latest by June, 2016. The Commission is additionally tasked to look into the short term actions under the Framework and come up with a workable and achievable timetable for the same.⁴¹

All the stakeholders, government officials at the federal level and in the Punjab Government, civil society, academia, and think tanks, participated in a joint effort to implement the Framework. They showed that such an approach can be effective. It needs to be carried forward and strengthened through the recommendations of the Commission. The other Provinces – Balochistan, Sindh and Khyber Pakhtunkhwa – can replicate this small beginning to the good of Pakistan and its future generations.

In its Final Report dated 16 January 2016 to the Lahore High Court, the Commission had reported on the progress in the implementation of the Priority Areas (PAs) upto 31 December 2015. On the review of the Final Report, the Lahore High Court ordered, on 18

⁴¹ Order of the Lahore High Court dated 18 January 2016 in Writ Petition No. 25501 of 2015.

January 2016, that the “Commission is additionally tasked to look into the short term actions under the Framework and come up with a workable and achievable timetable for the same.”

The Supplemental Report dated 24 February 2017 responded to the order of the Lahore High Court dated 18 January 2016. It includes the Reports of six (6) Working Groups, giving an update on their actions on the Priority Actions. Overall, of the 242 Priority Areas given in the Framework, the six (6) Working Groups reported progress on 144 PAs and that is about 60 percent of the total Priority Areas. The progress on 144 PAs is uneven and at various stages of progress, and many will need more time and resources for completion.

The recommendations of the Commission in the Supplemental Report were adopted, on 28 February 2017, by (now) Mr. Chief Justice Syed Mansoor Ali Shah in the Climate Change Order-19.

The Chair of the Commission with the Secretary of the Commission and the Chairs of the Working Groups met with the Chairman, Planning and Development, Government of Punjab, on 17 April 2017, to facilitate the mainstreaming of climate change in the policies and upcoming budget of the Government of Punjab.

The Chairman, P&D, GoPb, responded well to the work and suggestions of the Chair of the Commission and this highlighted the growing impact of the judiciary-backed contribution of the Commission to the climate change agenda in Punjab in particular and the country in general. This presents an exciting first of a direct interface between the consultative processes of Commissions appointed by the Court with the highest decision-making body in the Government.

As a result of this meeting the P&D, GoPb, organized training courses of its officers by the Commission through LEAD Pakistan. This was an important contribution to capacity building of the most important Planning Department of Pakistan.

The Commission and this case continue before the Chief Justice of the Lahore High Court at the time of this publication. The work and effectiveness of the Commission has been immeasurably enhanced by the regular listing of this case before the Lahore High Court with the full attendance of concerned governmental functionaries, both federal and

provincial, and the numbered Climate Change Orders passed at each hearing. These Orders are promptly put on the website of the Court.

9. Houbara Bustard Commission (2017 -)

The Chief Justice of the Lahore High Court, in Naeem Sadiq vs. Government of Pakistan (Writ Petition No. 32 of 2014), appointed the Houbara Bustard Commission with me as its Chair. The membership of the Commission, including my recommendees, comprises (1) Ms. Saima A. Khawaja, Advocate, (2) Dr. Afsar Mian, Professor, (3) Mr. Khalid Ayaz Khan, Director General, Wildlife & Parks, Punjab,⁴² (4) Dr. Khalid Hamid Sheikh, former Vice Chancellor, Punjab University, Lahore; (5) Mr. Anwaar Hussain, Additional Advocate General, Punjab, (6) Mr. Hammad Naqi Khan, Director General/Chief Executive Officer, WWF, Pakistan, (7) Brig. (Retd) Mukhtar Ahmed, President, Houbara Foundation International Pakistan (HFIP), (8) Mr. Mahmood Akhtar Cheema, Country Representative, International Union for Conservation of Nature (IUCN), (9) Mr. Sardar Kalim Ilyas, Advocate, (10) Mr. Sheraz Zaka, Advocate, and (11) Mr. Umair Saleem, Advocate.

The Houbara Bustard Commission held its first meeting in my office on 15 July 2017 and recommended, as a first and preliminary measure, the conduct of a survey in four (4) districts frequented by the migratory houbara bustard. This has been approved by the Lahore High Court to be held between the second week of December 2017 till the second week of January 2018.

E. My Experience as Chair of Commissions

It is likely that no person has had the privilege and pleasure to head as many Commissions constituted by the superior courts of Pakistan as I have. I am humbled by this opportunity to make a small contribution to environmental protection in Pakistan, a mission that I singly started in my country in the 1970s. It has been a remarkable journey since then and the opportunities offered in shaping and progressing judicial environmental commissions have been immensely gratifying. So is the fact that the full recommendations of each Commission were adopted by the Courts without any exception. This success was enhanced by some Courts even appointing Implementation Committees/Standing Bodies to implement the recommendations of the Commissions (Lahore Clean Air Commission and the Islamabad Environmental Commission). The

⁴² The representation of the Government is on an ex officio basis. See supra note 40.

Courts have, additionally, facilitated the interim recommendations of the Climate Change Commission and the Houbara Bustard Commission.

With the commissioning of the Compost Plant in Lahore, it was remarkable that the public and private sector partnership reflected in the membership of the Solid Waste Management Committee facilitated this success and demonstrated the value to civil society of avoiding protracted, contentious, divisive and adversarial proceedings before the courts of Pakistan. The model, instead, was to resolve complex issues by the use of science, technology and dispassionate technical advice with the willing co-operation and support of the City Government. Each metropolis is unique but it is hoped that the experience of the Solid Waste Management Committee in Lahore may provide some useful lessons for urban environmental management in Pakistan. Equally useful would be a consensus-building approach of the Lahore Clean Air Commission, the Lahore Canal Road Committee, and the Islamabad Environmental Commission.

The use of court-appointed Commissions to resolve complex environmental issues in Pakistan has already shown promise. Moving away from an adversarial ethos of a court room to a more informal round-table of a Commission by itself promotes a dialogue and discussion between the stakeholders. Moreover, when care is taken toward an all-inclusive process of enabling all the stakeholders from both the public and private sectors to be represented in the Commission, the credibility of its work and success is significantly assured. It is particularly important to include in the Commission those Departments or Ministries of the Government that would ultimately be responsible for the implementation of the recommendations of the Commission. Eminent scientists and experts drawn from Universities and academia can anchor the work of the Commission by providing “neutral” and state-of-the-art technical and science-based advice on the complex issues before the Commission.

For a Chairman, the biggest challenge is in picking the members of the Commission. If they are to be from the most effective decision-makers in the Government, from civil society, from academia, from the legislatures and the media, each of them would be pre-occupied with his/her other commitments and may not readily find time for the Commission.

On appointing me as the Chairman of the Commission, the Court always offered that it could include in its Order any membership that I suggested to it. But I found it more effective, before hand, to reach out personally to each person that I thought could bring

value to the work of the Commission. I would typically request about 60 hours of the person's time for the work of the Commission in the next 4-6 months and would recommend to the Court the inclusion of that person in the Commission only if I got that commitment. The larger appeal for the person was the possibility of contributing to a cause of the community or the city or the nation that the Commission was expected to serve. In many cases, the person was already familiar with my work in the environment and invariably agreed to my request to join the Commission. This brings me to my grateful and proud statement that nobody ever refused my request to join a Commission headed by me.

Selecting members for the Commission becomes all the more challenging when the Chair insists on handling all the work, as I invariably did, on a pro bono basis. No member of any Commission that I headed received any remuneration and I am grateful for the prolific support that each member gave for the work and result of the Commission. The Commissions improvised their own methods of financing their work requirements. In the Solid Waste Managing Committee, for example, the District Nazim (Mayor), Lahore, a member of that Committee, undertook to finance the costs of an EIA directed by the Committee. Similarly, in the Islamabad Environmental Commission, IUCN Pakistan, a member of that Commission, on the request of the Chair, paid the travel costs of Mr. Arif Hasan, urban planner in Karachi, to attend a meeting as a special invitee of the Commission in Islamabad.

In the hearings of the Commissions, we also included those stakeholders that may be adversely affected by our recommendations. Thus, vehicular traffic was an important consideration in the Lahore Clean Air Commission. When we considered proposals for the improvement of air quality through improved vehicular traffic, we specifically reached out to Qingqi, the motor cycle rickshaw company that is an important player in this field, and tried to carry it in our recommendations. We similarly reached out to the car and motor cycle manufactures and assemblers.

The role of the Chairman can also be important in the impartiality and fairness with which he conducts the proceedings of the Commission and enables public participation and hearings to factor different points of view. The success of the Chairman lies ultimately in persuading the members of the Commission and other participants to move away from the narrower mindset and language of "I" "you" "mine" and "yours" to a more appropriate "we" "us" and "ours". Only when this central aspect of a common ground for the needs of a city or civil society is recognized and realized can a Commission succeed in the important tasks entrusted it by the Courts.

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But the use of judicial commissions is by no means a panacea as the technique can only work effectively where expert opinion is not divided⁴³ and there is a fair chance that a consensus can emerge amongst the diverse group of stakeholders. The greatest strength that a Commission can have is the unanimity or consensus on its recommendations. I have been particularly fortunate in developing a consensus in each Commission that I have headed. The Courts see the quality of the membership of the Commission and the unanimous/consensus voice with which the Commission speaks following an open, inclusive and participative process of public hearings and site visits to fully endorse the recommendations of the Commission.

With the high level/status membership of the Commissions, many Judges expressed surprise at the regular attendance of the members of the meetings of the Commission. The response has been a very good fortune in the leadership I provide to each Commission. It has to do with my involving the members in the work of the Commission, in shaping the process of our work, in developing their ownership of what we did, and in fixing the meetings of the Commission to the convenience of the maximum members. In one case, the appointing Court had directed the attendance of the members at the meetings of the Commission. But I requested the Court that it is not necessary to coercively (through orders of the Court) secure the attendance of the Commission members and that, instead, I would rather have them do so voluntarily out of their own commitment to their responsibilities on the Commission and to the respect that they may have for its leadership. This proved a far more effective means of building the team work and a sense of ownership in the Commission members.

F. Limitations in Work of Judicial Commissions

Even though the advent of public interest litigation and innovative procedural pathways such as judicial commissions threaten to obliterate the law/policy divide, the successes of the new approach in India and Pakistan have been welcomed by a public that has long

⁴³ In the Indian dam case, *Tehri Bandh Virodhi Sangarsh Samiti vs. State of U.P* (1992) SCC Supp 1 44, the Supreme Court held that it did “not possess the requisite expertise to render any final opinion on the rival contentions of the experts. In our opinion the Court can only investigate and adjudicate the question as to whether the Government was conscious to the inherent danger as pointed out by the petitioners and applied its mind to the safety of the dam. We have already given facts in detail, which show that the Government has considered the question on several occasions in the light of the opinions expressed by the experts. The Government was satisfied with the report of the experts and only thereafter clearance has been given to the project.”

been used to an apathetic legislature and a weak executive.⁴⁴ As long as environmental protection remains a low priority item for the political establishment and the state machinery, courts in Pakistan will increasingly be called upon to give practical significance to the fundamental rights guaranteed under the Constitution. However, it should be borne in mind that the activism of the courts is not a substitute for proper policy making and implementation as judicial intervention is by its very nature reactive and hemmed in by the procedural pathways that are peculiar to the legal process. The countries of South Asia are still in the early stages of environmental consciousness⁴⁵ and although public awareness of environmental issues is improving with each passing year, prioritizing environmental concerns in national planning and steady implementation of laws and policies is of paramount importance.

Though this Chapter has pointed to the usefulness of appointment of Commissions/Committees in public interest environmental litigation, this experience may be relevant to all other public interest litigation in which technical and specific backgrounds and skills are required. The Supreme Court of Pakistan has shown this lead in the appointment of Commissions to examine flood relief efforts (December 2010) and for soliciting recommendations in loans write off cases (March 2011). It is hoped that the robust experience of judicial environmental commissions covered in the following Chapters will be of some assistance to the growing role of such other commissions in the jurisprudence of Pakistan.

⁴⁴ See Ashok Desai and S. Muralidhar, *Public Interest Litigation: Potential and Problems* in B.N. Kirpal et al., (ed.) *Supreme But Not Infallible: Essays in Honour of the Supreme Court of India*, Oxford (2000) 159, on the appeal of public interest litigation in India despite the lingering questions about its constitutional legitimacy. For the Pakistan over-view, see generally Dr. Parvez Hassan and Azim Azfar, *supra* note 1, at 216-217.

⁴⁵ The dissemination and easy availability of information is crucial to any public attempt to improve environmental consciousness and activity. Jona Razzaque notes that “in India, Pakistan and Bangladesh, there is no right to environmental information or right of public participation in decision-making... There should be a specific Act or guidelines to deal with the availability of environmental information, outlining which information is available and how to go about asking for it from the government, from private individuals and companies”. See Jona Razzaque, *Human Rights and the Environment – National Experience*, (2002) 32 *Environmental Policy and Law* 99, at 107. On this and other requirements for good environmental governance, see generally, Parvez Hassan, *Elements of Good Environmental Governance* (2001) 6 (1) *Asia Pacific Journal of Environmental Law* 1, also in Donna G. Craig, Nicholas A. Robinson and Koh Kheng-Lian, *Capacity Building for Environmental Law in the Asian and Pacific Region – Approaches and Resources*, Volume II, at 985.

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CHAPTER 2

THE ASPHALT PLANTS CASE

United Welfare Association vs. Lahore Development

Authority and Others

Writ Petition No. 9297 of 1991

before the Lahore High Court, Lahore

A. Request to Dr. Parvez Hassan dated 15 October 1991

B. Report of Dr. Parvez Hassan dated 23 November 1991

C. Order of the Court dated 22 December 1991

D. Order of the Court dated 16 September 1997

A. Request to Dr. Parvez Hassan dated 15 October 1991

IN THE LAHORE HIGH COURT LAHORE
WRIT PETITION NO. 9297-91
PRESENT: MR. JUSTICE KHALIL UR REHMAN KHAN

Writ Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. Praying that by an appropriate writ or order, the action of the respondents in not removing the Asphalt Plants may kindly be declared to be illegal and without lawful authority and they may kindly be directed to remove the same forthwith.

It is further prayed that pending the disposal of the writ petition the respondents No. 2 and 3 may be directed to discontinue functioning the Asphalt Plants at the disputed site.

United Welfare Association (Registered), Allama Iqbal Town, Lahore, through Ch. Muhammad Tufail Ramey (elected President of the Association) resident of 306-Kamran Block, Allama Iqbal Town, Lahore.

Petitioner

vs.

1. The Lahore Development Authority, through its Director General, L.D.A. Plaza, Egerton Road, Lahore.
2. M/S HAKAS (Pvt.) Limited, through Irfan Mahmood Alivi, Resident Director of the Company care of Asphalt Plant situated in Hidayat Ullah Block, Mustafa Town, Wahdat Road, Lahore.
3. Sarfraz Mateen Butt alias Billoo Butt, Proprietor of Asphalt Plant situated in Hidayat Ullah Block, Mustafa Town, Wahdat Road, Lahore.

Respondents

ORDER:-

15-10-91

Mr. Iqbal Mahmood Awan, Advocate.

1. Contends that despite protest of the inhabitants and promises made, the respondent authority has not taken any practical step to stop the working of Asphalt and Stone Crushing Plants which are polluting the environment of the three blocks of Allama Iqbal Town.
2. A copy of the petition be forwarded to respondent No. 1 for report and parawise comments to be submitted within three weeks. Learned counsel may also deliver copy of the petition to Dr. Parvez Hassan, Advocate, with the request to visit the area in order to verify the complaint made and then suggest to the court the measures to be adopted. To come up on 10th November, 1991.

Sd/(KHALIL UR REHMAN KHAN)
JUDGE.

B. Report of Dr. Parvez Hassan dated 23 November 1991

Before the Lahore High Court, Lahore

Re: W.P. No. 9297/1991

United Welfare Association vs. L.D.A. and Others

Subject: Asphalt Plants along Wahdat Road, Lahore: Pollution

Respectfully Sheweth:

During the hearing of the above captioned Writ Petition on 15 October 1991, His Lordship Mr. Justice Khalil-ur-Rehman directed me to "visit the area in order to verify the complaint made and then suggest to the court the measures to be adopted".

In response to the above directive, I visited the site on 16 November 1991. As there were technical matters involved in the assignment to me, I requested Dr. Muhammad Hanif, Chief Scientific Officer and Officer Incharge, Environmental Research and Pollution Control Section of the Pakistan Council of Scientific & Industrial Research (PCSIR) to accompany me. Dr. Hanif has worked with me on many environmental causes in the country and I felt that his contribution in this matter would be important. Dr. Hanif is also the Vice President of the Environmental Protection Society of Pakistan (EPSOP).

Dr. Muhammad Hanif and I visited the three Asphalt Plants, one installed by LDA and two others by private parties along Wahdat Road, Lahore. Of the three plants, the one owned by the LDA was operational at the time of our visit to the plants site. The air-borne pollutants, from the operational activity of the plant, were dispersed over a large area around including Mumtaz Bakhtawar Memorial Hospital and the adjoining permanent settlements – Allama Iqbal Town, Canal view, PCSIR Housing Society, Azam Gardens, Punjab University Campus, Syed Maudoodi International Islamic Educational Institute (which is a residential institution) and others.

The pollutants from this activity, among others, include toxic substances like sulphur dioxide, nitrogen oxides, hetrocyclic compounds and hydrocarbons besides colossal quantities of air-borne fine dust emitted through the crush unloading at the site and during its processing at the plant. These pollutants are responsible, through their direct inhalation

by the residents of the affected localities, for a variety of diseases including also ophthalmic, respiratory, ears, nose, even carcinogenicity etc. These air-borne pollutants are even responsible for the aggravation of these diseases among those already suffering from them. With the changing pattern of the wind, these pollutants affect the entire area around the site and even pollute fodder and vegetables being grown in patches there. These pollutants are responsible for the slow poisoning of the people. The quantities of the pollutants do increase manifold when all the asphalt plants, located close to each other, operate at a time and ultimately their impact on the health of the residents of the area increases manifold.

It is clear that these plants are polluting, contaminating and poisoning the environment in the whole neighbourhood. The residents, several of whom had assembled at the site, had long tales of woe and excessive health hazards that they were experiencing. There were complaints of air discharges, settling in the kitchen utensils (and thereby entering the food chain), windows and other household items to the extent of causing a perpetual nuisance to all the residents. The complaints appeared credible in the light of what we saw.

These Asphalt plants, we were informed, are producing asphalt for use not for Allama Iqbal Town but for the entire city and district of Lahore.

The continued operation of these plants is inconsistent with the rights of the adjoining residential areas to a clean and healthy environment. The residents are continually exposed to the obnoxious fumes and the potential health hazards unleashed by these asphalt plants. These should be removed from the site and relocated in areas where there is no danger to the environment. Even at the reallocated sites, the activities of the plants should be monitored with a view to minimise the impact of their environmental degradation. A 60-90 day period would appear adequate for the relocation of these plants. In this period, the operations should ideally be stopped altogether. If essential, the operations may be curtailed during this period to the minimum. It is noted that there are no extensive civil engineering works that would need to be dismantled for such relocation. There will be a cost of relocation which the plant owners should bear in the interest of the public good and public interest.

In making the above recommendation, I have not examined the legal basis of the rights of the plant owners at their respective sites and have only considered the environmental perspective as directed by this Honourable Court.

I shall be available to appear before the Honourable Court on any date and to answer any query that the Honourable Court may have in respect of the above report and recommendation.

Submitted by

Dr. Parvez Hassan

(1) Member, Pakistan Environmental
Protection Council

(2) President, Environmental Protection
Society of Pakistan (EPSOP)

23 November 1991

C. Order of the Court dated 22 December 1991

IN THE LAHORE HIGH COURT LAHORE
WRIT PETITION NO. 9297-91
PRESENT MR. JUSTICE KHALIL UR REHMAN KHAN

Writ Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. Praying that by an appropriate writ or order, the action of the respondents in not removing the Asphalt Plants may kindly be declared to be illegal and without lawful authority and they may kindly be directed to remove the same forthwith.

It is further prayed that pending the disposal of the writ petition the respondents No. 2 and 3 may be directed to discontinue functioning the Asphalt Plants at the disputed site.

United Welfare Association (Registered) Allama Iqbal Town, Lahore, through Ch. Muhammad Tufail Ramey (elected President of the Association) resident of 306-Kmman Block, Allama Iqbal Town, Lahore.

Petitioner

vs.

1. The Lahore Development Authority, through its Director-General, L.D.A. Plaza, Egerton Road, Lahore.
2. M/S HAKAS (Pvt.) Limited, through Irfan Mahmood Alivi, Resident Director of the Company care of Asphalt Plant situated in Hidayat Ullah Block Mustafa Town, Wahdat Road, Lahore.
3. Sarfraz Mateen Butt alias Billoo Butt, Proprietor of Asphalt Plant situated in Hidayat Ullah Block Mustafa Town, Wahdat Road, Lahore.

Respondents

ORDER:-

22-12-91

Mr. Iqbal Mahmood Awan, Advocate, for petitioner.

Mr. A.R. Arshad Malik, Advocate for L.D.A.

The learned legal adviser of the L.D.A. states that the Director-General has passed the order of shifting of the Asphalt Plants from the locality in question. The schedule of shifting will be presented to the Court by the next date of hearing and meanwhile some of the plants shall also be shifted. To come up on 18th January, 1992.

Sd/(KHALIL-UR-REHMAN KHAN)
JUDGE.

D. Order of the Court dated 16 September 1997

APPEAL/REVISION No. 9297/91

United Welfare Association

APPELLANT
PETITIONER

versus

L.D.A.

RESPONDENT

ORDER:-

16-9-1997

Mr. Iqbal Mahmood Awan, Advocate and Mr. Muhammad Hussain, Advocate counsel for the petitioner. Mian Muzaffar Hussain, Addl. Legal Advisor L.D.A., Mian Ghulam Hussain, Advocate, counsel for respondent No. 3.

Mian Ghulam Hussain, Advocate stated that respondent No. 3 has already removed Asphalt Plant and the petitioner is, therefore left with no cause for concern. Mr. Muhammad Hussain, Advocate, learned counsel for the petitioner concedes the statement made by the learned counsel for respondent No. 3 and states that the Asphalt Plant has since been removed. This petition has thus borne fruit and is disposed of accordingly.

(MUHAMMAD ISLAM BHATTI)
JUDGE.

CHAPTER 3

SHEHLA ZIA CASE

Shehla Zia vs. WAPDA and others

Human Rights Case No. 15-K of 1992

before the Supreme Court of Pakistan

(PLD 1994 Supreme Court 693)

A. Judgment of the Court dated 12 February 1994

B. Modification dated 26 April 1994 of the Order reappointment of the Commission

C. Report of the Technical Committee dated 15 June 1994

44 *Resolving Environmental Disputes in Pakistan: The Role of Judicial Commissions*

A. Judgment of the Court dated 12 February 1994

P L D 1994 Supreme Court 693

*Present: Nasim Hasan Shah, C.J.,
Saleem Akhtar and Manzoor Hussain Sial, JJ*

Ms. SHEHLA ZIA and others---Petitioners

versus

WAPDA---Respondent

Human Rights Case No.15-K of 1992, heard on 12th February, 1994.

(Environmental pollution---Installation of Grid Station/cutting of trees).

Dr. Parvez Hasan for Petitioners.

Tariq Malik, Project Director, WAPDA for Respondent.

Date of hearing: 12th February, 1994.

ORDER

SALEEM AKHTAR, J.--- Four residents of Street No.35, F-6/1, Islamabad protested to WAPDA against construction of a grid station in F-6/1, Islamabad. A letter to this effect was written to the Chairman on 15-1-1992 conveying the complaint and apprehensions of the residents of the area in respect of construction of a grid station allegedly located in the green-belt of a residential locality. They pointed out that the electromagnetic field by the presence of the high voltage transmission lines at the grid station would pose a serious health hazard to the residents of the area particularly the children, the infirm and the Dhobi-ghat families that live in the immediate vicinity. The presence of electrical installations and transmission lines would also be highly dangerous to the citizens particularly the children who play outside in the area. It would damage the greenbelt and affect the environment. It was also alleged that it violates the principles of

planning in Islamabad where the green belts are considered an essential component of the city for environmental and aesthetic reasons. They also referred to the various attempts made by them from July 1991 protesting about the construction of the grid station, but no satisfactory step has been taken. This letter was sent to this Court by Dr. Tariq Banuri of IUCN for consideration as a human rights case raising two questions; namely, whether any Government agency has a right to endanger the life of citizens by its actions without the latter's consent; and secondly, whether zoning laws vest rights in citizens which cannot be withdrawn or altered without the citizens' consent. Considering the gravity of the matter which may involve and affect the life and health of the citizens at large, notice was issued to the respondents who appeared and explained that the site of grid station was not designated as open space/green area as stated in the layout plan of the area. It was further stated that the site has been earmarked as an incidental space which was previously left unutilized along the bank of nallah and was not designated as open space or green area. It is about 6-10 feet in depression from the houses located in the vicinity of the grid station site. The grid station site starts at least 40 feet away from the residences in the area and construction of grid station does not obstruct the view of the residents. It was further stated that the fear of health hazard due to vicinity of high voltage of 132 K.V. transmission lines and grid station is totally unfounded. Similar 132 KV grid stations have been established in the densely populated area of Rawalpindi, Lahore, Multan and Faisalabad, but no such health hazard has been reported. It was also claimed that not a single complaint has been received even from the people working in these grid stations and living right in the premises of the grid stations. The installations are made in such a way that the safety of personnel and property is ensured. It was further stated that electromagnetic effects of extra high voltage lines of voltage above 5000 KV on the human and animal lives and vegetation is under study in the developed countries, but the reports of results of such studies are controversial. In support of the contentions, CDA submitted an extract from the opinion of Dr. M. Mohsin Mubarak, Director, Health Services, which reads as follows:---

"The fears of the residents about the effects of high voltage transmission lines are also not considered dangerous for the nearby residents. Even a small electric point with 220 volts current or a Sui Gas installation in the kitchen can prove to be extremely dangerous if specific precautions are not undertaken and maintained. The high tension wires are not likely to harm the residents if due protection criteria are properly planned and executed. The concept of dangerous and offensive trades and civil defence is not that the candle should not be lit. A candle

must be lit to remove darkness and make the things more productive but care must also be taken not to let the candle burn every thing around."

The comments of Government of Pakistan, Ministry of Water and Power recommending the construction of grid station were also filed in which the following points were noted on the effect of electrical light and wiring on health of human beings:---

- "(c) Although the studies of effects of electric lines and wiring on the health of human beings are being carried out by different agencies/institutions of the world, there are no established and conclusive findings about any serious effects of electric lines/wiring on the health of human beings.
- (d) The effects of electricity can be considered on account of its two fields namely the electric field and the magnetic field and in this regard, extracts of section 8.11 and 8.13 of Transmission Line Reference Book of Electric Power Research Institute, California, USA on Biological Effects of Electric and Magnetic fields on people and animals are enclosed which indicate that there is no restriction on permissible duration of working if the electric field intensity is up to 5KV/m whereas in the case under consideration the electric (sic) field intensity would certainly be lesser than 0.5KV/m which value as indicated in the said extract is for a location at a distance of 20m from a 525 KV Line.

The nearest present live conductor is of only 132 KV and that too would be at a distance of more than 20m from the nearest house's boundary wall as shown in the enclosed map. This clearly shows that the nearby houses fall in a quite safe zone. As regards the magnetic fields, the intensity of the magnetic field at ground level close to transmission line varies from 0.1 to 0.5 gauss which values are less than those in industrial environments especially in proximity to low voltage conductors carrying currents as mentioned in the above extracts. In view of the above details, there should be no concern about the health of residents of nearby houses.

- (e) The apprehension that the grid station would generate and transmit excessive heat to houses is unfounded as the main equipment i.e. power transformers are properly cooled by circulation of oil inside transformer tanks and by means of cooling fans."

These opinions of the WAPDA and CDA are based on Transmission lines. Reference Book, 345 KV and above/2nd Edition, extract of which had been filed and relevant parts of which are reproduced as follows:---

"Although health complaints by substation workers in the USSR were reported (40.41), medical examination of linemen in the USA (38.39), in Sweden (19) and in Canada (56.58), failed to find health problems ascribable to electric fields. As a result of unclear findings and research in progress, no rules for electric-field intensity inside and outside the transmission corridor have been universally established. In some cases, design rules have been established to allow construction of EHV transmission lines to proceed with the maximum possible guaranteed protection of people from possible health risks.

Many studies of magnetic-field effects on laboratory items have been performed. A good general review and discussion offered by Sheppard and Eisenbud (59). Magnetic fields have been reported to affect blood composition, growth, behaviour, mune (sic) systems and neural functions. However, at present there is a lack of conclusive evidence, and a very confusing picture results from the wide variation in field strengths, frequency, exposure durations used in different studies."

WAPDA also submitted extracts from A.B.B. literature regarding insulation and coordination/standard clearances data based on LEC specification in which minimum clearance for 500 KV equipment and installation has been given 1,100 ft. and 1,300 ft. for phase-to-phase air clearance and phase-to-phase earth air clearance.

2. The petitioners were also asked to furnish material in support of their claim. They have filed news clippings from magazines, research articles, and opinions of scientists to show that electromagnetic radiation is the wave produced by magnetism of any electrical current and thus electromagnetic fields can affect human beings. The first item is a clipping from the magazine *The News International*, September 18, 1991, entitled 'Technotalk'. It refers to a book 'Electropollution -- How to protect yourself against it' by Roger Coghill. It has been observed that "now researchers are asking whether it is more than coincidence that the increase in diseases like cancer, ME, multiple sclerosis (sic), hyperactivity in children, allergies and even AIDS have occurred alongside enormous growth in the production and use of electricity". It further states that "the first warning sign came from the USA in 1979 when Dr. Nancy Wertheimer and Dr.

Ed Leeper found that children living next to overhead electricity lines were more likely to develop leukaemia. Since then, further studies have shown links with brain tumours, depression and suicide".

One US researcher found that electrical utility workers were 13 times more likely to develop brain tumour than the rest of the pollution (sic). A midlands doctor discovered a higher than average rate of depression and suicide in people living near electric power cables.

Photocopy of an article published in Newsweek, July 10, 1989, entitled 'An Electromagnetic Storm' has been filed. In this article the apprehensions and problems considered by the scientists have been discussed and reference has been made to the researches in this field in which, finally it was concluded as follows:--

"The question is whether we know enough to embark on a complete overhaul of the electronic environment. Avoiding electric blankets and sitting at arm's length from one's VDT screen (their fields fall off sharply after about two feet) seem only prudent. But drastic steps to reduce people's involuntary exposures might prove futile. For while research clearly demonstrates that electromagnetic fields can affect such process as bone growth, communication among brain cells, even the activity of white blood cells, it also shows that weak fields sometimes have greater effects than strong ones. Only through painstaking study will anyone begins (sic) to know where the real danger lies. On one point, at least, Brodeur and many of those he criticizes seem to agree: we're not quite sure what we're up against, and we need urgently to find out."

3. An article published in the magazine 'Nature', Volume 349, 14 February 1991 entitled 'EMF - Cancer Link Still Murky' refers to a study made by epidemiologist John Peters from the University of Southern California, who released his preliminary results from a case control study of 232 young leukemia victims. The results implied that leukemia reasons are co-related to electromagnetic field (EMF) exposure and that they are not dependent on how exposure is estimated.

4. In an article from Electronics World & Wireless World, February 1990 entitled 'Killing Fields', the author has discussed and produced a large number of case studies from which it was observed that at least there was two-fold increase in adult leukaemia link to fields from wires near human beings. It was further observed that if one

accepts a casual link to power line electromagnetic fields as much as 10-15% of all childhood cancer cases might be attributed to such fields. There has been a growing concern and research in the US and seven American States have adopted rights of way, but no such step has been taken in UK. The case studies also showed that:--

"Among recent residential studies, GP Dr. Stephen Perry published correlations between the magnetic-field exposure of people living in multi-storey blocks (of nine storeys or more). Wolverhampton with the incidence of heart disease and depression. Magnetic field strengths measured in all 43 blocks with a single rising cable showed very significantly higher readings ($p = 0.0002$) in those apartments categorized as 'near' the cable, averaging 0.315 T (highest: 0.377 T) against 0.161 T (lowest: 0.148 T) in the 'distant' apartments. In line with these measures, significantly more '..... myocardial infraction, hypertension, isshaemic (sic) heart disease and depression...' was reported in those living near the cable."

Other articles in the same magazine were entitled "Killing Fields, the Epidemiological Evidence" and "Killing Fields, the Politics" in which suggestion was made that "until results of this research become available moratorium should be placed on all new buildings or routing of power lines which causes 50 Hz fields in houses to exceed every cautiously set limit".

In an information sent by Mark Chernaik, Environmental Law US to Brig. (Rtd.) Muhammad Yasin, Projects Coordinator, Sustainable Development Policy Institute (SDPI), it is stated that "when electric current passes through high voltage transmission lines (HVTLs), it produces electric and magnetic fields. Although both can affect biological systems, the greatest concern is the health impacts of magnetic fields. A magnetic field can be either static or fluctuating Magnetic field from HVTLs fluctuates because the electric currents within HVLTs are alternating currents (AC) which reverse direction 50 to 60 times per second (50 to 60 Hz). Magnetic fields pass nearly unimpeded through building materials and earth". It refers to four recent epidemiological studies which show that the people exposed to relatively strong static and fluctuating magnetic fields have higher rates of leukaemia as compared to general population. It gives the figures that the rate of leukaemia was higher in over 1,70,000 children who lived within 300 meters of HVTLs in Sweden from 1960-85. Children who were exposed to fluctuating magnetic fields greater than 0.20 Ut were 2.7 times more likely to have contracted leukaemia and children who were exposed to greater than 0.3 Ut were 3.08

times more likely to have contracted leukemia (sic) than other children (Reference: Feychting, M. & Anlbon. A (sic) (October 1993) Magnetic Fields and Cancer in Children Residing in Swedish Higher Voltage Power Lines" - American Journal of Epidemiology, Vol.138, p.467). It also refers to an article "Childhood Cancer in Relation to Modified Residential Wire Code Environmental Health Perspectives, Vol.101, pp.76-80 in which studies were carried out in respect of cancer in children living in the Danver (sic) area of US and it was reported that children living in homes within 20 meters of HVTLs or primary distribution lines were 1.9 times more likely to have contracted cancer in general and 2.8 times more likely to have contracted leukaemia in particular than children living in homes with relatively moderate or low exposure to magnetic fields. Likewise reference has been made to the study relating to leukaemia in workers who maintain and repair telephone lines in US and the rate of cancer in Norwegian (sic) electrical workers who were exposed to magnetic fields. It also states that power company challenged the existence of link between leukaemia and exposure to magnetic fields on the basis that there is no biological mechanism which can explain the link. It has been stated that "there is a plausible (but still unproven) biological explanation for the link between leukaemia and exposure to magnetic fields". It also suggests methods to reduce magnetic fields from HVTLs.

5. Dr. Tariq Banuri has also made a statement and given his opinion as an expert on Environmental Economics and a student of Social Management. According to him:--

- "(a) The earlier consensus on the limited degree of the harmful effects of radiation does not exist. While at this point the expert evidence is not conclusive, regarding its impact the burden of proof has shifted from individuals to the organisation. As a result, Courts in the US have recommended more stringent safety standards.
- (b) Given the absence of proper safeguards and standards in Pakistan's research, it is unlikely that studies done in Pakistan would help decide the issue. Perforce, we would have to rely on the results of cross-country studies, or on those of studies conducted in industrialized countries. We should not regard the results in other countries as inappropriate for our purposes. These are the only results we are likely to be able to use in the foreseeable future.

- (c) Even in the latter countries, until such time as the matter gets resolved, the profession is likely to place greater weight on the critical and more recent studies than would be warranted by their frequency or number. In other words, a single study showing additional harmful consequences has more weight, than hundreds of studies that argue that there is no change."

According to him precautionary principles should be adopted and there should be a balance in existing situation, developments and the environmental hazards.

6. The petitioners have also relied on an article entitled "Regulatory and Judicial Responses to the Possibility of Biological Hazards from Electromagnetic Fields generated by Power Lines" by Sherry Young, Assistant Professor of Law, Claude W. Pettit, College of Law, Ohio Northern University, B.A. Michingan (sic) State University, Haward (sic) Law School published in Villanora (sic) Law Review, Vol. 36, p. 129 in 1991. It is an exhaustive and informative article which deals with the current state of knowledge about the biological effect of exposure to electromagnetic fields, the responses of the legal system to the possibility of biological hazards, evaluations and the proposals for regulatory response. It refers to various studies made in USA, Sweden and Canada about ELF exposure and cancer in children and adults. After referring to the various studies and the results arrived at the author has summed up as follows:-

"While the implications of these studies justify additional research, it would be both difficult and futile to base any significant regulation of electric transmission and distribution systems on rather limited data currently available. At best, various experiments have demonstrated that particular cells or animals have shown particular responses to exposure to ELF fields of particular frequencies and intensities for specific duration. The mechanism by which those effects occur are not known. It is also unknown whether the changes that have been observed are in fact harmful to the organisms involved, whether they would be harmful if they occurred in humans, or whether exposure to ELF fields results in numerous biological effects that in fact cancels each other out. Additionally, it is unknown whether humans or other animals are able to adapt to exposure, either immediately or after some threshold period of adjustment. It is known that in some of the experiments demonstrating biological effects, the effects disappeared upon increased, as well as decreased, exposure. Therefore, it is impossible to conclude that any given level of exposure will be harmless, no matter how precisely its frequency, intensity and duration are regulated, nor can it be

established that any given level of exposure is definitely harmful. Consequently, it is impossible at this time to prescribe alternations (sic) in electric transmission and distribution systems that are likely to significantly reduce the risks, if any, of exposure to ELF fields.

At present, the scientific evidence regarding the possibility of adverse biological effects from exposure to power-frequency fields, as well as the possibility of reducing or eliminating such effects, is inconclusive. The remaining question is how the legal system, including both the judiciary and the various regulatory agencies, should respond to this scientific uncertainty."

The research project known as the New York Power Line Projects (HYPLP (sic)) was established to investigate independently and without any bias on several projects particularly for considering the implication of Wythmer (sic) and Leeper study which suggested association between proximity to power lines and childhood leukaemia. The author has summarized the conclusion of this project as follows:--

"The panel concluded that they had documented biological effects of electric and magnetic fields and that several of those findings were worthy of further consideration because of their possible implications for human health. The panel was not able, however, to identify any adverse health effects. Although the replication of the Wyrthemer (sic) and Leeper study basically confirmed the study's finding of an association between power line configurations and childhood cancer, the panel was unable to offer any recommendation based on this and other epidemiological studies because of methodological difficulties with quantifying magnetic field exposure levels and the lack of any established casual relationship between weak magnetic fields and cancer. Finally the panel recommended further research in the following areas: (1) The possible association between cancer and exposure to magnetic fields, and effects of exposure on learning ability. (2) The possible existence of thresholds for biological effects; and (3) methods of power delivery for use that would reduce magnetic fields."

After this report staff task force was appointed by the Chairman of the New York Public Service Commission to evaluate the report of NYPLP and develop recommendations for consideration by it. The task force noted that "the researchers had not determined whether the effects that had been established would persist at lower field intensities or whether there was threshold below which the effects disappeared."

"Nonetheless the task force found that the results were disturbing enough to require additional epidemiological studies preferably in New York." The recommendations made by NYPLP were endorsed by the task force.

7. Dr. Mirza Arshad Ali Baig who was at that time Director-General of Planning and Development and Industrialization of Pakistan Council of Scientific and Industrial Research to a query made by Dr. Tariq Banuri has given his opinion as follows:--

"The information that is so far available, with me suggests that transmission lines give rise to magnetic fields which have extremely high intensity compared with naturally occurring fields. This is particularly the case with sources operating at power frequencies of 50 or 60 Hz were (sic) magnetic fields of very high magnitude compared with the natural are common. Any one near the transmission lines is, therefore, exposed to excessive magnetic field.

Magnetic fields give rise to induced electric fields and currents which in turn interact with the blood flow as well as living tissues. Such issues which are vulnerable to electrical excitation e.g. visio-sensory stimulation that generate magneto-phosphenes are likely to be affected on long term exposure and under high intensity of the field.

So far there is no direct evidence of effects of exposure to magnetic fields but there are indications that an excess in the incidence of cancer among children and adults is associated with very weak (0.1 to 1mT) 50 or 60 Kg magnetic flux densities such as those directly under high tension wires, welding acres, induction heaters and a number of home appliances. The ill-effects have just started surfacing up because of availability of some health facilities and institutions where ailments of many kind are being reported In Pakistan these effects may easily be attributed to anything other than scientific. Instead of waiting for abnormal cases to be reported in our situation it is perhaps, imperative that we go for sustainable development and discourage installation of transmission lines over the residential areas anywhere."

The opinion of Dr. Muhammad Hanif, Officer Incharge, Environmental Research and Pollution Control Section of Pakistan Council of Scientific and Industrial Research,

Lahore dated 10-7-1991, after referring to various studies and research made in USA, concluded as follows:--

"According to my conclusion, I draw from the literature so far read by me, there is going to be proved ill-health effects on human beings associated especially with the high voltage transmission. However, for a while setting aside the question of the ill-health effects, of high energy concentrated electrical waves, there remains a constant concern about the safety factor. The high structures especially to be installed for the transmission of electricity and the high voltage current passing though these transmission lines continue to pose constant danger to the people and the property of the area under their direct hit in case, these structures collapse due to any cause."

A documented research paper entitled Electromagnetic (EH (sic)) (sic) Radiation--A Threat to Human Health, by Brig. (Rtd.) Muhammad Yasin of Sustain (sic) Development Policy Institute has also been relied upon by the petitioners. The author has referred to some reported research conclusions as follows:--

- "(i) The risk of dying from acute myliod (sic) leukaemia is increased by 2.6 if you work in electrical occupation especially if you are a telecommunication engineer or radio amateur.
- (ii) Service personnel exposed to non-ionising radiation are seven times more than the unexposed colleagues likely to develop cancer of the blood forming organs and lymphatic tissues and are likely to develop thyroid tumours.
- (iii) 10 to 15 per cent of all childhood cancer cases might be attributable for power frequency fields found in homes (23/115 V 50 - 60 Hz). The risk of childhood cancer more than double in homes where the average 60 Hz magnetic field is over 300 MT."

He has also referred to studies in Sweden on effect of high tension power lines on the health of children and detected higher risk of leukaemia. This study also indicated that prolonged exposure to electromagnetic fields has links of leukaemia in adults. His conclusion and recommendations are to create awareness, to adopt safety standards prescribed by developed countries and undertake studies and research.

8. From the aforesaid material produced on record which contains upto date studies and research it seems that so far no definite conclusions have been drawn by the scientists and scholars, but the trend is in support of the fact that there may be likelihood of adverse effects of electromagnetic fields on human health. It is for this reason that in all the developed countries special care is being taken to establish organizations for carrying on further research on the subject. The studies are, therefore, not certain, but internationally there seems to be a consensus that the lurking danger which in an indefinite manner has been found in individual incidents and studies cannot be ignored. WAPDA on the other hand insists on executing the plan which according to it is completely safe and risk free. The material placed by WAPDA is based on studies carried out two decades back. The other statement is based on their personal observation of their workers who are working in grid stations and further that from the locality no such complaint has been made as in the present case. The research and opinion relied upon by WAPDA is not the latest one nor from authentic sources because they are merely relying upon old opinions. In the present-day controversies where every day new avenues are opened new researches are made and new progress is being reported in the electrical fields, it would be advisable for WAPDA to employ better resources and personnel engaged in research and study to keep themselves upto date in scientific and technical knowledge and adopt all such measures which are necessary for safety from adverse effect of magnetic and electric fields. On the other hand the materials placed by the petitioners are the latest researches carried out to examine the magnetic fields effect on health and also about the possible dangers that may be caused to human beings. In the absence of any definite conclusion that electromagnetic fields do not cause childhood leukaemia and adult cancer and in the presence of studies the subject requires further research and the conclusions drawn earlier in favour of the power company are doubtful - safest course seems to be to adopt a method by which danger, if any, may be avoided. At this stage it is not possible to give a definite finding on the claims of either side. There is a state of uncertainty and in such a situation the authorities should observe the rules of prudence and precaution. The rule of prudence is to adopt such measures which may avert the so-called danger, if it occurs. The rule of precautionary policy is to first consider the welfare and safety of the human beings and the environment and then to pick up a policy and execute the plan which is more suited to obviate the possible dangers or make such alternate precautionary measures which may ensure safety. To stick to a particular plan on the basis of old studies or inconclusive research cannot be said to be a policy of prudence and precaution. There are instances in American Studies that the power authorities have been asked to alter and mould their programme and planning in such a way that the intensity and the velocity is kept at the lowest level. It is highly technical

subject upon which the Court would not like to give a definite finding particularly when the experts and the technical evidence produced is inconclusive. In these circumstances the balance should be struck between the rights of the citizens and also the plans which are executed by the power authorities for welfare, economic progress and prosperity of the country.

9. Dr. Parvez Hasan, learned counsel for the petitioners contended that the Rio Declaration on Environment and Development has recommended the precautionary approach contained in principle No. 15, which reads as follows:--

"Principle 15.-- In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation."

The concern for protecting environment was first internationally recognised when the declaration of United Nations Conference on the Human Environment was adopted at Stockholm on 16-6-1972. Thereafter it had taken two decades to create awareness and consensus among the countries when in 1992 Rio Declaration was adopted. Pakistan is a signatory to this declaration and according to Dr. Perwaiz Hasan although it has not been ratified or enacted, the principle so adopted has its own sanctity and it should be implemented, if not in letter, at least in spirit. An international agreement between the nations if signed by any country is always subject to ratification, but it can be enforced as a law only when legislation is made by the country through its legislature. Without framing a law in terms of the international agreement the covenants of such agreement cannot be implemented as a law nor do they bind down any party. This is the legal position of such documents, but the fact remains that they have a persuasive value and command respect. The Rio Declaration is the product of hectic discussion among the leaders of the nations of the world and it was after negotiations between the developed and the developing countries that an almost consensus declaration had been sorted out. Environment is an international problem having no frontiers creating transboundary effects. In this field every nation has to cooperate and contribute and for this reason the Rio Declaration would serve as a great binding force and to create discipline among the nations while dealing with environmental problems. Coming back to the present subject, it would not be out of place to mention that Principle No. 15 envisages rule of precaution and prudence. According to it if there are threats of serious damage, effective measures

should be taken to control it and it should not be postponed merely on the ground that scientific research and studies are uncertain and not conclusive. It enshrines the principle that prevention is better than cure. It is a cautious approach to avert a catastrophe at the earliest stage. Pakistan is a developing country. It cannot afford the researches and studies made in developed countries on scientific problems particularly the subject at hand. However, the researches and their conclusions with reference to specific cases are available, the information and knowledge is at hand and we should take benefit out of it. In this background if we consider the problem faced by us in this case, it seems reasonable to take preventive and precautionary measures straightaway instead of maintaining status quo because there is no conclusive finding on the effect of electromagnetic fields on human life. One should not wait for conclusive finding as it may take ages to find it out and, therefore, measures should be taken to avert any possible danger and for that reason one should not go to scrap the entire scheme but could make such adjustments, alterations or additions which may ensure safety and security or at least minimise the possible hazards.

10. The issue raised in this petition involves the welfare and safety of the citizens at large because the network of high tension wires is spread throughout the country. One cannot ignore that energy is essential for present-day life, industry, commerce and day-to-day affairs. The more energy is produced and distributed, the more progress and economic development become possible. Therefore, a method should be devised to strike balance between economic progress and prosperity and to minimise possible hazards. In fact a policy of sustainable development should be adopted. It will thus require a deep study into the planning and the methods adopted by WAPDA for construction of the grid station. The studies in USA referred to above have suggested that certain modes can be adopted by which high tension frequency can be decreased. This is purely scientific approach which has to be dealt with and decided by the technical and scientific persons involved in it. It is for this reason that both the parties have agreed that NESPAK should be appointed as a Commissioner to examine the plan and the proposals/schemes of WAPDA in the light of the complaint made by the petitioners and submit its report and if necessary to suggest any alteration or addition which may be economically possible for constructing a grid station. The location should also be examined and report submitted at the earliest possible time.

11. At this stage it may be pointed out that in all the developed countries great importance has been given to energy production. Our need is greater as it is bound to affect our economic development, but in the quest of economic development one has to

adopt such measures which may not create hazards to life, destroy the environment and pollute the atmosphere. From the comments filed by WAPDA it seems that they in consultation with the Ministry of Water and Power have prepared a plan for constructing grid station for distribution of power. While making such a plan, no public hearing is given to the citizens nor any opportunity is afforded to the residents who are likely to be affected by the high tension wires running near their locality. It is only a one-sided affair with the Authority which prepares and executes its plan. Although WAPDA and the Government may have been keeping in mind the likely dangers to the citizens health and property, no due importance is given to seek opinion or objections from the residents of the locality where the grid station is constructed or from where the high tension wires run. In USA Public Service Commission has been appointed for the purpose of regulating and formulating the plans and permission for establishing a grid station. It hears objections and decides them before giving permission to construct such a power station. No such procedure has been adopted in our country. Being a developing country we will need many such grid stations and lines for transmission of power. It would, therefore, be proper for the Government to establish an Authority or Commission manned by internationally known and recognised scientists having no bias and prejudice to be members of such Commission whose opinion or permission should be obtained before any new grid station is allowed to be constructed. Such Commission should also examine the existing grid stations and the distribution lines from the point of view of health hazards and environmental pollution. If such a step is taken by the Government in time, much of the problem in future can be avoided.

12. The learned counsel for the respondent has raised the objection that the facts of the case do not justify intervention under Article 184 of the Constitution. The main thrust was that the grid station and the transmission line are being constructed after a proper study of the problem taking into consideration the risk factors, the economic factors and also necessity and requirement in a particular area. It is after due consideration that planning is made and is being executed according to rules. After taking such steps possibility of health hazards is ruled out and there is no question of affecting property and health of a number of citizens nor any fundamental right is violated which may warrant interference under Article 184. So far the first part of the contention regarding health hazards is concerned, sufficient discussion has been made in the earlier part of the judgment and need not be repeated. So far the fundamental rights are concerned, one has not to go too far to find the reply.

Article 9 of the Constitution provides that no person shall be deprived of life or liberty save in accordance with law. The word 'life' is very significant as it covers all facts of human existence. The word 'life' has not been defined in the Constitution but it does not mean nor can it be restricted only to the vegetative or animal life or mere existence from conception to death. Life includes all such amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally. For the purposes of present controversy suffice to say that a person is entitled to protection of law from being exposed to hazards of electromagnetic fields or any other such hazards which may be due to installation and construction of any grid station, any factory, power station or such like installations. Under the common law a person whose right of easement, property or health is adversely affected by any act of omission or commission of a third person in the neighbourhood or at a far off place, he is entitled to seek an injunction and also claim damages, but the Constitutional rights are higher than the legal rights conferred by law be it municipal law or the common law. Such a danger as depicted, the possibility of which cannot be excluded, is bound to affect a large number of people who may suffer from it unknowingly because of lack of awareness, information and education and also because such sufferance is silent and fatal and most of the people who would be residing near, under or at a dangerous distance of the grid station or such installation do not know that they are facing any risk or are likely to suffer by such risk. Therefore, Article 184 can be invoked because a large number of citizens throughout the country cannot make such representation and may not like to make it due to ignorance, poverty and disability. Only some conscientious citizens aware of their rights and the, possibility of danger come forward and this has happened so in the present case.

13. According to Oxford dictionary, 'life' means state of all functional activity and continual change peculiar to organised matter and specially to the portion of it constituting an animal or plant before death and animate existence."

In Black's Law Dictionary, 'life' means "that state of animals, humans, and plants or of an organised being, in which its natural functions and motions are performed, or in which its organs are capable of performing their functions. The interval between birth and death. The sum of the forces by which death is resisted..... "Life" protected by the Federal Constitution includes all personal rights and their enjoyment of the faculties, acquiring useful knowledge, the right to marry, establish a home and bring up children, freedom of worship, conscience, contract, occupation, speech, assembly and press".

The Constitutional Law in America provides an extensive and wide meaning to the word 'life' which includes all such rights which are necessary and essential for leading a free, proper, comfortable and clean life. The requirement of acquiring knowledge, to establish home, the freedoms as contemplated by the Constitution, the personal rights and their enjoyment are nothing but part of life. A person is entitled to enjoy his personal rights and to be protected from encroachments on such personal rights, freedom and liberties. Any action taken which may create hazards of life will be encroaching upon the personal rights of a citizen to enjoy the life according to law. In the present case this is the complaint the petitioners have made. In our view the word 'life' constitutionally is so wide that the danger and encroachment complained of would impinge fundamental right of a citizen. In this view of the matter the petition is maintainable.

14. Dr. Pervez Hasan, learned counsel has referred to various judgments of the Indian Supreme Court in which the term 'life' has been explained with reference to public interest litigation. In *Kharak Singh v. State of UP* (AIR 1963 SC 1295) for interpreting the word 'life' used in Article 21 of the Indian Constitution reliance was placed on the judgment of Field, J. in *Munn v. Illinois* (1876) 94 US 113 at page 142 where it was observed that 'life' means not merely the right to the continuance of a person's animal existence but a right to the possession of each of his organs--his arms and legs etc." In *Francis Corali v. Union Territory of Delhi* (AIR 1981 SC 746) Bhagwati, J. observed that right to life includes right to live with human dignity and all that goes alongwith it, namely, the bare necessities of life such as adequate nuition (sic), clothing and shelter and facilities for reading and writing in diverse from (sic)". Same view has been expressed in *Olga Tellis and others v. Bombay Municipal Corporation* (AIR 1986 SC 180) and *State of Himachal Pradesh and another v. Umed Ram Sharma and others* (AIR 1986 SC 847). In the first case right to life under the Constitution was held to mean right to livelihood. In the latter case the definition has been extended to include the "quality of life" and not mere physical existence. It was observed that "for residents of hilly areas, access to road is access to life itself". Thus, apart from the wide meaning given by US Courts, the Indian Supreme Court seems to give a wider meaning which includes the quality of life, adequate nutrition, clothing and shelter and cannot be restricted merely to physical existence. The word 'life' in the Constitution has not been used in a limited manner. A wide meaning should be given to enable a man not only to sustain life but to enjoy it. Under our Constitution, Article 14 provides that the dignity of man and subject to law the privacy of home shall be inviolable. The fundamental right to preserve and protect the dignity of man under Article 14 is unparalleled and could be

found only in few Constitutions of the world. The Constitution guarantees dignity of man and also right to 'life' under Article 9 and if both are read together, question will arise whether a person can be said to have dignity of man if his right to life is below bare necessity like without proper food, clothing, shelter, education, health care, clean atmosphere and unpolluted environment. Such questions will arise for consideration which can be dilated upon in more detail in a proper proceeding involving such specific questions.

15. Dr. Pervaz Hasan has also referred to several judgments of the Indian Supreme Court in which issues relating to environment and ecological balance were raised and relief was granted as the industrial activity causing pollution had degraded the quality of life. In *Rural Litigation & Entitlement Kendra and others v. State of UP and others* (AIR 1985 SC 652) mining operation carried out through blasting was stopped and directions were issued to regulate it. The same case came up for further consideration and concern was shown for the preservation and protection of environment and ecology. However, considering the defence need and for earning foreign exchange some queries were allowed to be operated in a limited manner subject to strict control and regulations. These judgments are reported in AIR 1987 SC 359 and 2426 and AIR 1988 SC 2187 and AIR 1989 SC 594. In *Shri Sachidanand Pandey and another v. The State of West Bengal and others* (AIR 1987 SC 1109) part of land of zoological garden was given to Taj Group of Hotels to build a five-star hotel. This transaction was challenged in the High Court without success. The appeal was dismissed. Taking note of the fact that society's interaction with nature is so extensive that "environmental question has assumed proportion affecting all humanity", it was observed that:--

"Obviously, if the Government is alive to the various considerations requiring thought and deliberation and as arrived at a conscious decision after taking them into account, it may not be for this Court to interfere in the absence of mala fides. On the other hand, if relevant considerations are not borne in mind and irrelevant considerations influence the decision, the Court may interfere in order to prevent a likelihood of prejudice to the public."

In *M.C. Mehta v. Union of India* (AIR 1988 SC 1115) and *M.C. Mehta v. Union of India* (AIR 1988 SC 1037) the Court on petition filed by a citizen taking note of the fact that the municipal sewage and industrial effluents from tanneries were being thrown in River Ganges whereby it was completely polluted, the tanneries were closed down. These judgments go a long way to show that in cases where life of citizens is degraded, the

quality of life is adversely affected and health hazards are created affecting a large number of people, the Court in exercise of its jurisdiction under Article 184(3) of the Constitution may grant relief to the extent of stopping the functioning of factories which create pollution and environmental degradation.

16. In the problem at hand the likelihood of any hazard to life by magnetic field effect cannot be ignored. At the same time the need for constructing grid stations which are necessary for industrial and economic development cannot be lost sight of. From the material produced by the parties it seems that while planning and deciding to construct the grid (sic) station WAPDA and the Government Department acted in a routine manner without taking into consideration the latest research and planning in the field nor any thought seems to have been given to the hazards it may cause to human health. In these circumstances, before passing any final order, with the consent of both the parties we appoint NESPAK as Commissioner to examine and study the scheme, planning, device and technique employed by WAPDA and report whether there is any likelihood of any hazard or adverse effect on health of the residents of the locality. NESPAK may also suggest variation in the plan for minimizing the alleged danger. WAPDA shall submit all the plans, scheme and relevant information to NESPAK. The petitioners will be at liberty to send NESPAK necessary documents and material as they desire these documents should reach NESPAK within two weeks. NESPAK is authorised to call for such documents or information from WAPDA and the petitioners which in their opinion is necessary to complete their report. The report should be submitted within four weeks from the receipt of the order after which further proceeding shall be taken. WAPDA is further directed that in future prior to installing or constructing any grid station and/or transmission line, they would issue public notice in newspapers, radio and television inviting objections and to finalise the plan after considering the objections, if any, by affording public hearing to the persons filing objections. This procedure shall be adopted and continued by WAPDA till such time the Government constitutes any commission or authority as suggested above.

M.B.A./S-869/S

Order accordingly.

B. Modification dated 26 April 1994 of the Order re appointment of the Commission

IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

PRESENT:

Mr. Justice Saleem Akhtar

Mr. Justice Saiduzzaman Siddiqui

Mr. Justice Wali Muhammad Khan

H.R. Case No. 15-K/1992

(Environmental Pollution - Installation of Grid Station/Cutting of trees)

Mr. Wajid Ali Assistant Director, WAPDA is present.

Date of hearing: 26-4-1994

ORDER

SALEEM AKHTAR, J.- By an exhaustive order dated 12-2-1994 NESPAK was appointed as Commissioner to examine and study the scheme, planning, device and technique employed by WAPDA and to report whether there is any likelihood of any hazard of adverse effect on the health of the residents of the locality. Further directions in this regard are also contained in the order. Dr. Tariq Banuri by his letter dated 10-4-1994 suggested the name of Dr. Areesha Zaman, Chief Physicist INMOL, Shaikh Zayed Hospital, Lahore, a resident of 8-A, New Muslim Town, Lahore, as according to him a technical committee was to be constituted. After the hearing, the name of expert was to be suggested by the petitioners. There was no dispute about the NESPAK, but the other name was not received from any party till the order was issued in April 1994. Notice of the letter dated 10-4-1992 was issued to the WAPDA. Mr. Wajid Ali is present and states that WAPDA has no objection to the constitution of committee consisting of NESPAK and Dr. Areesha Zaman. We, therefore, by consent modify the order dated 12-2-1994 and constitute a committee consisting of NESPAK and Dr. Areesha Zaman to examine and study the scheme, planning, device and technique employed by WAPDA and report whether there is any likelihood of any hazard or adverse effect on the health of the residents of the locality. The Committee may also suggest variation in the plan for minimizing alleged danger. WAPDA shall submit all the plans, scheme and relevant information to the Committee. The petitioners will be at liberty to send NESPAK

necessary documents and material as they desire. These documents should reach the Committee within two weeks from today. The Committee is authorised to call for such documents or information from WAPDA and the petitioners which in their opinion are necessary to complete their report. The report should be submitted within four weeks from today, after which further proceedings shall be taken. Further direction issued to WAPDA in order dated 12-4-1994 shall remain operative and continue as indicated therein.

The office should inform Dr. Areesha Zaman immediately.

Sd/-Saleem Akhtar, J
Sd/-Saiduzzaman Siddiqui, J
Sd/-Wali Muhammad Khan

ISLAMABAD
26-4-1994

C. Report of the Technical Committee dated 15 June 1994

Human Rights Case No. 15-K OF 1992

Environment Pollution

Installation of Grid Station

Report of the Technical Committee

Submitted to the Supreme Court of

Pakistan

in Compliance with the Orders

Dated April 26, 1994

June 15, 1994

Submitted by

(Mrs. Areesha Zaman)
Principal Scientific Officer
INMOL, Lahore

(Mr. Tahir Javaid)
General Manager (Substations)
NESPAK, Lahore

Introduction

Both electric and magnetic fields occur naturally. The earth's magnetic field, which is due mainly to currents circulating in the outer layer of the Earth's core, varies between about 30 uT (microtesla) at the equator and about 60 uT at the poles. This field may be distorted locally by ferrous minerals or by steel work such as in buildings.

Just over 100 years ago, human exposure to external electric and magnetic fields was limited to those fields arising naturally. Within the past 50 years, there has been very significant growth of man-made, low frequency electric and magnetic fields at frequencies of 50 and 60 Hz predominantly from electric power generation, transmission, distribution, and utilization.

Public controversy and scientific debate have grown during the past several years regarding the possible health effects of exposure to power frequency 50/60 Hz fields associated with the transmission, distribution and utilization of electric power throughout the world. The primary issue that has fueled this controversy is the question of whether routine occupational and/or residential exposure to power-frequency fields increased the risk of cancer, primarily leukemia, lymphomas, nervous tissue tumors.

When a voltage is applied to an object such as an electrical conductor, the conductor becomes charged and surrounded by an electric field. If charges flow along the conductor and thus form a current, magnetic field is also created.

The level of human exposure to power frequency electric fields occurs near high-voltage transmission lines and in grid stations depending upon the voltage rating and the distance from the live parts. The magnetic fields generated by household appliances extend up to quite high values though these fields which depend on the type of wiring and the power of the equipment supplied, usually fall off rapidly as one moves away from the appliance. Some examples of magnetic fields measured at a distance of 30 cm from household equipment are:

- o Microwave oven 4 to 10 uT,
- o Vacuum cleaner 2 to 20 uT.

The electric field intensity of different household appliances is normally less than 0.03 kilovolt per meter (kV/m).

Power systems generally use alternating voltages and currents and hence the fields they produce are also alternating, in contrast to unidirectional fields such as that associated with the natural fields of the Earth. The frequency of these alternations is usually 50 Hz while in North America and part of Japan and in some other countries, 60 Hz is preferred. Electric and magnetic fields at much higher frequencies can, however, be generated, for example, through radio waves of frequency 530 kilo-Hertz to 30 Mega-Hertz and television frequencies of 70 to 400 Mega Hertz. These higher frequencies interact with objects and people in a different way as compared to 50/60 Hz power frequencies and it is important to make the distinction.

The electromagnetic spectrum is shown in Figure-1 and it stretches from extremely low frequencies (ELF), which includes power frequencies, through radio, microwaves, infrared, visible and ultra-violet light to X-rays and gamma-rays. For X-rays and gamma-rays, the small discrete packets called photons which carry the energy are capable of ionizing that is, disrupting individual molecules or atoms. Such disruption can sometimes damage living material. For visible light and all lower frequencies, this process cannot happen and hence term "non-ionizing" radiation is often applied to these frequencies.

A highly controversial issue that has arisen during the past decade is the question of whether chronic exposure to power-frequency fields (non-ionizing radiation) leads to an elevated risk of cancer, primarily leukemia and nervous tissue tumors. It is speculated that the 50/60 Hz magnetic fields in the homes of subjects living near high-current distribution lines may have been a possible factor underlying their elevated cancer risk. In contrast to these studies other independent epidemiological surveys have shown no clear relationship between children or adult cancer risk and residential exposure to 50/60 Hz fields from power distribution lines on childhood or adult cancer risk and residential exposure to 50/60 Hz fields from power distribution lines.

Basis of the Report

Technical Committee Report is based on recently published research work and recommendations made by the internationally recognized organizations on the various aspect of 50/60 Hz power frequency fields. So far no research data or facilities are available in Pakistan to study the different health problems associated with the fields.

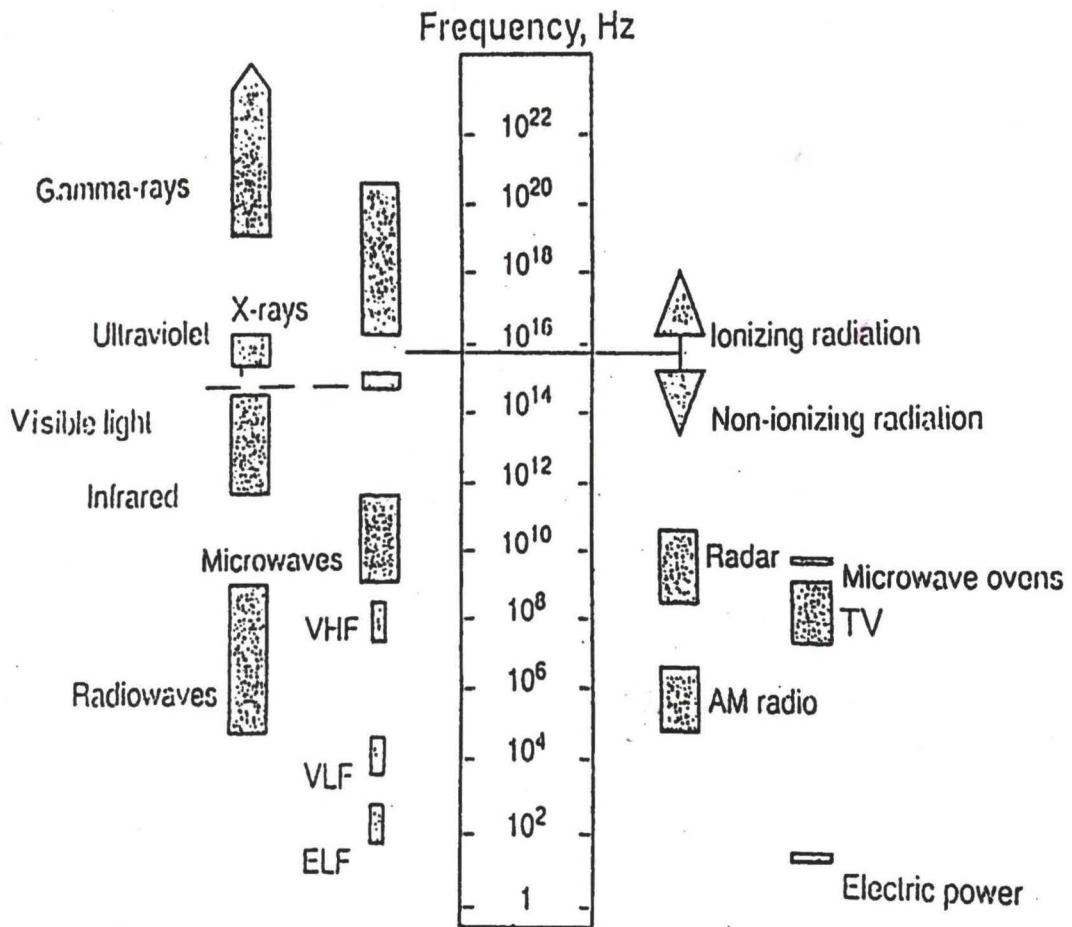


FIG. 1 Electromagnetic spectrum

Health Effects from Exposure to Electric and Magnetic Fields

The use of Electricity has become such an integral part of our lives that we take it completely for granted. Yet in recent years this aspect of modern life has come under scientific scrutiny regarding its possible health effects.

Possible health effects of exposure to 50/60 Hz frequency electric and magnetic fields are receiving increased attention in the scientific literature and specially in the public media all over the world. Laboratory research at the cellular and animal level has demonstrated various biological effects that may be related in some manner to the effects of exposure to humans. The studies suggest that these fields might be cancer promoters but are unlikely to be cancer initiators. However the exact mechanisms of this relationship are far from clear. At the level of human epidemiology approximately seventy (70) studies have examined the possible correlation of field exposure with adult and childhood cancers. Although the possibility of a correlation is weak, it cannot be discounted and further research is needed.

Public concern about health hazard from the delivery and usage of electric power is based on suggestive data which at this time is both incomplete and inconclusive. A good deal of research is underway. Until we have the necessary information concerned electric utilities individuals may adopt "prudent avoidance" strategy. By this we mean limiting exposures. This can be done at reasonable cost and with reasonable effort.

Recommended Exposure Limits

In the absence of any applicable codes present, various International organizations, standards regulating bodies and electric power utilities have developed interim guidelines which recommend the exposure limits to 50/60 Hz electric and magnetic fields. The same are described hereunder:-

The International Radiation Protection Association (IRPA)

The International Radiation Protection Association (IRPA) is an independent body working in collaboration with the World Health Organization for the development of health criteria. The present secretariat is in France.

IRPA formed a working group on non-ionizing radiation (NIR) in 1974, which examined the problems arising in the field of protection against the different types of non-ionizing radiation. At the 1977 IRPA Congress in Paris, this working group became the International Non-Ionizing Radiation Committee (IRPA/INIRC).

The IRPA/INIRC, in cooperation with the Environmental Health Division of the World Health Organization (WHO), has undertaken responsibility for the development of health

criteria documents on NIR. These form part of the WHO Environmental Health Criteria Programme, which is sponsored by the United Nations Environment Programme (UNEP). The documents include an overview of the physical characteristics, measurement and instrumentation, sources and applications of NIR, a thorough review of the scientific literature on biological effects and evaluations of the health risks of human exposure to NIR. These criteria then become the scientific data base for the development of exposure limits and codes of practice.

The interim guidelines were approved by IRPA on May 03, 1989. The exposure limits recommended by IRPA are shown in Table 1.

The IRPA Interim Guidelines being more stringent have so far only been adopted by Australia and no other country.

TABLE 1

**Limits of Exposure to 50/60 Hz
Electric and Magnetic Fields**

Guidelines Recommending Agency	Exposure Characteristics	Electric Field Strength kV/m (rms)	Magnetic Flux Density uT (rms)
IRPA, France	Occupational		
	Whole working day	10	500
	Short Term	30	500
	General Public		
	24 hours per day	5	100
	Few hours per day	10	1000
ACGIH, USA	Workers	25	1000
	Workers Wearing Cardiac Pacemaker	---	100
NRPB, UK	Workers and Public	10	2000

IRPA	International Radiation Protection Agency
ACGIH	American Conference of Governmental Industrial Hygienists
NRPB	National Radiological Protection Board

International Conference on Large High Voltage Electric Systems (CIGRE)

CIGRE was founded in the 1921 in Paris, France with the objective of facilitating and promoting the interchange of technical knowledge and information between all countries in the field of generation and transmission at high voltages. To achieve the objects, technical sessions have been arranged and study committees of experts formed from the members. It is compulsory that members belong to different countries. A large number of international associations are in collaboration with CIGRE.

In 1991, the CIGRE Expert Group, which consisted mainly of doctors and biologists and which was set up to consider the fields and health question, published a statement on the 'Current Status of Research on Power-Frequency Electric and Magnetic Fields and Cancer'.

Their principal conclusion was:

'In summary, the view of the CIGRE Expert Group is that the evidence for exposure to power-frequency electric and magnetic fields as a cause of cancer is not persuasive, and that any such relationship remains questionable. The matter is of sufficient importance, however, to deserve continued research.'

American National Standard Institute (ANSI)

National Electric Safety Code (ANSI C2) is a standard in practice with most of the U.S. Electric Utilities.

The purpose of this standard is the practical safeguarding of persons during the installation, operation, or maintenance of electric supply and communication lines and their associated equipment. This contains minimum provisions considered necessary for the safety of employees and the general public. The standard, however, does not provide the safety limits against exposure to electromagnetic fields.

American National Standards Institute (ANSI) Committee C 95.1 Standard for Human Exposure to Electromagnetic Fields.

The currently published version of this standard "Radio Frequency Protection Guides" deals with safety levels with respect to human exposure to radio frequency electromagnetic fields, 300 kHz. The updated standard which goes by the same name but covers 3 kHz to 300 GHz and is dated 1991, is at present going through the balloting process and may be issued soon as an ANSI Standard. The updated standard embraces a two-tier structure for occupational and general population exposures. Further, a sub-committee has been assigned to review and extend the standards from 3 kHz to direct current including 50/60 Hz power frequencies.

Case Study of the Planned Grid Station

Location

The planned 132 kV Grid Station is located in F-6/1, Blue Area, Islamabad. The proposed grid station shall cater to the residential and commercial load of Blue Area, Islamabad.

Scheme

According to the information provided by WAPDA, the planned grid station will be conventional, outdoor type having a single busbar arrangement with a double circuit incoming 132 kV transmission line and 11 kV outgoing underground cables.

The 11 kV indoor equipment includes 11 kV panels, protection and control panels, PLC system and other auxiliaries.

Design and Planning

The planned grid station follows a standard design, similar to other 132 kV grid stations functioning at various places in Pakistan in the WAPDA's transmission system.

Single line diagrams and switchyard layout of the proposed 132 kV grid station as provided by WAPDA are enclosed (Drawing Nos. PDW/TE 1204 & PDW/TS/4417). The

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General layout showing the nearby houses is also enclosed (Drawing No. PDW/TS/4410).

The drawings indicate that the nearest live conductor/part (132 kV) inside the grid station is over 20 meters from the nearest residence.

Device and Techniques

The planned 132 kV grid station consists of four (4) single breaker bays. Two bays are to be utilized for connecting two (2) 10 MVA, 132/11 kV power transformers while two 132 kV transmission lines shall terminate in the other two bays. Each bay will include one 132 kV circuit breaker, one disconnecting switch, one current transformer and surge arresters for the protection of transformers. The above equipment is proposed to be installed outdoor and 200 kVA, 11 kV/440 Volt distribution transformers are planned to be installed inside the switchgear building.

Grid station shall be equipped with all the standard conventional techniques of control, protection, metering and communications.

Electric and Magnetic Fields Emanating from the Planned Grid Station

In a typical grid station the major sources of the field are:

- 132/11 kV Power transformers.
- 11 kV/440 V Distribution transformers.
- 132 kV Main busbars.
- 132 kV Equipment level busbars.

The active parts of both the power and distribution transformers are enclosed in a metallic tank which acts as a screen to the fields and the fields emanating in the vicinity are minimal.

The fields produced by the 132 kV Main busbars and 132 kV equipment level busbars are similar to the fields produced by the transmission lines.

The typical profiles developed by CIGRE (CIGRE Working Group 36.01, Ref-9) for different high voltage transmission lines are shown in Figures 2 and 3 which includes 132 kV voltage level, at which the proposed grid station is planned.

According to the information provided by WAPDA the location of the public housing from the nearest live conductor is 20 meters. The electric and magnetic fields values are interpolated from CIGRE profiles at a distance of 20 meter. For verification, the values have also been computed by other methods (References 16, 17 & 18). The interpolated and computed values are shown in Table-2.

Although, instruments for the measurement of electric and magnetic fields at site have been developed, no such instrument is available in Pakistan.

Table 2

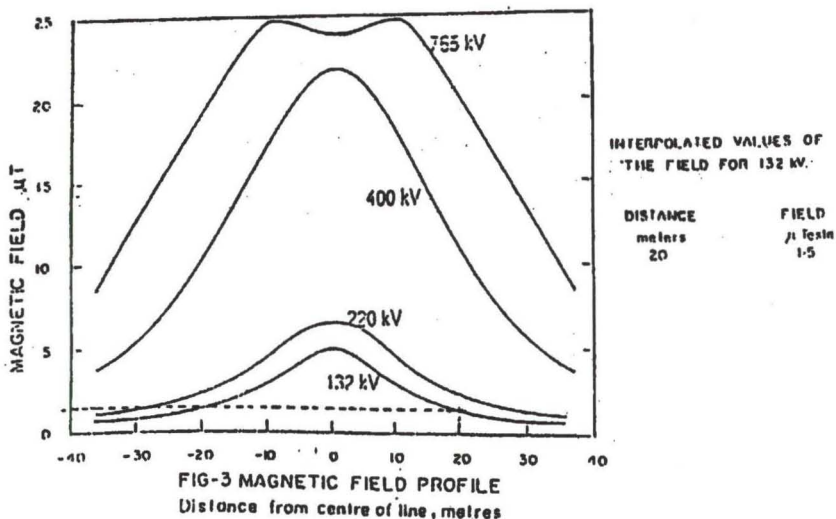
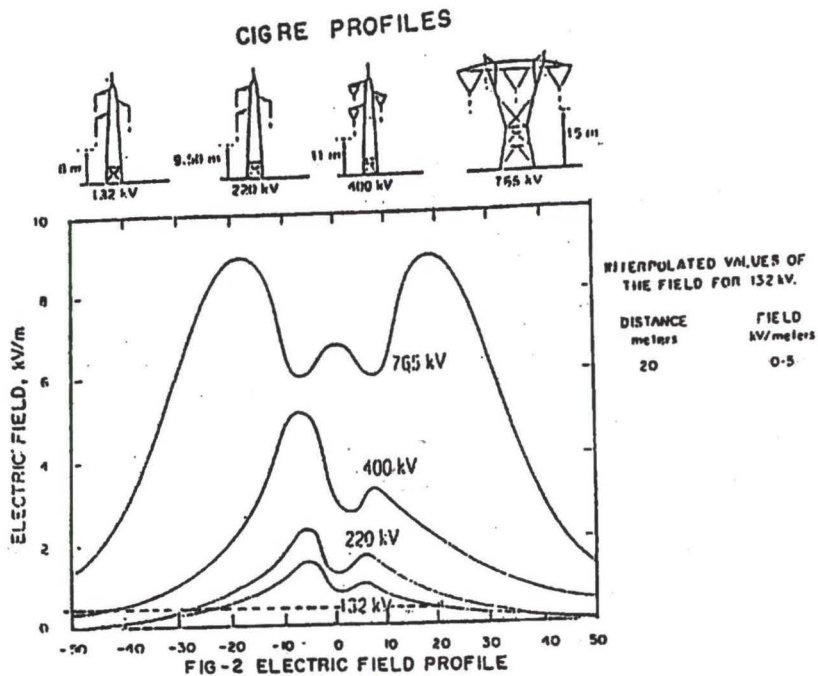
Origin	Electric Field kV/m	Magnetic Field uT	Remarks
Planned 132 kV Grid Station	0.5	1.5	Interpolated values
F-6, Islamabad	0.542	1.137	Computed values

The exposure limit currently in practice for general public in different countries which are also compared with IRPA Guidelines are shown below in Table-3.

Table 3

Origin	Electric Field kV/m	Magnetic Field uT	Remarks
Germany	20.7	5000	Standard, order or rule usually with legal force
United Kingdom	12.3	2000	Guideline
Australia	5	100	Guideline
IRPA	5	100	Guideline

The expected values from the planned grid station as shown in the above Table-2 are thus well within the limits recommended by IRPA.



Conclusions

No research data is available in Pakistan regarding health effects from exposure to 50/60 Hz electric and magnetic fields. The recently published data and research work by various international organizations all over the world were reviewed on the subject and the outcome of the same is summarized below:-

1. "The evidence, knowledge and epidemiology studies so far available about the possible health effects of the electric and magnetic fields are incomplete and inconclusive". Research is in progress by various international organizations. Until the studies are concluded and a code of practice is formulated, International organization recommends "Prudent Avoidance" strategy.
2. The IRPA interim guidelines on the limits of exposure to 50/60 Hz electric and magnetic fields provides the necessary "prudent avoidance" strategy for general public. Exposure limits recommended by IRPA for electric and magnetic fields are 5 kV/meter and 100 uT (micro tesla) respectively.
3. The interpolated and computed values of the electric and magnetic fields for the planned siting of WAPDA 132 kV grid station are less than the limits recommended for public exposure by IRPA Guidelines.

Technical Committee

(Mrs. Areesha Zaman)
Principal Scientific Officer
INMOL, Lahore

(Mr. Tahir Javaid)
General Manager (Substations)
NESPAK, Lahore

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CHAPTER 4

SALT MINERS CASE

**General Secretary, West Pakistan Salt Miners Labour Union vs. Director,
Industries and Mineral Development
Human Rights Case No. 120 of 1993
before the Supreme Court of Pakistan
(1994 SCMR 2061)**

- A. Appointment of the Commission (Paragraph 6 of the Judgment dated 12 July 1994)**
- B. Report of the Commission dated November 1996 (without Annexures)**
- C. Order of the Court dated 8 July 2002**
- D. Order of the Court dated 7 April 2015**
- E. Report of the Commission dated 6 June 2015 (without Annexures)**
- F. Order of the Court dated 1 October 2015**

A. Appointment of the Commission (Paragraph 6 of the Judgment dated 12 July 1994)

1994 SCMR 2061

[Supreme Court of Pakistan]

Present: Muhammad Rafiq Tarar and Saleem Akhtar, JJ

**GENERAL SECRETARY, WEST PAKISTAN SALT MINERS LABOUR
UNION (CBA) KHEWRA, JHELMUM ---Petitioner**

versus

**THE DIRECTOR, INDUSTRIES AND MINERAL DEVELOPMENT,
PUNJAB, LAHORE---Respondent**

Human Right Case No. 120 of 1993, decided on 12th July, 1994.

Petitioner in person.

Sardar M. Aslam, Advocate Supreme Court for Pakistan Mineral Development Corporation.

M. Munir Piracha, Advocate Supreme Court for the Punjab Coal Co.

Syed Niaz Ali Shah, Addl., A.G., Pb. for the Government of Punjab.

Date of hearing: 12th April, 1994.

JUDGMENT

SALEEM AKHTAR, J---This petition under Article 184(3) of the Constitution was filed complaining against the pollution of water supply source to the residents and mine workers of Khewra. They claim to be settled there for generations and the water supply was arranged by Pakistan Mineral Development Corporation (PMDC) through a

pipeline connecting the spring and taking water to the reservoir. It has been alleged that although water catchment area was reserved and no lease for coal mines was to be granted, the authorities concerned particularly the Director, Industries and Mineral Development, Government of the Punjab, granted lease and reduced the water catchment area.

The result was that the poisonous water coming out of the mines pollutes the water reservoir and is a health hazard. It was further alleged that the allotment and grant of lease to the miners in the water catchment area is illegal and mala fide. It has been prayed that such leases may be cancelled and the residents may be saved from the health hazard created by the miners and the authorities concerned. The case was processed in the office and prima facie it was established that if the operation of coal mines is granted in the water catchment area, it is likely to pollute the water resources, which may be contaminated with the water flowing out of the mine holes during operation. Consequently, cognizance was taken under Article 184(3) of the Constitution and notice was issued to PMDC, Director, Industries and Mineral Development, Government of the Punjab through Advocate-General and M/s. Punjab Coal Company (PCC). In pursuance of the notice the petitioner submitted its detailed note supported by documents. Similarly PMDC and respondent No. 1 submitted their replies. PCC and M/s. A. Majeed & Co., to whom leases were granted, also filed their replies. In the present case the main contestant seems to be PCC.

2. The history of these coal mines particularly in the water catchment area goes back to the early part of the century when during British days the water catchment area was reserved and grant of mining lease was prohibited. PMDC has filed a copy of the letter No. 78 C & I dated 31-1-1911 from Mr. R.A. Munt, ICS, Financial Secretary to the Government of the Punjab addressed to the Commissioner, N.I. Salt Revenue, which reads as follows:--

"In reply to your Letter No. 2576 dated the 22nd October, regarding the coal mining operations in the Salt Range in the Jhelum District, I am directed to say that the Lieutenant Governor agrees to the proposals contained in paragraph 4 of your letter under reply. I am to add, however, that His Honour understands that the preservation of the Khewra Water Supply is real ground for the reservation of this area which lies to the north of the Mayo Salt Mine. "

Other related letters referred and subsequent correspondence in this regard have not been filed, but none of the official respondents appearing have disputed this letter. From this letter it seems that even at that time for the preservation of the Khewra water supply an area was separately reserved while granting lease for mining purposes. Initially the area of the water catchment was alleged to be 4161 acres which was declared as restricted area. PMDC has filed a plan in which the original water catchment area has been shown. It also mentions the present water catchment area, which has been reduced to 545.09 acres. A visual inspection of this document clearly gives an idea that the original water catchment area was much larger than it exists now. It would have been at least six to seven times more than the present area. The location of PCC (No. 27A) is also shown whereas the area of M/s. A. Majeed & Co has also been mentioned. It seems that after the year 1950 the mining leases were granted in the original catchment area, which has been reduced to about 1/8th of its original measurement as claimed by the petitioner and PMDC. It was in the year 1981 that a small area now measuring 545.09 acres was absolutely forbidden for allotment for mining purposes. In this regard reference has been made to the report of a high-powered committee constituted in the year 1981 to dispose of the application of M/s. Rasco & Co. for grant of prospecting licence for coal near 'Nali', District Jhelum. This committee was constituted by the Secretary, Industries and Mineral Development and consisted of:--

- (1) Director of Industries Mineral Development, Punjab, Lahore.
- (2) Deputy Commissioner, Jhelum.
- (3) Chief Inspector of Mines, Punjab, Lahore.
- (4) Superintending Engineer, Public Health Engineering, Circle II, Rawalpindi.
- (5) Representative of Pakistan Mineral Development Corporation.
- (6) Assistant Commissioner, Pind Dadan Khan.

The committee was authorised to co-opt any other member. The terms of reference were:--

- (i) Whether or not this is a catchment area for water supply of Khewra Town and Dandot?

- (ii) Whether there is a natural spring in the area for supply of water to these Towns?
- (iii) Whether mining would in any way affect or contaminate the water?
- (iv) Whether alternate water supply schemes for Khewra etc. have been implemented and are on ground?
- (v) Also the reaction of the local population regarding mining in this area?

The committee after visiting the site observed that the area fell within the reserved water catchment zone and referred to the decision of the Mines Committee of 22-2-1981 that no further mining concession should be granted within this particular area forming the water catchment zone for the water supply scheme PMDC (sic) a scheme mainly serving the population of Khewra Town.

It further reported as follows:--

"The major spring located in this area is called 'Mitha Pattan'. It is a collection of many smaller springs originating from within this area. The 'Mitha Pattan' spring has an outlet of about 2 lac gallons per day.

According to the assessment of Superintending Engineer, Public Health Engineering Circle No. II, Rawalpindi this source of water caters to at least 60 % to 70 % of the needs of Khewra Town. The other two sources of water are the water supply scheme of Municipal Committee, Khewra and one outlet from the Imperial Chemical Industries' waterworks. The municipal water supply scheme is catering only up to 15 % of the needs of the local population while the outlet from the waterworks of Imperial Chemical Industries contributes only to the extent of 5 % in this regard.

It was also brought out by the Superintending Engineer, Public Health Engineering Department and conceded by the Chairman, Town Committee, Khewra that the water available from the municipality's water supply scheme is not of good quality. As such, the only major source of drinking water for Khewra Town is the Mitha Pattan spring located in the area in question."

As regards water contamination and pollution the Committee after referring to the structural behaviour of the area as explained by the geological map, observed:-

"This map clearly indicates that contours in the area form a cup-shaped valley, in which the water from smaller springs is joined into a main spring i.e. 'Mitha Pattan'.

A number of lithological units are exposed at different spots. Hillocks of Sakesar Limestone which are regarded as cap-rock for coal deposits are also visible in this area for which M/s. Rasco & Company has applied. However, these hillocks are irregular and highly disturbed. There are a number of visible 'faults', fractures and joints in the area. The relevant geological data indicate that the 'Patala Shales', which is the coal bearing formation in the salt range, is very close to the springs. Any sub-surface and underground mining activity in this area will pose the following two threats, to the water reservoir:

- (1) Water may leak through the mines which, in turn, can dry the springs.
- (2) Pollute the water in the catchment area.

During the proceedings of the meeting of the Committee, a specific reference was made to a past incident involving the installation of a mining tunnel by the Pakistan Mineral Development Corporation near Pir Jehnia, District Chakwal. The terrain was similar to the area under discussion. While driving the tunnels, the underground water zone of the locality was punctured. This adversely affected the water source in the area."

The Committee also seriously took note of the fact that the water rights of the miners which stand established since 1911, should always be taken into consideration. The Committee recommended that:

"The area, declared restricted by the Mines Committee in 1981, should continue to enjoy this status. The Committee also recommends that demarcation of past leases granted in the adjoining areas be re-checked so as to ensure that no one violates the boundaries of this restricted area."

This report gives a clear picture of geological, geographical and historical background of the present controversy. The claim of the petitioners though formed in general terms basically seeks enforcement of the right of the residents to have clean and unpolluted water. Their apprehension is that in case the miners are allowed to continue their activities, which are extended in the water catchment area, the water source, reservoir and the pipelines will get contaminated.

3. In its reply, PCC besides taking preliminary legal objection regarding maintainability, has pleaded that the lease was granted to it in the year 1950 for 30 years and it has been renewed on 1-11-1980 for another 20 years. It has also been stated that the leased area stretches to the north separated by a deep and considerably wide ravine from other mining area allotted to as many as 18 different companies carrying out the same business in similar circumstances and conditions. This area is outside the alleged catchment area declared by the Ministry of Industries. The water reservoir collects water solely from natural spring. The natural spring and the water reservoir both are situated at a higher point from the mining area of PCC and are separated by a huge and deep ravine. The mining activities cannot affect the natural spring or reservoir. The water collected in reservoir is supplied to the workers colony through two pipes, one of which stands disconnected by PMDC. Sometimes water downstream overflows which is not used by any body. On a similar complaint that due to the mining activity of PCC, water reservoir is contaminated and that mining activity might disturb natural springs, the matter was considered by respondent No. 1 on an appeal from the order of the Leasing Authority where it was held that according to the demarcation by the Committee comprising representatives of PCC, PMDC and the Directorate, mine 27-A falls outside the restricted area, but within 50 metres from the boundary within the leased area of PCC. The Leasing Authority had granted land for working of this mine subject to three conditions which included installation of second pipeline by PMDC, cost of which would be borne equally by PMDC and PCC, the water reservoir was to be enlarged and that a retaining wall would be constructed by PCC near the mouth of mine 27-A. The PCC has entirely relied upon this order and claims that retaining wall has been constructed, but the petitioners allege that the water overflowing from the mines which is admittedly a poisonous water and a health hazard, is contaminating the water reservoir. M/s. A. Majeed & Co. has also submitted reply denying the claim made by the petitioners. Apart from stating that Mitha Pattan is the water source and the reservoir is situated at such a place that question of contamination (sic) does not arise, it further stresses that huge investments have been made on the working of the mines, due to operation of mines many workers and their families are settled and are earning their livelihood. Furthermore there are various

Government authorities authorised to see that the miners work in a proper and legal manner and further that water source is not contaminated.

4. We have heard all the parties present. Mr. Munir Piracha, learned ASC for PCC contended that the facts of the case do not warrant any action under Article 184(3) as the petitioners have not shown that any fundamental right has been violated and that a question of public importance is involved with reference to the enforcement of the fundamental rights. The petitioners' complaint is about the contamination of the water reservoir. During arguments it was also contended that if the mining operation is continued, the water resources of Mitha Pattan will be polluted, destroyed or dried up. From the statements, background and the records which have been produced and have not been disputed or rebutted, the picture clearly emerges that the petitioner and the other workers numbering 35000 reside in an area in Khewra who are mostly engaged in the mining work. Almost from about a century the residents of the area were provided water through Mitha Pattan, which receives water from several small springs in the area and it serves as a reservoir for supply of water to the residents of that area. The location and geographical position of these springs and Mitha Pattan seems to have been taken into consideration as far back as in the year 1911 when it was felt necessary that the water catchment area which is the source to supply water to the residents should not be touched, endangered, injured or impaired by mining activities. Mining activities were, therefore, prohibited in that area and this state continued up to the present time with the difference that the total area was reduced and mining leases were frequently granted in the water catchment area. The area which at one time is claimed to be more than 4000 acres, has been reduced to 545.09 acres which the Mining Committee by its decision dated 22-2-1981 declared restricted water area and all types of mining activities were completely prohibited. Letters and instances have been referred to show that this policy was enforced with vigour and strictness and applications for mining leases and licences in the water catchment area were not granted. However, the irony of situation is that with the passage of time, population has grown and number of mining leases in the catchment areas has increased, but the water source remains the same and water catchment area has been reduced. The mining operations in this area pose serious danger of cracks, punctures and leakage in the rocks and ravines which may lead to contamination or drying up of the springs. These are well-known and acknowledged dangers to the water source and have been mentioned in the report submitted by the Committee. In such a situation when the water catchment area seems to have been reduced to its minimum, the mining activities have completely surrounded the water catchment area and are extending nearer to the source spring, it seems necessary to immediately take measures to protect the water

sources and springs. It is fortunate that so far no major mishap has occurred, but the more mining activities increase and the catchment area is reduced, the danger of bursting, leaking and contamination also increases. In this situation, if the petitioners complain, are they not justified to seek protection of their right to have clean water free from contamination and pollution. Article 9 of the Constitution provides that "no person shall be deprived of life or liberty save in accordance with law". The word 'life' has to be given an extended meaning and cannot be restricted to vegetative life or mere animal existence. In hilly areas where access to water is scarce, difficult or limited, the right to have water free from pollution and contamination is a right to life itself. This does not mean that persons residing in other parts of the country where water is available in abundance do not have such right. The right to have unpolluted water is the right of every person wherever he lives. Recently in *Shehla Zia v. WAPDA* (H.R. Case No. 15-K/1992-PLD 1994 SC 693) while dealing with Article 9, one of us (Saleem Akhtar, J.) observed as follows:--

"The word 'life' in the Constitution has not been used in a limited manner. A wide meaning should be given to enable a man not only to sustain life but to enjoy it. Under our Constitution, Article 14 provides that the dignity of man and subject to law the privacy of home shall be inviolable. The fundamental right to preserve and protect the dignity of man under Article 14 is unparalleled and could be found only in few Constitutions of the world. The Constitution guarantees dignity of man and also right to 'life' under Article 9 and if both are read together, question will arise whether a person can be said to have dignity of man if his right to life is below bare necessity like without proper food, clothing, shelter, education, health care, clean atmosphere and unpolluted environment. "

It was further observed:--

"In *M.C. Mehta v. Union of India* (AIR 1988 SC 1115) and *M.C. Mehta v. Union of India* (AIR 1988 SC 1037) the Court on petition filed by a citizen taking note of the fact that the municipal sewage and industrial effluents from tanneries were being thrown in River Ganges whereby it was completely polluted, the tanneries were closed down. These judgments go a long way to show that in cases where life of citizens is degraded, the quality of life is adversely affected and health hazards are created affected a large number of people, the Court in exercise of its jurisdiction under Article 184(3) of the Constitution may grant relief to the extent

of stopping the functioning of factories which create pollution and environmental degradation. "

The petitioners' demand here is the barest minimum. Water has been considered source of life in this world. Without water there can be no life. History bears testimony that due to famine and scarcity of water, civilizations have vanished, green lands have turned into deserts and arid zones completely destroying the life not only of human being, but animal life as well. Therefore, water, which is necessary for existence of life, if polluted, or contaminated, will cause serious threat to human existence. In such a situation, persons exposed to such danger are entitled to claim that their fundamental right of life guaranteed to them by the Constitution has been violated and there is a case for enforcement of fundamental rights by giving directions or passing any orders to restrain the parties and authorities from committing such violation or to perform their statutory duties. In our view the petition is maintainable.

5. The next contention of the learned counsel is that the question whether mining activity could possibly pollute or diminish the water supply, is a question of fact and two authorities have recorded finding on it, therefore, such question cannot be raised before and determined by this Court. In dealing with this contention, one has to keep in mind the scope and extent of the jurisdiction exercised by this Court under Article 184(3) under which, in cases where question of public importance with reference to the enforcement of fundamental rights is involved, direction or order of the nature as mentioned in Article 199 can be given or passed. Article 184(3) reads as follows:--

"184. (1) & (2)

(3) Without prejudice to the provisions of Article 199, the Supreme Court shall, if it considers that a question of public importance with reference to the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II is involved, have the power to make an order of the nature mentioned in the said Article."

It is well-settled that in human rights cases/public interest litigation under Article 184(3), the procedural trappings and restrictions, precondition of being an aggrieved person and other similar technical objections cannot bar the jurisdiction of the Court. This Court has vast power under Article 184(3) to investigate into questions of fact as well independently by recording evidence, appointing commission or any other reasonable and legal manner to ascertain the correct position. Article 184(3) provides that this Court has

the power to make order of the nature mentioned in Article 199. This is a guideline for exercise of jurisdiction under this provision without restrictions and restraints imposed on the High Court. The fact that the order or direction should be in the nature mentioned in Article 199, enlarges the scope of granting relief which may not be exactly as provided under Article 199, but may be similar to it or in the same nature and the relief so granted by this Court can be moulded according to the facts and circumstances of each case. While raising this contention the learned counsel has referred to the order passed by the Secretary, Government of the Punjab, referred to above in appeal from the order of the Licensing Authority. The appellate authority has confirmed the order of the Licensing Authority with certain restrictions and safeguards provided in it. The location of mine 27A is not disputed being completely adjacent to the present water catchment area. Another salient point which emerges is that it is within 50 metres from the boundary within the lease area of P.C.C. From the plans produced, it is clear that the mouth of the mine is right on the boundary line of the catchment area which is a reduced area to the barest minimum. If it could not have posed any danger to the water source, why was it found necessary by both the authorities to impose a condition that a retaining wall be constructed by P.C.C. This by itself admits that the very existence of mine 27A and its mouth in the prohibited area does pose a serious danger and threat to the water catchment area and reservoir. P.C.C. has not filed its lease deed. However, M/s. A. Majeed & Co. have filed a lease deed and the standard form of lease is the same in almost every case. Clause (12) of the lease deed prohibits mining operation or workings to be carried on in or under the said land at any point within a distance of 50 yards from the boundaries of the said land except with the consent in writing of the Licensing Authority. Thus, without the consent in writing of the Licensing Authority P.C.C. could not have carried out mining work within 50 metres from the boundary. It is an admitted position as is obvious from the order of the Secretary, Government of the Punjab, Industries and Mineral Development that P.C.C. is operating and working within 50 metres from the boundary. It is very close to the boundary of the catchment area. The object of keeping distance of 50 metres from the boundary wall is to provide safeguard to the adjoining land. There is nothing on record to show that the authorities concerned have at any time applied their mind or passed any specific order in writing permitting P.C.C. to carry out operation or mining work within 50 metres from the boundary. The general permission granted and the order of the Leasing Authority do not refer to such special permission as required by the lease deed nor can the permission to carry out mining operation amount to such a permission. Such a permission should be specific in nature with reference to the distance of 50 metres from the boundary. General permission granted and relied upon can be of no avail to P.C.C. It is therefore clearly established that P.C.C. is carrying on mining work

adjacent to the catchment area and within the radius of 50 metres from the boundary. It is strange that the respondent did not object to P.C.C. to open the mine mouth adjacent to the water catchment area. As the lease in this prohibited area had been granted, it was the duty of the respondent to ensure that the lessee does not open the mine mouth so near the boundary. Conscious of the fact that P.C.C.'s mining operation would cause pollution, the Leasing Authority ordered for joint inspection by PMDC and P.C.C. to ensure that no further pollution is caused. But this arrangement did not work. It has been contended that as P.C.C.'s mine is located about one thousand yards downstream from the water tank/reservoir, which is approximately at a height of 200 ft. from the bed of the stream, there can be no possibility of causing pollution. This contention completely overlooks the fact that about 300/400 yards from the mine mouth of P.C.C. there exists an open reservoir built by PMDC in which over flown water from the big water reservoir is collected and distributed to the residents through a pipeline. This small reservoir is polluted by the mine debris and poisonous water as stated in the inspection report of the Mineral Development Officer prepared in January 1992. It concludes as follows:--

"It is in the fitness of things and also in the interest of public that the lease firm (appellant) may be advised to set up a device which should protect the falling debris into the stream and they may also be allowed to work in the said mine by giving such assurance. Whereas M/s. Pakistan Mineral Development Corporation may also be advised to take further steps for protection of water pipe line from main water tank and abandon the small water reservoir as it has a little area to settle down the heavier material which is mixed in the stream channel."

This report has been relied upon by the concerned authorities, but they do not seem to have taken any effective steps to stop pollution of stream and small reservoir except that three conditions were imposed which have remained ineffective.

6. In view of the above discussion:--

- (i) P.C.C. is directed to shift within four months, the location of the mouth of mine No. 27A at a safe distance from the stream and small reservoir in such a manner that they are not polluted by mine debris, carbonised material and water spilled out from the mines to the satisfaction of the Commission consisting of the following members:--
 - (a) Dr. Parvez Hasan, Advocate, Lahore (Chairman).

- (b) Dr. Tariq Banuri.
- (c) Director, Industries and Mineral Development, Lahore.
- (d) A member nominated by PMDC.
- (e) A member co-opted by the aforesaid members of the Commission.

The Commission shall have power of inspection, recording evidence, examining witnesses including the powers as provided by Order XXVI of the Civil Procedure Code. If, on the report of the Commission, it transpires that shifting of the mine mouth is not possible, then the case shall be placed before the Court for further consideration including the question whether the operation of mine No. 27A should be completely stopped;

- (ii) PMDC is directed to install a second pipeline connecting the top level reservoir;
- (iii) PMDC will enlarge the top level water reservoir and construct wall of reservoir cost of which will be shared equally by PMDC and P.C.C.;
- (iv) P.C.C. and all the miners operating adjacent to the water catchment area shall take such measures to the satisfaction of the Commission, which may prevent pollution of the water source reservoir, stream beds and water catchment area;
- (v) respondent No. 1 and all authorities empowered and authorised to grant, renew or extend the mining lease or licence, are ordered:--
 - (a) not to grant any fresh lease/licence/permission to carry out mining work in the area which prior to 1981 was water catchment area;
 - (b) not to renew or extend the existing lease/licence of the miners mentioned in the Schedule to the judgment without prior permission of this Court;

- (vi) PMDC and P.C.C. shall bear the cost of the Commission expenses and initially Rs.10,000 shall be deposited by each of them with this Court within two weeks.

All the parties concerned including the persons mentioned in the Schedule and members of the Commission be informed of this judgment. The Commission shall submit its report within six weeks.

SCHEDULE

S. No.	NAME OF PARTY	DATE OF GRANT	VALID UP TO
1.	M/s. Punjab Coal Co.	1-11-1950	1-11-2000
2.	M/s. Fazal Din & Co.	1-11-1950	31-10-2005
3.	M/s. A. Majid & Co.	11-11-1950	31-10-2000
4.	Mr. Saleem Jamal	15-1-1953	9-11-2013
5.	M/s. Rehman Aslam Colleries	13-10-1960	12-2-2008
6.	P.M.D.C.	1-7-1962	30-6-1992
7.	Punjab Min. Dev. Corp.	28-8-1962	23-9-2000
8.	Ch. Noor Alam	1964	8-5-2005
9.	Malik Ali Shah	31-5-1968	1-12-1997
10.	Al-Madad Coal Co.	31-5-1968	22-6-2008
11.	M/s. Bilal Mineral Associates	27-3-1975	6-3-2002
12.	Malik Abdur Rashid	9-5-1978	7-1999
13.	Col. Anayyat Hussain	16-12-1981	1-2000

B. Report of the Commission dated November 1996 (without Annexures)

**Report of Commission appointed by the
Supreme Court of Pakistan**

in

Human Rights Case No.120 of 1993

General Secretary, West Pakistan

Salt Miners' Labour Union, Khewra, Jhelum

Vs.

Director, Industries and Mineral

Development, Punjab, Lahore

(November 1996)

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- X. A Note on Mining Activities in Catchment Area and its effect on Water Supply Source of PMDC Salt Mines, Khewra by Mr. Mahmood-ul-Hasan, Geological Survey of Pakistan
- XI. Map of proposed Reserve Area
- XII. List of Mines Recommended for Closure (to be obtained from Director Industries)
- XIII. List of Mines Recommended for Continued Operations (to be obtained from Director Industries)

A. BACKGROUND

1. The Supreme Court of Pakistan, in its judgment dated 12 July 1994 in Human Rights Case No.120 of 1993 (General Secretary, West Pakistan Salt Miners' Labour Union, Khewra, Jhelum vs. Director, Industries and Mineral Development, Punjab, Lahore), appointed a 5-person Commission to inspect the stream and reservoir supplying water to Khewra to ensure that the water is not polluted by the debris, carbonized material and water spilled out from mine No.27A, and to report whether this can be accomplished by shifting the mouth of the mine, or whether other alternatives, including completely stopping the operation of the mine, would have to be explored. The Commission was also directed to satisfy itself with regard to the measures taken by all the mine operators in the area to prevent the pollution of the water source reservoir, stream beds, and water catchment area. The Commission members appointed by the Supreme Court are as follows:

1. Dr. Parvez Hassan, Advocate, Lahore (Chairman)
2. Dr. Tariq Banuri
3. Director, Industries and Mineral Development, Lahore
4. A member nominated by PMDC
5. A member co-opted by the aforesaid members of the Commission

The operative paragraph of the judgment of the Supreme Court, including the Terms of Reference of the Commission, is placed at **Annexure-I**.

2. PMDC nominated Mr. C.M. Arshad, General Manager (Salt) as its nominee on the Commission. Subsequently, after consultation with the other members, Dr. Parvez Hassan invited Dr. Mohammad Hanif, Chief Scientific Officer and Head, Centre for Environmental Protection Studies, PCSIR, Lahore, to join the Commission as the fifth member.

3. After consultation between members, 16 September 1994 was selected tentatively for the site visit. However, this had to be postponed because of the view that the Commission should visit the site for at least two days. In order to decide this and other matters, an informal meeting of the Commission members was held in the office of Dr. Parvez Hassan, Commission Chair, at 10.00 am on 15 September 1994. Mr. Naeem Tahir,

General Secretary, Pakistan Mine Owners Association also attended the meeting at the invitation of the Chair. The following decisions were taken:

- (1) All parties indicated in the schedule of the judgment of the Supreme Court be notified about the proposed work of the Commission so that they can appear before the Commission if they want.
- (2) The Commission members should visit the site on 20-21 October 1994.
- (3) The general public of the area should be informed about the visit of the Commission to the site, and any members of the general public should be free to appear before the Commission.
- (4) Structural geologist, to be identified by PMDC, may be requested to visit the site with the Commission.
- (5) As his office deals with workers safety, the Chief Inspector of Mines, Government of Punjab, may be requested to be present at the site during the visit of the Commission.
- (6) The Deputy Commissioner, Chakwal and Jhelum be informed of the visit of the Commission to the site.

4. Accordingly, notices were sent by the Commission to all, the 13 parties in the Supreme Court case and letters were addressed by the Commission Chair to the Deputy Commissioners, Chakwal and Jhelum, and the Chief Inspector of Mines. Announcement of the Commission's visit was also made in the mosques and on mosque loudspeakers, with the information that anyone who wished to address the Commission should present himself/herself at the PMDC Rest House, Khewra, between 10.00 am and 12.00 noon on 21 October 1994.

5. PMDC, which was requested to nominate a structural geologist to assist the Commission, proposed the name of Mr. Mahmood-ul-Hasan, Director, Geological Survey of Pakistan. Subsequently, at the suggestion of the Commission members, Dr. Parvaiz Naim, Director, Environment Assessment Services, IUCN-Pakistan, Karachi was also invited to assist the Commission during the site visit.

6. Minutes of all the proceedings of the Commission and copies of all communications and notices sent by the Commission were sent to the Registrar Supreme Court of Pakistan. Their copies are, however, available with the Commission.

B. ACKNOWLEDGEMENTS

7. The Commission wishes to acknowledge with thanks the cooperation and support of the following:

- (1) PMDC in nominating a member of the Commission, identifying a structural geologist to assist the Commission and providing support and hospitality to the Commission members during their visit to the site;
- (2) IUCN-Pakistan, for providing the services of an environmental analyst to assist the Commission during its site visit;
- (3) The Directorate of Industries and Minerals, Government of Punjab, Lahore, for undertaking a detailed analysis of the mine sites in the catchment area;
- (4) PCSIR, for providing the services of Dr. Mohammad Hanif, a member of the Commission, and for the analysis of the water samples collected at the site.
- (5) The Geological Survey of Pakistan for providing the services of Mr. Mahmood-ul-Hasan, Director, and Mr. Tahir Ali Mashhadi, Deputy Director.
- (6) All the parties to the case which responded to the notice of the Commission and assisted the Commission during its visit to the site; and
- (7) Mr. Naeem Tahir, General Secretary, Pakistan Mine Owners Association, for his general assistance to the Commission including during the visit to the site.

C. SITE VISIT

8. The members of the Commission visited the area from 11.00 am on 20 October 1994 to 2.00 p.m. on 21 October 1994. They were accompanied by Dr. Mahmood-ul-Hasan and Dr. Parvaiz Naim. A preliminary briefing in the presence of the representatives of all the parties was held at the Civil Hospital, Choa Saidan Shah, at 11.00 am on 20 October. Following this, the Commission members proceeded to the site area, where they travelled the entire length of the water stream from its mouth near Pidh village, down to the two

reservoirs, and to the mouth of mine 27A. En route, nine (9) samples of water were collected from the stream and the reservoirs. After the physical inspection, on 20 October 1994, a hearing was held at mine 27A in the presence of the representatives of all the parties. Later, the venue of the hearing was shifted to the PMDC Rest House, Khewra, where it continued until 8.00 p.m. It is noted that all the 13 parties in the case before the Supreme Court attended. The Mine Owners Association was also represented through its General Secretary, Mr. Naeem Tahir. The list of individuals present at the hearing of the parties on 20 October 1994 is **Annexure-II**.

9. On the following day, 21 October 1994, the Commission heard 88 members of the general public who responded to the announcement of the visit. The names of the 88 members of the general public who presented themselves in response to the public notice is given in **Annexure-III**.

The following documents were submitted to the Commission by various parties:

- (1) A copy of a note addressed by two senior medical officers at the PMDC Salt Mines, Khewra to the Chief Mining Engineer, giving a list of diseases caused by the pollution of the water supply (**Annexure IV**).
- (2) Application dated 20 October 1994 with Annexures by Punjab Coal Company (**Annexure V**).
- (3) Application dated 20 October 1994 with General Plan of the Lease Area submitted by A. Majid & Co. (Private) Limited (**Annexure VI**).

D. PROCEEDINGS OF THE COMMISSION AT SITE

10. The representatives of the PMDC present at the hearing agreed voluntarily to desist from using the area allotted to them for salt mining purposes if it abutted onto the water catchment area. They also agreed to undertake an environment impact assessment of their entire activities in the area, with a view to demarcating the area to be excluded from mining activities, and identifying technological and managerial improvements needed to upgrade the mining practices in the region towards environmental soundness.

11. The representatives of PCC, owners of mine 27A, were willing to close down the present mine face which abuts onto the catchment area, and explore other sites for the mine mouth. However, they have so far not identified to the Commission an alternative mouth from which effluents and debris will not be released to the catchment area.

12. The other mine owners, particularly through the representative of the Pakistan Mine Owners Association, expressed willingness to invest in upgrading their technology and mining practices, and suggested that some technical and financial assistance might be needed for the purpose. There was not a single party that disagreed with the tentative conclusion of the Commission, based on the extended visit of the Commission to the site and the walk through the entire length of the catchment area (which apparently had been undertaken for the first time), that the mining activity abutting on the catchment area was clearly polluting and contaminating the water quality. Most of the mine owners, however, pointed out that they had made substantial investments of funds and time in their mining operations and that an abrupt ending of their operations will cause immense hardship.

13. The Report of the Punjab Directorate of Industries, **Annexure VII**, shows that thirteen (13) leases are in operation in the area wherein about 100 mines have been installed. Total drivage of mines carried out in the whole area is 44,651 meter. Also, the Report records that the mine owners have incurred huge expenses for the development of infrastructure facilities in the area such as constructions of roads, quarters, offices, dumps, platforms, water tanks and machinery.

14. All members of the general public who appeared before the Commission, complained of medical problems because of impure water. No one suggested that there were no problems. All of them resided in areas where water supply came from the catchment area visited by the Commission. Some brought medical records; others showed physical deformities visible to the naked eye. Some said that their doctors had advised them that their problems were because of the use of contaminated water. This is supported by the note, mentioned above, prepared by the senior medical officers from the area, included here as **Annexure IV**. It is also confirmed by the report of Dr. Parvaiz Naim of IUCN who accompanied the Commission, on the observed health problems and recommendations for their monitoring and amelioration. This report has been prepared on the basis of the statements and examination of the general public, and is placed at **Annexure VIII**.

15. The water samples collected during the site inspection were tested at PCSIR under the supervision of Dr. Mohammad Hanif, Commission Member. The samples were found to be polluted on account of inorganics, organics, aromatics, BOD, COD, and fecal matter. According to the analysis, the main reason for the pollution is the mixing of the spring water with polluted water from the mines, and the washing/leaching of the solid waste discharged at the mine face because of the inefficient methods of excavation, storage, and

transportation of coal. The poor water quality was observed despite the fact that all the mines were closed on the day of the inspection. The complete report of Dr. Mohammad Hanif is placed at **Annexure IX**.

16. According to the report of the structural geologist, Mr. Mahmood-ul-Hasan, the pumping of the waste water into the ground is not a desirable long run solution, since it may end up contaminating ground water quality. The report is at **Annexure X**.

E. CONCLUSIONS OF THE COMMISSION

17. The Supreme Court has, in a detailed judgement in this case, given the background of the requirement for a protected catchment area for the water supply. This catchment area has been dwindling over the years and it is imperative to protect it against further encroachment for future generations. The Commission is of the view that the Supreme Court declare a catchment area comprising 1842.15 acres with its geographical contours and co-ordinates of corner points fully demarcated in the enclosed map, **Annexure XI**. This area should hereafter be the protected catchment area and no development activity within this area should be allowed without the prior permission of the Standing Committee proposed to be set up as per recommendation (9) of this report.

18. On the basis of the site inspection, the statements of the individuals mentioned above, the documents received, and the reports of the experts, the Commission is of the opinion that the water supply to Khewra town and neighbouring villages is being polluted because of the liquid and solid effluents from the coal mines along the catchment area of the water stream. The primitive and unhygienic mining practices in the area (working conditions, effluents discharge and storage) totally disregard human safety or health. Indeed, the Government and governmental agencies working there have also contributed to this neglect and practices by omission and commission. This state of affairs should not be allowed to continue any longer: it poses a serious threat to human and other forms of life.

19. The mine water and effluents get mixed into the stream water through many channels - direct infusion, leaching or seepage into the ground, washing by rain and run-offs, and through air currents. This means that simply diverting the water somewhere else is not a permanent solution, nor is it to pump the water into the ground: it would be equally disastrous if environmental harm is transferred from one area to another. The proper solution is to introduce separate waste collection and handling facilities at the mines. For

solid effluent, this means better methods of storage, handling, and transportation. For liquid effluents, it means the construction of waste water drains and treatment facilities.

20. This poses several problems. The first is the identification of an appropriate catchment area on scientific grounds. This has been identified by the Commission in **Annexure XI**. The next problem is to prevent the degradation of water quality in the catchment area. This can be effected by closing some mines, constructing additional water pipelines, and a concrete channel and primary treatment facility for the waste water. The longer term and more permanent issue is to introduce water treatment at source, and to improve mining practices in the area to stop the pollution activity in total; this includes improvement in the working conditions of mine workers, and in storage, handling and disposal of the mine debris. As mentioned, mine owners have expressed a willingness to cooperate in introducing such improvements.

21. The federal Environment Protection Agency and the Punjab Environment Protection Agency should be operationalised to perform an on-going review and monitoring of the mining activities in the catchment area. As the lead specialist agencies, their involvement is crucial to a meaningful implementation of an environmental regime in the area.

F. RECOMMENDATIONS OF THE COMMISSION

22. In view of the above, the Commission recommends the following:

- (1) The Supreme Court should declare a catchment area comprising 1842.15 acres as demarcated in **Annexure XI** as reserve area.
- (2) All mining activity that affects water quality in the reserve area as demarcated in **Annexure XI** should be stopped immediately. This includes closing all mines with mouths draining into water channels in the reserve area. The list of such mines is **Annexure XII**. In particular, the mouth of mine 27A should be closed forthwith. The owners of mine 27A may, however, operate the mine from a direction approved by the Commission or the Standing Committee (see Recommendation (9) below) that does not face the water channels in the reserve area. It is noted, once again, that these mine owners did not propose an alternative mouth for mine 27A to the Commission.

- (3) It is noted that the laying by PMDC of the pipeline from reservoir 1 to reservoir 2 as directed by the Supreme Court in its Order, dated 12 July 1994 is essential and must be expedited.
- (4) A new pipeline should be laid to cover the additional water springs upstream of PMDC's main water-tank. Due attention should be given in the designing of the new pipeline facilities to the needs of livestock and wildlife to access an appropriate quality of drinking water. This could be done by providing small water tanks along the pipeline. The costs for the proposed pipeline should be shared between the Government of Pakistan and Government of Punjab.
- (5) Attention should also be given to the construction of a separate channel for carrying liquid effluents discharged from various mines to a primary treatment facility. The costs of the construction of the channel as well as the primary treatment facility should be shared between the mine owners, the Government of Pakistan and Government of Punjab. Subject to law, allowance may be made for a two year transitional period during which mine owners will progressively work towards a proper programme of treatment at source and disposal of liquid and solid waste, as well as improved mining practices. On the basis of the polluters pay principle, the basic responsibility, financial and otherwise, for this should be solely that of the mine owners. However, on account of the substantial resources required and the urgent need to provide a new environmental order for the country, the Government of Pakistan and the Government of Punjab may be directed to provide technical and financial assistance to the mine owners for designing and implementing this programme. Such assistance should be determined and co-ordinated by the Standing Committee appointed under Recommendation (9).
- (6) Permission should be given for the operation of the mines that do not discharge directly into the water channels of the reserve area, and would be linked to the primary treatment facility. These mines should comply with law including, in particular, with the National Environmental Quality Standards under the Pakistan Environmental Protection Ordinance, 1983. A list of such mines is in **Annexure XIII**.
- (7) At the end of the transitional two year period, the Committee appointed under Recommendation (9) should monitor the implementation of the

treatment/improvement programme, and to allow continuation of mining activity subject to the above Recommendation (5).

- (8) As a model for the kind of work that would be needed, PMDC, as a major participant in the economic activity of the region, be directed to undertake an environment impact assessment of their activities in the area, and to come up with recommendations. PMDC may also be involved in the technical and financial assistance contemplated in Recommendation (5).
- (9) Governmental functionaries are handicapped in the discharge of their duties owing to political and other pressures and it is for this reason that the Commission recommends that minimum discretion be conferred in environmental matters in the Directorate of Industries, Government of Punjab. Instead, the Supreme Court may require the Pakistan Environmental Protection Council to appoint a Standing Committee on Mining to advise it in such matters. Or, the Supreme Court may appoint a Standing Committee itself that should assist the Supreme Court in all environmental matters before it. Such a Committee can comprise leading technical, scientific and professional expertise in the country drawn from both the governmental and private sectors. The Committee can, among others, monitor the recommendations of the Commission through the Environmental Protection Agency, Government of Punjab.
- (10) The Environment Protection Agency, Government of Punjab be directed to implement and monitor the recommendations of the Commission on an on-going basis and to report periodically thereon to the Standing Committee.
- (11) The Environment Protection Agency of the Government of Punjab should be strengthened to play a role in the planning and implementation of mining activities in the province and to provide ongoing support to the province in the planning of environmental activities.

Dr. Mohammad Hanif

Mr. C.M. Arshad

Director of Industries and
Mineral Development, Lahore

Dr. Tariq Banuri

Dr. Parvez Hassan
Chairman

C. Order of the Court dated 8 July 2002

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Sh. Riaz Ahmed, CJ

Mr. Justice Iftikhar Muhammad Chaudhry

Mr. Justice Qazi Muhammad Farooq

CMA Nos. 937/96, 1368 & 1643 of 99, 520-521/2000
1316/2001, 985 & 1181 of 2002 in HR Case No. 120/93

General Secretary West Pakistan Salt Mines Labour Union Khewra, Jhelum

Petitioner

Versus

Director Industries & Mineral Development, Punjab, Lahore

Respondent

For the applicants

In CMA 937/96

Mr. Ghulam Mustafa Qureshi

Law Officer, PMDA

Mr. M. A. Zaidi, AOR

Sardar Muhammad Aslam, ASC for

Malik Ali Shan & Co.,

Mr. Imtiaz Muhammad Khan, AOR

In CMA 1368/99

Sh. Zamir Hussain, ASC

Raja Abdul Ghafoor, AOR

In CMA 1643/99

Nemo

In CMA 520/2000

Mr. Naeem Tahir, Chief Executive

A.Majid & Co.,

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In CMA 521/2000	Qazi M. Amin, ASC Ch. Akhtar Ali, AOR
In CMA 1316/2001	Mr. Abdur Rashid Awan, ASC Mr. M.A. Zaidi, AOR
In CMA 985/02	Hafiz S.A. Rehman, Sr. ASC Mr. Mehr Khan Malik, AOR
In CMA 1181/02 Date of hearing	Ch. M. Khalid Farooq, ASC 8.7.2002

ORDER

SH. RIAZ AHMED, CJ.- The report of the Commission has been perused. As far as Punjab Coal Company is concerned, it is stated that in the light of the report of the Commission, they have closed down mine number 28 and 32 voluntarily. It is also stated before us that they have also shut down mine No. 27-A though it was not recommended and only change of its mouth was recommended by the Commission, but despite that they have closed down the same.

2. Adverting to the case of Majeed and Co., it is stated that mine leased out to them does not fall within the water catchments area and it has also been so stated by the Commission as well. In this view of the matter, we would allow them to operate their normal mining operation.

3. As far as Punjab Mineral Development Corporation is concerned, Mr. Khalid Farooq, ASC is present and states that the mines leased out to the Corporation also fell outside the water catchments area, therefore, they should also allowed to carry on their normal business. We allow them to do so.

4. As regards Fazal Din & Co., Qazi Muhammad Amin ASC represents it and stated that portion of mine leased out to them falls within the catchment area, therefore, they would not conduct any mining and would only operate the mining in the area falling outside water catchments. In this view of the matter, they are allowed to do so.

5. Mr. Ghulam Mustafa, Law Officer of the Pakistan Mineral Development Corporation has entered appearance and stated that their lease is not being renewed because this Court had passed an order that no renewal would take place without prior permission of this Court. In the light of the aforesaid order, we direct that the question for the grant of lease or otherwise shall be decided by the authorities concerned in accordance with law and rules on the subject. We further direct that recommendation of the Commission shall be complied with in letter and spirit by the lease holder of the mines and no violations shall take place on the respective sites.

6. Sardar Muhammad Aslam, ASC appears for Ali Shan & Co., and states that his application for the grant of lease of mining falling outside catchments area is pending before the Director Industries Punjab who is not disposing of the same. He is directed to decide the said application in accordance with law and rules on the subject.

7. It is stated that applications of M/s. Almadad Coal Mining Co., and Ittehad Coal Mines, for the grant of lease of coal mining are pending adjudication and this Court should direct that lease should be granted. We are afraid, we cannot do so, but we would direct the authorities concerned in this behalf to decide the question for the grant or otherwise of the lease of the mines to the company within one month positively.

With these observations CMAs are disposed of.

Sd/- Sh. Riaz Ahmad, CJ
Sd/- Iftikhar Muhammad Chaudhry, J
Sd/- Qazi Muhammad Farooq, J

Islamabad
8.7.2002

D. Order of the Court dated 7 April 2015

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE MIAN SAQIB NISAR

MR. JUSTICE IQBAL HAMEEDUR RAHMAN

MR. JUSTICE MAQBOOL BAQAR

**CIVIL MISCELLANEOUS APPLICATIONS NO. 2656/2006, 982/2008, 4725/2009
AND 6952/2013 IN HUMAN RIGHTS CASE NO. 120/1993**

1. Col (R) Muhammad Inayat
(in C.M.A. 2656/2006)
2. General Secretary West Pakistan Salt
Mines Labour Union Khewra, Jhelum
(in C.M.As 982/2008, 4725/2009 & 6952/2013)

...Applicant(s)

VERSUS

1. Director Industries & Mineral Development, Punjab Lahore
(in all cases)

...Respondent(s)

For the applicant(s):
(in C.M.As. 2656/2006 &
6952/2013)

In person

On Court's notice:

Khawaja Ahmed Hussain, Addl. A.G.P.
Mr. Ramzan, Dy. Director, Mines
Mr. M. Jalil, Dy. Director, Mines

Date of hearing:

07.04.2015

...

ORDER

Pursuant to order dated 2.4.2015 passed by this Court, learned Additional Attorney General for Pakistan has provided three names for the appointment of the Commission, those are: Mr. Hammad Naqi Khan, Director General, World Wildlife Fund, Lahore, Mr. Ahmad Rafay Alam, Advocate, High Court and Mr. Feisal Hussain Naqvi, ASC. We appoint Mr. Ahmad Rafay Alam, Advocate, High Court, as a Commission with the mandate to visit the site to ascertain and verify whether the directions of this Court given vide judgment dated 12.7.1994 have been complied with in letter and spirit or otherwise. The Director General, Mines and Minerals, Government of Punjab, Lahore, shall ensure all the cooperation to Mr. Ahmad Rafay Alam in completing the assignment. The report in this regard be submitted by the said Commission within one month. Re-list thereafter.

Sd/- Mian Saqib Nisar, J
Sd/- Iqbal Hameedur Rahman, J
Sd/- Maqbool Baqar, J

Islamabad the
7th April, 2015
Not Approved For Reporting
Ghulam Raza/*

E. Report of the Commission dated 6 June 2015 (without Annexures)

**REPORT OF THE COMMISSION APPOINTED BY THE
SUPREME COURT OF PAKISTAN**

(Without Annexures)

IN

HUMAN RIGHTS CASE NO. 120 OF 1993

General Secretary, West Pakistan

Salt Miners' Labour Union, Khewra Jhelum

vs.

Director, Industries and Mineral

Development, Punjab, Lahore

(June 2015)

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A. BACKGROUND

1. Through Order dated 7 April 2015 passed in Human Rights Case No. 120 of 1993 ("HRC 120 of 1993"), the Honourable Supreme Court was pleased to appoint the undersigned Commission "with a mandate to visit the site to ascertain and verify whether the directions of this Court given vide judgment dated 12.7.1994 have been complied with in letter and spirit or otherwise."

2. In its Judgment dated 12 July 1994 passed in HRC 120 of 1993, the Honourable Supreme Court was pleased to, inter alia, direct as follows:

- i) PCC is directed to shift within four months, the location of the mouth of mine No. 27A at a safe distance from the stream and small reservoir in such a manner that they are not polluted by mine debris, carbonized material and water spilled out from the mines to the satisfaction of the Commission consisting of the following members;
- ii) PMDC is directed to install a second pipeline connecting the top level reservoir;
- iii) PMDC will enlarge the top level reservoir and construct wall of reservoir cost of which will be shared equally by PMDC and PCC;
- iv) PCC and all the miners operating adjacent to the water catchment area shall take such measures to the satisfaction of the Commission, which may prevent pollution of the water source reservoir, stream beds and water catchment area;
- v) Respondents No. 1 and all authorities empowered and authorized to grant, renew or extend the mining lease or licence are ordered:
 - a) not to grant any fresh lease/licence permission to carry out mining work in the area which prior to 1981 was water catchment area;
 - b) not to renew or extend the existing lease/licence of the miners mentioned in the Schedule to the judgment without prior permission of this Court;

3. In pursuance of the Judgment dated 12 July 1994, the, Commission appointed by the Honourable Supreme Court (the "1994 Commission") submitted its report in November

1996 making the following, inter alia, recommendations (the "Report" or "Recommendations" as the context permits):

- (1) The Supreme Court should declare a catchment area comprising of 1842.15 acres as demarcated in Annexure XI as reserve area.
- (2) All mining activity that affects water in the reserve area as demarcated in Annexure XI should be stopped immediately. This includes closing all mines draining into water channels in the reserve area. The list of such mines is Annexure XII. In particular, the mouth of mine 27A should be closed forthwith. The owners of mine 27A may, however, operate the mine from a direction approved by the Commission or the Standing Committee (see Recommendation (9) below) that does not face the water channels in the reserve area. It is noted, once again, that these mine owners did not propose an alternative mouth for mine 27A to the Commission.
- (3) It is noted that the laying by PMDC of the pipeline from reservoir 1 to reservoir 2 as directed by the Supreme Court in its Order dated 12 July 1994 is essential and must be expedited.
- (4) A new pipeline should be laid to cover the additional water springs upstream of PMDC's main water-tank. Due attention should be given in the designing of the new pipeline facilities to the needs of livestock and wildlife to access an appropriate quality of drinking water. This could be done by providing small water tanks along the pipeline. The costs for the proposed pipeline should be shared between the Government of Pakistan and the Government of Punjab.
- (5) Attention should also be given to the construction of a separate channel for carrying the liquid effluents discharged from various mines to a primary treatment facility. The costs of the construction of the channel as well as the primary treatment facility should be shared between the mine owners, the Government of Pakistan and the Government of Punjab. Subject to law, allowance may be made for a two year transitional period during which mine owners will progressively work towards a proper programme of treatment at source and disposal of liquid and solid waste, as well as improved mining practices. On the basis of the polluter pays principle, the basic responsibility, financial and otherwise, for this should be solely that of the mine owners.

However, on account of the substantial resources required and the urgent need to provide a new environmental order for the country, the Government of Pakistan and the Government of Punjab may be directed to provide technical and financial assistance to the mine owners for designing and implementing this programme. Such assistance should be determined and co-ordinated by the Standing Committee appointed under Recommendation (9).

- (6) Permission should be given for the operation of the mines that do not discharge directly into the water channels of the reserve area, and would be linked to the primary treatment facility. These mines should comply with law including, in particular, with the National Environmental Quality Standards under the Pakistan Environmental Protection Ordinance, 1983. A list of such mines is Annexure XIII.
- (7) At the end of the transitional two year period, the Committee appointed under Recommendation (9) should monitor the implement of the treatment/improvement programme, and to allow continuation of mining activity subject to the above Recommendation (5).
- (8) As a model for the kind of work that would be needed, PMDC, as a major participant in the economic activity of the region, be directed to undertake an environment impact assessment of their activities in the area and to come up with recommendations. PMDC may also be involved in the technical and financial assistance contemplated in Recommendation (5).
- (9) Governmental functionaries are handicapped in the discharge of their duties owing to political and other pressures and it is for this reason that the Commission recommends minimum discretion be conferred in environmental matters in the Directorate of Industries, Government of Punjab. Instead, the Supreme Court may require the Pakistan Environmental Protection Council to appoint a Standing Committee of Mining to advise it in such matters. Or the Supreme Court may appoint a Standing Committee itself that should assist the Supreme Court in environmental matters before it. Such a Committee can comprise of leading technical, scientific and professional expertise in the country drawn from both the governmental and private sectors. The Committee can, among others, monitor the recommendation of the Commission through the Environmental Protection Agency.

- (10) The Environmental Protection Agency, Government of Punjab be directed to implement and monitor the recommendations of the Commission on an ongoing basis and to periodically report to the Standing Committee.
- (11) The Environmental Protection Agency of the Government of Punjab should be strengthened to play a role in the planning and implementation of mining activities and to provide ongoing support to the province in the planning of environmental activities.

4. Through Order dated 8 September (sic) 2002 passed in HRC 120 of 1993, the Honourable Supreme Court was pleased to "further direct that the recommendations of the [1994] Commission shall be complied with in letter and spirit by the lease holder of the mines and no violations shall take place on the respective sites." This Commission has therefore treated the Report of the 1994 Commission as forming part of the binding Judgment and Orders of the Honourable Supreme Court.

B. ACKNOWLEDGMENTS

The Commission would like to acknowledge the Director-General, Mines and Minerals, Punjab and the Deputy Director Officer (Small Scale Mining), Chakwal for their facilitation of the Commission's work and for their organizing logistics and room and board arrangements. The Commission would also like to thank all those that responded to its requests and attended its hearing of 16 May 2015. The Commission is especially grateful to Dr. Parvez Hassan, Chairman of the 1994 Commission, who graciously allowed the Commission to inspect the full Report of the 1994 Commission at his office in Lahore.

C. SITE VISIT

1. Following intimation of the Order dated 7 April 2015, the Commission met with the Director-General, Mines and Minerals, Government of Punjab on 21 April 2015 and was provided with a background file to HRC 120 of 1993. A list of the documents provided in the background file are listed in **Annex I**. At the conclusion of the meeting, it was decided the Commission would visit Khewra and visit the site on 27 and 28 April 2015.
2. The Director-General, Mines and Minerals, Punjab facilitated the travel and accommodation of the Commission from Lahore to and in Khewra through the Deputy Director (Small Scale Mining), Chakwal.

3. At the call of the Deputy Director (Small Scale Mining), Chakwal, the Commission met with officials of the Chakwal, Jhelum and Pind Dadan Khan local governments as well as officials of the Housing, Urban Development and Public Health Engineering Department of the Government of Punjab at 9am on 27 April 2015 at the ICI Rest-house at Khewra. A list of the officials met by the Commission is attached as **Annex II**.

4. The Commission set out and conducted a site visit between 10 am-1pm on 27 April 2015 and approached the Khewra water catchment area from the South, visiting Mine 31A (outside the Khewra water catchment area) and Mine 27A (inside the Khewra water catchment area but closed voluntarily by the Punjab Coal Company) enroute to the Khewra Water Supply Reservoir.

5. The Commission again set out and conducted a further site visit between 7-9am on 28 April 2015 and visited the source of "Mitha Pattan" water springs upstream of the Khewra Water Supply Reservoir near to the village of Pidh, Tehsil Choa Saidan Shah, District Chakwal. During this site visit, the Commission was accompanied by the In-Charge, Water Supply of the Pakistan Mineral Development Corporation (Private) Limited ("PMDC") in Khewra, a Surveyor from PMDC and a representative of the Directorate of Mines and Minerals, Punjab. After the site visit, the Commission met with the Water Foreman of the Town Municipal Administration ("TMA"), Khewra, also on the call of the Deputy Director (Small Scale Mining), Chakwal.

6. After the site-visits, the Commission was better able to appreciate the nuances of the Orders of the Honourable Supreme Court and Report of the 1994 Commission. Several questions arose after a scrutiny of the same and the Commission, vide letter dated 28 April 2015 (**Annex III**), wrote to the Director-General, Mines and Minerals, Punjab appending a set of questions to be answered by various stakeholders and thereafter, on 8 May 2015, met with the Director-General in Lahore on 8 May 2015 and consulted him on the same. Then, under instructions from the Director-General, the Deputy Director (Small Scale Mining), Chakwal issued letters to the PMDC, TMA, Khewra and mineowners listed in the Schedule to the Judgment dated 12 July 1994 passed in HRC 120 of 1993 requesting them to respond to specific questions raised by the Commission and providing them an opportunity to personally meet the Commission on 16 May 2015. A copy of the said correspondence is attached as **Annex IV**.

7. The Commission also wrote to the Director-General, EPA, Punjab vide letter dated 28 April 2015 (**Annex V**) asking specific questions with respect to the Orders of the

Honourable Supreme Court passed in HRC 120 of 1993 and requesting assistance in the sampling and testing of the water resources of Khewra. Following, the Commission met with the Director-General in person on 11 May 2015, in which meeting the Director-General directed the District Officer (Environment), Jhelum to arrange water sampling and testing of the Khewra water catchment area and water supply of Khewra. On 16 May 2015, the Commission met with various representatives from the Directorate of Mines & Minerals, Punjab, the Pakistan Mineral Development Company and EPA, Punjab, the District Officer (Environment), Jhelum as well as various mine-owners at 9am at the PMDC Guest House in Khewra. After the meeting, the Commission received a hand-delivered letter from Messrs Fazal Din and Company (**Annex VI**).

D. OBSERVATIONS AND CONCLUSIONS

1. The Khewra Water catchment area

- (1) The term "Khewra water catchment area" is legally undefined and refers generally to all that land adjacent to Khewra that drains water into streams that eventually run through the Khewra valley. In its Judgment dated 12 July 1993 (sic) passed in HRC 120 of 1993, the Honourable Supreme Court noted originally an area measuring 4161 acres within the Khewra water catchment area was declared a restricted area in 1911 (the "1911 Restricted Area") and no mining was permitted therein in order to protect the underground drinking water sources from pollution. The Honourable Supreme Court noted that, by 1981, this restricted area had dwindled to merely 545.09 acres. In its Judgment, the Honourable Supreme Court directed that no fresh lease or licence or permission to carry out mining work was to be permitted in the "area which prior to 1981 was water catchment area" - a reference to the 1911 Restricted Area.
- (2) The Report of the 1994 Commission recommended to the Court an area measuring 1842.15 acres within the Khewra water catchment area be declared a "reserve area" (the "1994 Commission's Reserve Area"). In its reply to the questions directed to it by the Commission (the "Reply of the Directorate of Mines and Minerals, Punjab", **Annex VII**), the Directorate of Mines and Minerals confirmed that the 1994 Commission's Reserve Area "had been properly demarcated". The Reply of the Directorate of Mines and Minerals, Punjab also annexes a map of the Khewra water catchment area (the "Map of the Khewra

water catchment area") clearly identifying the boundaries of nearby mining leases as well as the 1911 Restricted Area and the 1994 Commission's Reserve Area.

2. The Khewra Drinking Water Supply

- (1) The drinking water supply of Khewra, which has population, the Commission was informed, of approximately 50,000 persons, comprises of (i) spring water from the Khewra water catchment area north of Khewra Salt Mines that originates at the "Mitha Pattan" spring located below village Pidh; (ii) water pumped from the Jhelum River; and (iii) water supplied by the ICI factory. This report is concerned primarily with the spring water in the Khewra water catchment area.
- (2) Fresh water originating from the "Mitha Pattan" spring is joined by other streams from additional water springs in the Khewra water catchment area until it is diverted and made to flow into the Khewra Water Supply Reservoir. The Commission was struck by the scenic beauty of the area, as well as the variety of birds in the valley through which the stream flows from its source to the Khewra Water Supply Reservoir.
- (3) During the site visit to the "Mitha Pattan" spring, the Commission observed the banks of the stream from the mouth of the spring onwards were occasionally lined with black deposits, clear evidence that coal-mining debris was still finding its way into the water flowing along the stream (photos attached as **Annex VIII**).
- (4) Although the Commission did not observe any mines in operation in the areas within the Khewra water catchment area visited - and the Directorate of Mines and Minerals, Punjab confirms this position - the existence of mine debris at the mouths of old or closed mines in the area means rains will continue to wash the mine debris down into the Khewra water catchment area and into the stream carrying water to the Khewra Water Supply Reservoir.
- (5) The Commission was informed by the representative of the PMDC that it had laid a pipe for the water of the stream running from "Mitha Pattan" to the Khewra Water Supply Reservoir in the late 1990s, but that due to flooding in the Khewra water catchment area in 2000-2002, the pipes had been washed away. This information was confirmed by the Deputy Director (Small Scale Mining),

Chakwal, though the Commission could not independently verify this information.

- (6) The Khewra Water Supply Reservoir (photo attached, Annex IX) comprises of three contiguous and open water tanks. Two tanks belong to the PMDC and a third, smaller, tank belongs to the TMA, Khewra. Fresh water from the "Mitha Pattan" spring flows into the first PMDC water tank and the overflow from it is stored in the second PMDC water tank. The overflow from the second PMDC water tank is stored in the TMA, Khewra water tank. A pipe leading from the PMDC water tanks provides water, the Commission was informed, for use by PMDC officers and employees. The TMA, Khewra water tank also receives water from a 4" pipe connected, the Commission was informed, directly to a water source situated in an abandoned bore approximately 1800 feet away from the Khewra Water Supply Reservoir. The Commission was informed this 4" pipe was laid approximately 3-4 years ago. Another pipe leading from the TMA, Khewra water tank provides drinking water to three mohallas in Khewra.
- (7) The preceding description of the Khewra Water Supply Reservoir is confirmed by the statements made by the Tehsil Officer (I&S), TMA, Pind Dadan Khan, vide letter No. 166/TMA dated 17 May 2015 (Annex X), that vide agreement dated 27 July 2001 with the PMDC, the TMA, Khewra was to provide drinking water to the inhabitants of Khewra from the water stored in the Khewra Water Supply Reservoir.
- (8) It is pointed out that the Order dated 12 July 1994 passed by the Honourable Supreme Court in HRC 120 of 1993 quotes from a 1981 report of a Committee constituted by the Secretary, Industries and Mineral Development, Government of Punjab that the "Mitha Pattan" spring catered to at least 60-70 percent of the needs of Khewra Town, the remainder of up to 15 percent being provided by the municipal water supply scheme and of up to 5 percent through one outlet maintained by the ICI factory. According to the Tehsil Officer (I&S), TMA, Pind Dadan Khan, water from the nearby Jhelum River is now pumped from Bela to Khewra. This pumped water is provided to approximately 35,000 inhabitants in Khewra for drinking purposes. The water from the Khewra Water Supply Reservoir now provides drinking water to the inhabitants of only three mohallas of Khewra comprising, the Commission was informed, of no more than 3000-5000 inhabitants. Thus the water from the Khewra Water Supply Reservoir today

supplies no more than 10 percent of the inhabitants of Khewra. In addition, the Commission was informed that the ICI factory provides drinking water to the public through 22 taps located in Khewra with water pumped from its own pumping facility situated on the River Jhelum and from a local spring. The water supply of Khewra today is totally different from what it was twenty years ago. The "Mitha Pattan" spring is no longer the major source of drinking water in Khewra Town.

- (9) It is further pointed out that, vide letter of the District Officer (I&S), TMA, Pind Dadan Khan and discussion with the Water Foreman, TMA, Khewra, the water from the Khewra Water Supply Reservoir is enough to provide inhabitants of the three mohallas to which it is connected with no more than one hour of drinking water every three days. Due to regular loadshedding (sic), the pumps at Bela supplying water from the River Jhelum can provide drinking water no more than one hour every three days. For other personal use, the Commission was informed that inhabitants sometimes dig wells and use the brackish/salty ground water.

3. Results from Water Sampling and Testing

- (1) Samples of water from the "Mitha Pattan" spring, the Khewra Water Supply Reservoir and from drinking water pumped from the River Jhelum were taken by the District Officer (Environment), Jhelum on the directions of the Director-General, EPA, Punjab were received for testing on 18 May 2015 and the Analysis Report of 7 Drinking Water Samples were transmitted to the Director-General, EPA, Punjab vide letter dated 29 May 2015 (**Annex XI**) and subsequently received by the Commission on 1 June 2015.
- (2) The Analysis Report samples water from seven (7) different locations, namely: the mouth of the "Mitha Pattan" spring; the two PMDC water tanks and TMA, Khewra water tank forming the Khewra Water Supply Reservoir; the 4" pipe delivering water to the TMA, Khewra tank; the TMA pump from where water from the Khewra Water Supply Reservoir is piped into three mohallas in Khewra; and the TMA pump supplying drinking water from the River Jhelum near Bela. Although the Analysis Report does not provide a comprehensive chemical analysis of the samples taken, bacteriological analysis shows none of the water from the Khewra Water Supply Reservoir is fit for consumption, and that the Total Dissolved Solids found in the water are near to or exceed National

Environmental Quality Standards ("NEQS"). Further analysis of water from the Khewra water catchment area can reveal the chemical contamination, if any, in the water. The characteristics of any contamination can reveal the source of the same and provide basis for addressing any remedial measures.

4. Changed legal regime

1. The Judgment in HRC 20 of 1993, reported as General Secretary, West Pakistan Salt Miners' Labour Union, Khewra Jhelum vs. Director, Industries and Mineral Development (1994 SCMR 2061) is a landmark in environmental jurisprudence and an achievement of the Superior Judiciary's active protection of the Fundamental Rights of citizens. The Judgment recognizes the Fundamental Right to life as including the "right to have unpolluted drinking water."
2. Since the Judgment dated 12 July 1994 passed in HRC 20 of 1993, other landmarks in law have developed the concepts of environmental regulation, both over coal mining and drinking water in particular and over environmental regulation in general. A summary of these developments is provided in **Annex XII**.
3. An overview of these developments in law reveals:
 - (a) The Government of Punjab, under the Doctrine of Public Trust, is responsible for the regulation of natural resources throughout Punjab, including water and minerals such as coal, in a manner - such as, for example, minerals rules, which are guardians of the Public Trust - that makes them available to everyone irrespective of status;
 - (b) Under the Irrigation and Drainage Act, 1873, the Government of Punjab is entitled, in the public interest, to the use and control of, inter alia, sub-soil water; and it may carry out evaluations and assessment regarding the condition of the aquifer etc. and take necessary steps for the proper management of sub-soil-water in order to protect the environment, the quality and availability of such water;
 - (c) Under the Punjab Local Government Ordinance, 2001 and the Punjab Local Government Act, 2013 local governments have wide-ranging powers,

functions and responsibilities to provide drinking water and to protect water sources from pollution;

- (d) All proponents of small- or large-scale coal mining undertakings are required under Punjab Environmental Protection Act, 2012 ("PEPA 2012") and the Pakistan Environmental Protection Agency (Review of IEE/EIA) Regulations, 2000 (the "IEE/EIA Regulations") to prepare Environment Impact Assessments ("EIAs") of their proposed coal mining projects and to submit the same to the EPA, Punjab for Environmental Approval;
- (e) All applicants for both the grant and for the renewal of coal mining leases for large-scale mining operations are required by the Punjab Mineral (sic) Concession Rules, 2002 to satisfy the Director-General, Mines and Minerals, Punjab that, inter alia, their proposals for the prevention of pollution etc. are satisfactory;
- (f) All applicants for the grant of mining leases for small-scale mining activities for the commercial extraction of sand, gravel, limestone, clay, sulphur and other minerals (not including coal, gold, copper and precious stones) with a total cost less than Rs. 100 are required by the IEE/EIA Regulations to prepare Initial Environmental Examinations ("IEEs") of their proposed mining projects;
- (g) The EPA, Punjab, as the environment regulator, is responsible for protection, preservation etc. of the environment, prevention of pollution, enforcement of NEQS, the provisions of PEPA, 2012, the IEE/EIA Regulations and any terms and conditions set out in Environmental Approvals of IEEs and EIAs and can, inter alia, take action to correct or stop any mining activity that it deems is in violation of PEPA 2012, the IEE/EIA Regulations and the terms and conditions of any Environmental Approval; and
- (h) Strategic Environmental Assessments ("SEAs"), though not legally recognized in the Punjab, are effective tools to measure the cumulative adverse environmental impacts resulting from any existing or proposed law, policy, plan or program.

5. Representations of Mine-Owners and Observations Relating thereto

At the meeting conducted on 16 May 2015, the Commission met with a number of mine-owners to discuss their responses to the specific questions asked of them by the Commission. A list of the mine-owners met is attached as Annex XIII. A summary of their representations is as under:

a) Punjab Coal Company (ML-CKL-I-COAL-6)

The Map of the Khewra water catchment area (see Annexure A to Annex VII) indicates a portion of this mining lease falls within both the 1911 Restricted Area and the 1994 Commission's Reserve Area.

Vide letter dated 11 May 2015 (Annex XIV) addressed to the Commission and delivered at the meeting of 16 May 2015, the Punjab Coal Company submitted that it had shut down its mines 27-A, 28 and 32 in light of the Report of the 1994 Commission. These mines fell within the 1911 Restricted Area and the 1994 Commission's Reserve Area. It further submitted that since that was not doing mining in the "Khewra water catchment area", it was not having any adverse environment effect therein. The letter notes that there is still mine debris from now closed pre-Partition mines in the Khewra water catchment area.

Annexures XII and XIII of the Report of the 1994 Commission list, respectively, mines within the 1994 Commission's Reserve Area recommended to be closed and mines within the 1994 Commission's Reserve Area proposed to be permitted to continue operation subject to the conditions stipulated in Recommendation (6) of the Report.

Annexure XII of the Report of the 1994 Commission lists, inter alia, the following Punjab Coal Company mines the 1994 Commission recommended stop their operations:

Mine No. PG-7

Mine No. PG-1 (New)

Mine No. P-1 (Tunnel)

Annexure XIII of the Report of the 1994 Commission lists, inter alia, the following Punjab Coal Company mines within the 1994 Commission's Reserve Area the 1994 Commission proposed be permitted to continue operation subject to certain conditions:

- | | | |
|-----|------|--------------------|
| 1. | 23 | Working, no water. |
| 2. | 24 | " " |
| 3. | 26 | " " |
| 4. | 27 | " " |
| 5. | 27-1 | " " |
| 6. | 29 | Permanent closed |
| 7. | 30 | " " |
| 8. | 31 | " " |
| 9. | 31-1 | " " |
| 10. | 32-J | Permanent closed |
| 11. | 33 | " " |
| 12. | 34 | Working, no water |
| 13. | 35 | " " |
| 14. | 37 | Permanent closed |
| 15. | 40 | " " |
| 16. | 27-A | Working, no water |

The mines listed in Annexure XII and XIII of the Report of the 1994 Commission were prepared by a team comprising of the Assistant Director, Mineral Development, Chakwal, the Assistant Manager (Tech), PMDC, the Survey & Drawing Officer, Mineral

Evaluation & Technical Cell, Sargodha Region and the Surveyor, PMDC Salt Mines, Khewra. This team also prepared the Demarcation Report of Proposed Water Catchment Area of 1842.15 Acres Near Khewra (**Annex XV**) that eventually led to the Directorate of Mines and Minerals' declaration of the 1994 Commission's Reserve Areas as a restricted area.

b) Abdul Haseeb (ML-CKL-II-88)

The Map of the Khewra water catchment area (see Annexure A to Annex VII) indicates this mining lease is wholly outside the 1994 Commission's Reserve Area but falls partially within the 1911 Restricted Area.

The Brief Report of the Mining Concessions Falling 111 (sic) Water Catchment Area in Khewra Salt Range provided to the Commission by the Director-General, Mines and Minerals, Punjab (the "Brief Report of Mining Concessions", **Annex XVI**) states this mining lease was granted for a term extending from 10 November 1993 till 9 November 2013; that it was subsequently assigned to Mr. Abdul Haseeb; and that the "mining lease was treated as expired with effect from 19.01.2015 due to non-provisions of permission [from the Honourable Supreme Court]." Vide letter submitted to the Commission (**Annex XVII**) and oral submissions made at the meeting of 16 May 2015, Mr. Abdul Haseeb stated that his mining lease fell outside the "Khewra water catchment area" and had been listed in the Schedule to the Judgment dated 12 July 1994 passed in HRC 120 of 1993. In its Judgment, the Honourable Supreme Court had directed "not to renew or extend the existing lease/licence of the miners mentioned in the Schedule to the Judgment without prior permission of this Court. Mr. Abdul Haseeb has sought the permission of the Honourable Supreme Court.

c) Messrs Rehman Aslam Collieries (ML-CKL-II-Coal-15 now ML-JLM-121)

The Brief Report of Mining Concessions states the term of this mining lease was renewed for a term extending from 13 October 1990 to 12 October 2010; and that this "mining lease was treated as expired with effect from 19.01.2015 due to non provision of permission from the Honourable Supreme Court of Pakistan."

Annexure XII of the Report of the 1994 Commission lists, inter alia, the following Rehman Aslam Collieries' mines the 1994 Commission recommended stop their operations:

Mine No.2

Mine No. 2-J

Mine No.5

Mine No. 5-B

Tunnel No.1

Annexure XIII of the Report of the 1994 Commission lists, inter alia, the following Rehman Aslam Collieries' mines within the 1994 Commission's Reserve Area the 1994 Commission proposed be permitted to continue operation subject to certain conditions:

1.	3	Working, no water, proved
2.	3-J	Joined with mine No.3 and became one mine
3.	4	Temporary closed, no water, proved
4.	1	Temporary closed, no water, proved
5.	5-C	Permanent closed, no water
6.	6	" "
7.	6-A	" "
8.	7	" "
9.	8	" "

d) Col. (R) Raja Muhammad Inayat (ML-CKL-I-100)

The Map of the Khewra water catchment area (see Annexure A to **Annex VII**) indicates that 12.33 acres of this mining lease falls within the 1911 Restricted area.

The Brief Report of Mining Concessions states this mining lease was granted for a term from 16 December 1994 to 15 December 2004; that subsequently this lease was assigned to Col. (R) Raja Muhammad Inayat; and that as this mining lease was listed in the Schedule to the Judgment dated 12 July 1994 passed in HRC 120 of 1993, the lessee was advised to obtain permission from the Honourable Supreme Court along with his renewal application. At present, this mining lease has expired due to non-renewal for this reason.

Vide letter with annexures submitted at the meeting on 16 May 2015 (**Annex XVIII**), Colonel (Retired) Raja Mohammad Inayat submitted that 2.86 acres of his mining lease had come to fall within the 1994 Commission's Reserve Area and that, vide letter No. ML-CKL-ICOAL-10011460 dated 28 March 2012, the Director-General, Mines and Minerals, Punjab was pleased to accede his request to surrender those 2.86 acres, reducing the size of his mining lease from 505.25 to 502.39 acres but wholly outside the 1994 Commission's Reserve Area. The letter further submitted that the mining lease no longer falls within the "Khewra water catchment" area. In addition, the representative of the lease-owner present on behalf of Col. (R) Raja Muhammad Inayat, stated the lessee was ready to surrender any other parts of his mining lease that may be found to be falling, if at all, within any part of the Khewra water catchment area or areas otherwise declared restricted or reserved.

e) Messrs Fazal Din and Company (ML-CKL-II-COAL-39)

The Map of the Khewra water catchment area (see Annexure A to **Annex VII**) indicates that this mining lease falls within the 1911 Restricted Area and a portion of it falls within the 1994 Commission's Reserve Area.

Vide letter dated 16 May 2015 delivered to the Commission at the meeting on 16 May 2015 (see **Annex VI** hereto), Messrs Fazal Din and Company stated that since they were not carrying out any mining activity within the 1994 Commission's Reserve Area, there was no need for them to take measures to prevent pollution in the same.

Annexure XII of the Report of the 1994 Commission lists, inter alia, the following Fazal Din and Company mines the 1994 Commission recommended stop their operations:

Mine No. 6

Annexure XIII of the Report of the 1994 Commission lists, inter alia, the following Fazal Din and Company mines within the 1994 Commission's Reserve Area the 1994 Commission proposed be permitted to continue operation subject to certain conditions:

1. 8-A Working, no water, proved
2. 9 Working, no water, not proved
3. Babar mine Working, no water, proved

Vide Order dated 8 July 2002 passed in HRC 120 of 1993, the Honourable Supreme Court of Pakistan recorded the submissions of counsel for Fazal Din and Company as under:

4. As regards Fazal Din & Co., Qazi Muhammad Amin, ASC represents it and stated that portion of mine leased out to them falls within the catchment area, therefore, they would not conduct any mining and would only operate the mining in the area falling outside water catchments. In this view of the matter, they are allowed to do so.

f) Pakistan Mineral Development Corporation (Private) Limited

PMDC was one of the mine-owners listed in the Schedule to the Judgment dated 12 July 1994 passed in HRC 120 of 1993.

Vide letter dated 15 May 2015 (**Annex XIX**), PMDC intimated it had complied with the Orders of the Honourable Supreme Court and had enlarged the top-level reservoir and installed a second pipeline from it. The letter also states that PMDC had collaborated with the TMA, Khewra to lay additional pipeline to cover the additional water-springs upstream from the Khewra Water Supply Reservoir.

Vide Order dated 8 July 2002 passed in HRC 120 of 1993, the Honourable Supreme Court of Pakistan recorded the submissions of Law Officer of the PMDC as under:

5. Mr. Ghulam Mustafa, Law Officer of the Pakistan Mineral Development Corporation has entered appearance and stated that their lease is not being renewed because this Court had passed an order that no renewal would take place without prior permission of this Court. In light of the aforesaid order, we direct

that the questions for the grant of lease or otherwise shall be decided by the authorities concerned in accordance with law.

E. REPORT AND RECOMMENDATIONS

Whilst the Commission's mandate remains to ascertain and verify whether the directions of the Honourable Supreme Court have been complied with in letter and spirit, it is mindful that the central theme of HRC 120 of 1993 was and always has been the provision of clean drinking water to the people of Khewra in protection of their Fundamental Right to a clean and healthy environment. Addressing the specific and broad parameters of this mandate, and verifying the Orders of the Honourable Supreme Court in HRC 120 of 1993, the Commission reports and recommends as follows:

1. The catchment area of 1842.15 acres identified by the 1994 Commission as Reserve Area has been demarcated a "reserve area" by the Directorate of Mines and Minerals, Punjab.
2. At present, no mining activity is taking place within the 1994 Commission's Reserve Area (see Reply of the Directorate of Mines and Minerals, Punjab, at Annex VII). Mines falling within the 1994 Commission's Reserve Area and listed in Annexure XII of its Report to be stopped have been closed. Mines within the 1994 Commission's Reserve Area specifically listed in Annexure XIII of its Report to be allowed to continue their operations subject to certain conditions were allowed to work on those mines. The Commission was provided with no evidence that the conditions for operating mines stipulated in Recommendation (6) of the Report of the 1994 Commission were or have been met.
3. Leases of mine-owners listed in the Schedule to the Judgment dated 12 April 1994 have not been renewed without permission of the Honourable Supreme Court of Pakistan.
4. PMDC has installed a second pipeline connecting the top-level reservoir, enlarged the top-level reservoir and, with the TMA, Khewra, laid a pipeline to cover additional water springs upstream of the Khewra Water Supply Reservoir. However, the pipeline to cover additional water springs upstream was reportedly damaged due to flooding about (sic) 2000-2002.

5. Recommendation (4) of the Report of the 1994 Commission to lay a pipeline linking the Khewra Water Supply Reservoir to additional water springs upstream may be reconsidered in light of the frequent flooding of the Khewra water catchment area and in light of any relevant findings or recommendations of the EIA or SEA carried out by the Directorate of Mines and Minerals, Punjab in accordance with Recommendation (8) below.
6. The water available in Khewra is not suitable for drinking purposes as it contains Total Dissolved Solids and bacteriological contamination in excess of NEQS and may also be contaminated by debris from old coal mining operations within the Khewra water catchment area. In order to address this demonstrated and potential contamination, the EPA, Punjab should be directed to carry out a complete physical, chemical, organic etc. testing of water sources of Khewra so as to determine whether any mining activity within the Khewra water catchment area is still the cause of contamination of water therein and to take any action it deems necessary in consequence thereof.
7. The Government of Punjab should, in fulfillment of its obligations as Trustee under the Doctrine of Public Trust, be directed to convene the Punjab Environmental Protection Council to consider, inter alia, the formulation and implementation of policy for mitigating the adverse environment affects of mining, especially coal-mining in the Khewra water catchment area; and a policy to address declining drinking water quality and to measure, evaluate and assess the quality of and availability of ground water in the Punjab.
8. In order for the Directorate of Mines and Minerals, Punjab to have a scientifically-sound baseline understanding of the adverse environmental impacts of previous and existing mining and other activities in and adjacent to the Khewra water catchment area, the Directorate should be directed to carry out an EIA or, alternatively, a SEA of the cumulative impact of all mining and other activities taking place therein. In either case, special attention may be given to the considerations set out in Annex XX. The EIA or SEA, as the case may be, is to set out mitigation measures that may be adopted by the Directorate or implemented by mine owners.
9. Proponents of all coal-mining projects are required by the IEE/ETA Regulations to submit EIAs of their proposed projects and obtain Environmental Approval.

Proponents of projects involving the commercial extraction of certain minerals are also required under PEPA 2012 to submit IEEs to the EPA, Punjab.

10. The EPA, Punjab is responsible for monitoring and enforcing the provisions of PEPA 2012 and its role in the planning and implementation of mining activities in Khewra and elsewhere should be strengthened through the enforcement of the provisions of PEPA 2012, especially those in relation to pollution and the submission and Environmental Approval of TEEs and ETAs.
11. EIAs, the conditions of any Environmental Approvals accorded by the EPA, Punjab and proposals for the prevention of pollution etc. conducted by, applicable to and from applicants for the grant or renewal of coal mining leases for large-scale mining undertaking must all be considered satisfactory by the Director-General, Mines and Minerals, Punjab in terms of the Punjab Mining Concession Rules, 2002 before any grant or renewal.
12. The TMA, Khewra or its successor should be directed, after considering the EIA or SEA carried out as per Recommendation (8), to prepare a scheme for the prevention of pollution in and treatment and purification of drinking water supplied by it to the residents of Khewra and present the same to the Government of Punjab for further action. The Honourable Supreme Court may, if it pleases, review any action on such scheme by way of rolling review of the HRC 120 of 1993.
13. In accordance with the Orders of the Honourable Supreme Court, "[t]he grant of lease or otherwise shall be decided by the authorities concerned in accordance with law" and, therefore:
 - (1) the Honourable Supreme Court may grant permission for the renewal of mining lease ML-CKL-II-88 under the Punjab Mining Concession Rules, 2002 provided the mine owner obtains Environmental Approval of an EIA of its coal-mining operation from the EPA, Punjab.
 - (2) the Honourable Supreme Court may grant permission for the renewal of mining lease ML-CKL-I-COAL-I00 under the Punjab Mining Concession Rules, 2002 provided the mine-owner obtains Environmental Approval of an EIA of its coal-mining operation from the EPA, Punjab; and

- (3) the Honourable Supreme Court may grant permission for the renewal of mining lease ML-CKL-II-Coal-15/ML-JLM-121 under the Punjab Mining Concession Rules, 2002 subject to the conditions stipulated in Recommendation (6) of the Report of the 1994 Commission and provided the mine-owner obtains Environmental Approval of an EIA of its coal-mining operation from the EPA, Punjab.

Ahmad Rafay Alam
Advocate of the High Courts

Saleem, Alam & Co.
H 40 St 2, Sarwar Colony
Sarwar Road, Lahore Cantt
Lahore

(Commission Appointed by
the Honourable Supreme
Court in HRC 120 of 1993)

Submitted on: 6 June 2015

F. Order of the Court dated 1 October 2015

IN THE SUPREME COURT OF PAKISTAN
(ORIGINAL JURISDICTION)

PRESENT:

MR. JUSTICE MIAN SAQIB NISAR
MR. JUSTICE IJAZ AHMED CHAUDHRY
MR. JUSTICE QAZI FAEZ ISA

**C.M.A. No. 2656/2006, 982/2008, 4725/2009 AND 6952/2013 IN HUMAN RIGHTS
CASE NO. 120/1993**

Application of Col (R) Muhammad Inayat (C.M.A. 2656/2006)
General Secy. West Pakistan Salt Mines (C.M.As 982/08, 4725/09 & 6952/13)
Labour Union Khewra, Jhelum ...Applicant(s)

VERSUS

Director Industries & Mineral Development, Punjab Lahore
...Respondent(s)
(in all cases)

For the applicant(s): Mr. Muhammad Munir Paracha, ASC
Syed Rifaqat Hussain Shah, AOR
(in C.M.A. 2656/2006)
Malik Qamar Afzal, ASC
Mr. M. Ramzan, Dy. Direction (sic), Mines
(in C.M.As. 982/2008, 4725/2009 & 6952/2013)

For Govt. of Punjab: Mr. Mudassir Khalid Abbasi, Asstt. A.G.

Date of hearing: 01.10.2015

...
ORDER

Pursuant to our order dated 7.4.2015, quite a comprehensive report has been submitted by Mr. Ahmad Rafay Alam, who was appointed as a Commission. We appreciate the efforts put in by the Commission in preparing the report. In the report, there are certain observation which highlight that the judgment of this Court passed in H.R.C. No. 120/1993 and the report of the Commission constituted in 1994 by this Court have seemingly not been complied with in letter and spirit. Besides, certain other hazardous environmental aspects have been pointed out in the report of the present Commission and certain remedial measures have been recommended. In light of the report, we direct Director General, Mines and Minerals, Punjab, Secretary Mines and Director General Environmental Protection Agency, Punjab to appear in person to assist this Court as to how the recommendations made in the report of the Commission regarding the hazardous/adverse environmental effect can be precluded and eliminated and what process should be utilised for environmental assessment as suggested by the Commission. A copy of this report must immediately be sent to all the three officers for their assistance on the next date of hearing. Relist in the week commencing 12th October 2015. Notice also be issued to the Mine owners through DG Mines and Minerals to appear before the Court and if they have any objection upon the report, those must be filed before the next date of hearing.*

Sd/- MIAN SAQIB NISAR, J
Sd/- IJAZ AHMED CHAUDHRY, J
Sd/- QAZI FAEZ ISA, J

Islamabad, the

1st October, 2015

Not Approved for Reporting

* Emphasis added

CHAPTER 5

LAHORE SOLID WASTE MANAGEMENT COMMITTEE

City District Government vs. Muhammad Yousaf

ICA No. 798 of 2002

before the Lahore High Court, Lahore

- A. Judgment by a single Judge in Muhammad Yousaf vs. Province of Punjab, in Writ Petition No. 20406 of 1998 against which the Intra Court Appeal No. 798 of 2002 was filed before the Division Bench of the Lahore High Court**
- B. Order of the Court dated 11 December 2002 re appearance of Dr. Parvez Hassan and Syed Mansoor Ali Shah, as Amicus Curiae**
- C. Order of the Court dated 25 February 2003 re appointment of Lahore Solid Waste Management Committee**
- D. Order of the Court dated 18 June 2003**
- E. Report of the Committee dated 18 March 2004 (without Annexure)**
- F. Judgment of the Court dated 25 January 2005**

A. Judgment by a single Judge in Muhammad Yousaf vs. Province of Punjab, in Writ Petition No. 20406 of 1998 against which the Intra Court Appeal No. 798 of 2002 was filed before Division Bench of the Lahore High Court

2003 CLC 576

[Lahore]

Before Mian Hamid Farooq, J

**MUHAMMAD YOUSAF
and 15 others---Petitioners**

Versus

**PROVINCE OF THE PUNJAB
through Secretary, Local Government
and 6 others---Respondents**

Writ Petition No. 20406 of 1998, heard on 30th September, 2002.

Aitzaz Ahsan for Petitioners.

Ch. Muhammad Bashir, A.A.G. for Respondents Nos. 1 to 4.

Kh. Muhammad Afzal for Respondent No.5.

Nawaz Anjum, Director Legal on behalf of Respondents Nos. 6 and 7.

Date of hearing: 11th September, 2002.

JUDGMENT

The petitioners, sixteen (16) in number, claiming to be the owners of agricultural land measuring over 300 Kanals in Village Mehmood Booti, Tehsil Cantt., District Lahore, through the filing of the present Constitutional petition, have challenged the establishment of an industrial project for production of energy out of waste, by the erstwhile Matropolitan (sic) Corporation, now succeeded by City District Government, over the land measuring 638 Kanals, 11 Marlas situated in Revenue Estate of Mehmood Booti, Tehsil Lahore Cantt., District Lahore, including that of the petitioners, with the following prayer:

"It is, therefore, respectfully prayed that a writ may kindly be issued restraining the respondents from setting up any industrial or other project over the land of the petitioners described in Annexure H and order of respondent No. 1 contained in Annexure A may kindly be declared to be without lawful authority and of no legal effect."

2. Precisely stated the facts as narrated in the present petition are that the then Matropolitan (sic) Corporation requested World Bank to finance an industrial project for production of energy out of municipal waste over the aforesaid land, including the petitioners, but the said request was declined by the World Bank, statedly, on the plea that the proposal would be hazardous to the environment. In the meantime aforementioned land was acquired, necessary notifications were issued by the competent authorities and award, dated 22-7-1997 was delivered, which action of acquisition of land, was, reportedly, challenged by the petitioners through filing Constitutional petition (W.P. No. 22157 of 1997) which is, statedly, pending. It is the case of the petitioners that they, on 12-5-1998, applied for the withdrawal of the notifications, but the said request was turned down, which necessitated the filing of the present petition do the additional grounds that with the promulgation of Pakistan Environmental Protection Act, 1997, no industrial project can be established within the municipal limits and that the land of the petitioners is, still, being used for cultivating purposes. Needless to mention that Environment Protection Agency has also been impleaded in the present petition as respondent No.7. Pursuant to the directions by this Court, the then Matropolitan (sic) Corporation filed the parawise comments and after the admission of the writ petition to regular hearing, written statement was submitted. The position taken by the Corporation was that the possession of the land had been taken over by Matropolitan (sic) Corporation on 22-7-1997; it has paid an amount of Rs. 1,52,96,610 to the Collector as compensation

of land and the compensation for trees etc. had also been deposited. It was further stated that the disputed land is being used by the Corporation for dumping and disposal of solid waste and that the waste of energy project has nothing to do with the acquisition of land fill site. Environmental Protection Agency also furnished parawise comments, which as per their own request, was treated as written statement, wherein it was stated that under section 12 of Pakistan Environmental Protection Act, 1997, a preponent (sic) of project is bound to submit environmental impact statement. During the proceedings, at the request of the learned counsel of the petitioners, which was not resisted by the opposing counsel, for the purpose of elucidating the matter in dispute. Mr. Ehsan Ullah Lilla, Advocate was appointed as local commission for spot inspection/local investigation who furnished his report, to which Matropolitan (sic) Corporation filed its objections. On one date of hearing of the case, Dr. Tufail Siddiqui, Incharge Solid Waste Management, City District Government also appeared and subsequently, on 9-9-2002, he filed a report of solid waste disposal in Lahore.

3. The learned counsel for the petitioners, while mainly relying on the report of the local commission, has vehemently submitted that it has corroborated the findings of the survey conducted by Environment Department; that on account of the pollution, the people are subjected to various diseases; on account of deposit of waste, it is causing immense loss to the crops, animals and contamination of sub-soil water and that the said filth depot is a public nuisance and injurious to health. On the other hand the learned counsel, representing the City District Government, has submitted that no other suitable place is available for using as dumping ground for solid waste; the City District Government has requested the Health Department to use spray on the site in order to minimize the effects of the dumping station; that all efforts are being made to overcome the problem, presently faced by general public, particularly the people of Mehmood Booti, but the Department is not in a position to shift the dumping ground from Mehmood Booti to other place. In this perspective, the learned counsel, representing the respondents prayed for the dismissal of the petition.

4. Notification, dated 8-2-1995, copy whereof has been filed as Annexure-D, shows that certain land in Mauza (sic) Mehmood Booti was acquired by the Collector, District Lahore for Lahore Matropolitan (sic) Corporation. The purposes of the acquisition, as given in the notification, is "for land-fill site (Waste of Energy Project)". Admittedly, the said project could not be established uptil now for one reason or the other, while the plea of the petitioners is that the World Bank refused to finance the said project. Be that as it may, the fact remains that uptil now, the said project could not be established and this

fact has been admitted by the City District Government. In this regard, it would be appropriate to reproduce certain portions of written statement filed on behalf of erstwhile Matropolitan (sic) Corporation:

" .. It is submitted that land fill site at Mehmood Booti is badly needed by MCL for dumping of solid waste because MCL does not have any other land fill site for this purpose, therefore, the acquisition of said land was planned keeping in view the need of land fill site for dumping of solid waste especially.

Therefore, Waste to Energy Project has nothing to do with the acquisition of land fill site because MCL had purchased the land for the disposal of Solid Waste and not for the Waste to Energy Project especially."

5. It flows from the above that the land, which was acquired for the purposes of land fill site (Waste to Energy Project), is being used, admittedly, by the City District Government for the purposes of dumping ground for Solid Waste and the acquired land is, prima facie, not being used for the purposes for which it was acquired. I have refrained myself from rendering findings on the crucial issue, as to what would be the legal effect/consequences, if the acquired land is not used for the purposes for which it was acquired, as according to the petitioners, Constitutional petition (W.P. No.22157 of 1997) is pending on this crucial issue, lest these findings may prejudice the cause of any of the parties and additionally this issue is not involved in this petition.

6. To my mind, the pivotal questions involved in this petition and require determination by this Court are as to whether the dumping of solid waste over the land and using it as dumping ground is creating multiple problems, causing diseases and pollution and is a series of nuisance for the inhabitants of the said locality and secondly, as to what relief in the above perspective, could be provided to the petitioners, in the present petition, if at all the same is to be treated as public interest litigation, as the relief claimed in the present petition is for restraining the respondents for setting up an industrial project for protection of energy out of waste. As noted above, the learned local commission was appointed, who inspected the spot in the presence of the parties and submitted his report. It would be advantageous to reproduce certain portions of the report of the local commission, which are as under:---

"Para.2 is full of dirt, filth and heaps of garbage and other dirty stinking material. This area comprises approximately 639 Kanals of land. There are piles

of dirt, garbage, waste and putrifying filth lying. Fire are smoldering at many places in the massive heaps and generating fumes, smoke, bad odor, foul smell and intense heat. It was practically impossible to stay there.

Para-3. That blowing wind at that time was causing smoke, odor, smell and heat to travel in the direction of the dinse (sic) Abadi of village Mehmood Booti. Many people complied (sic) of various diseases like pimples, skin allergies, Asthma and other lung affecting, diseases because of the presence of flies and germs created by this large quantity of garbage and refuse lying open and uncovered in the huge area. They also complained that the crops and animals have also been affected adversely. The subsoil water has also been contaminated and the tubewell water and water from well is not safe to drink

Para.5. The existence of filth depots in its area is really a public nuisance and injurious to the health and sanitation of the people and locality.

Although objections to the report of the local commission were submitted by City District Government, yet I find from the objections that the factual position prevailing at the spot, as picturized and described by the local commission in his report, was not denied by the City District Government, meaning thereby that the said factual position is deemed to be admitted by them. However, it was pointed out in the objections that the land was purchased for the said purpose and no other suitable place is available for using as dumping ground for solid waste. It was also admitted in the said objections that although problems are being faced particularly by the people of Mehmood Booti, the City District Government is not in a position to remove the said dumping ground. The relevant positions of objections, filed by the City District Government, are reproduced below:---

"It is also worth mentioning that the District Officer Health/Epidemic Control Officer (ECO) City District Government, Lahore, has been requested to use spray on the site to avoid generation of smoke, bad odor, foul smell, intense heat, flies and mosquitoes including other insects etc. on interval days. Moreover, sprinkling of water is being arranged to reduce the environmental hazards as discussed in the report and leveling of land is being done by earth filling. Action is also been taken to remove stagnant water also.

3 to 6. It is also submitted that all efforts are being made to overcome the problems presently being faced by the general public around the site and

particularly the people of Mehmood Booti but this department is not in a position to shift the dumping ground from Mehmood Booti to other place due to limited resources. However, all the possible efforts are being made for upkeep of this dumping ground to give relief to the adjoining Abadies." (Underlining is mine).

It flows from the above that the report of the local commission has in fact been admitted by the City District Government and instead of raising the objections to the said report they have shown their inability to redress the grievance of the people of the locality.

7. I find from the record letter, dated 9-5-2002, by District Officer Environment Lahore, addressed to the District Officer, Solid Waste Management, wherein it was reported that pursuant to receipt of a complaint, a survey was conducted by Environment Department and it was found during the survey that the people are suffering from the problems like constant foul smell, abundance of flies/other insects/dogs and injurious smokes arising from the burning of waste etc.

8. As noted above, Dr. Tufail Ahmad, Incharge Solid Waste Management, City District Government, personally appeared before this Court and subsequently filed his report on 9-9-2002, which would be advantageous to be reproduced:---

"(1) That Land Fill Site, located at Mehmood Booti, Bund Road, is the piece of land, which has been purchased by the City District Government (Ex-Metropolitan Corporation, Lahore) and owned by as municipal property from the years in the past.

(2) That with regard to resorting to urgent precautionary quarding (sic) measures and public grievance redressal, the dumping site waste flow is being covered by spreading earth layers over the waste. A dumper and a loader permanently has been placed there to operate for the said purpose.

(3) Executive District Officer, Health, has been requested for deployment of special squads to be made duty bound to carry out periodic anti-fly spray and spray-dog killing operations on the Mehmood Booti Dumping Ground. (Copy enclosed.)

(4) That the City District Government has created and developed few private Landfill sites (dumping grounds) at three other locations in Lahore, namely:

- (a) Babu Sabu Near Motorway Interchange, for transfer of solid waste from Ravi Town and Data Town Areas;
 - (b) Ittefaq Town, Ferozepur Road, for transfer of solid waste from Iqbal Town areas;
 - (c) Kamayan Ferozepur Road for transfer of solid waste from Gulberg and Nishter Town areas;
- (5) That due to development of these dumping grounds the pressures on Mehmood Booti seems to be released.

It is further submitted to the Honourable Court that maintaining the dumping ground at Mehmood Booti is natural compulsion and the Solid Waste Management has to undergo this restraint and face embarrassment."

9. Above narrative amply demonstrates that the said area is being used by City District Government for dumping of solid waste. Both the parties appear to be in agreement that on account of dumping of solid waste, there are heaps of garbage and the area is full of dirt/dirty material. It has been established that due to heaps of garbage and other dirty material, there is bad odor, foul smell, countless flies, mosquitoes and other insects all over the locality. One can imagine that on account of the curative measures, statedly, taken by the City District Government, as narrated by the Incharge Solid Waste Management, fumes and pollution must be emitting all the time, causing diseases, uncomfot (sic) and various other problems. Entire area must be polluted and the people living in that locality must be suffering from various serious diseases. Uptil now hundreds of peoples must have died in the said locality due to the various diseases caused by the dumping of solid waste, but most probably on account of ignorance, poverty or helplessness, nobody could come forward to highlight these muffled atrocities being "showered" by the public functionaries over the innocent citizens. One could imagine the state of life, being led and "enjoyed" by the people of locality and the enormous difficulties, in different shapes, being faced by them. Of course, they are the citizens of this country and are entitled to equal protection of law. The lives, being led by the people, living in that locality, must be miserable and it is the duty of the City District Government to redress the grievances of the citizens of this country living in Lahore, moreso, when the fundamental rights have been guaranteed to the citizens under the Constitution, which, inter alia, provides that the dignity of man and subject to law, the privacy of home shall be inviolable.

10. Now coming to the second question as to what relief can be granted to the petitioners. It is a matter (sic) of common knowledge that the pollution creates dangerous gases etc. which are injurious not only to human life, but also to the lives of animals, birds and plants. This Court, while dealing with the problem of pollution, in deciding a Constitutional Petition (W.P. No.25084 of 1997) titled *Mrs. Anjum Irfan v. L.D.A.*, PLD 2002 Lah. 555 has held as under:---

"The problem of pollution is more dangerous as compared to destruction by Hydrogen Bomb. It is proper and high time to implement the law in letter and spirit without discrimination as the life of human being is more precious. In fact, every one is not saved from the attack of pollution, in this view of the matter each and every citizen, public functionary authority and body must discharge its responsibility to reduce this problem at any rate at any cost."

11. The apex Court of this country in the case reported as *Ms. Shehla Zia and others v. WAPDA*, PLD 1994 SC 693 in a public interest litigation, considering the gravity of the matter, which involve and affect the life and health of the citizens at large, issued notice to the concerned authority. It was further held in the said judgment that if "there were threats of serious damage, effective measures should be taken to control it and it should not be postponed merely on the ground that the Scientific Research and Studies were uncertain and not conclusive".

12. The Hon'ble Supreme Court of Pakistan in the aforementioned case of *Ms. Shehla Zia*, *ibid*, has held as under:---

"There is a state of uncertainty and in such a situation the authorities should observe the rules of prudence and precaution. The rule of prudence is to adopt such measure which may avert the so-called danger if it occurs. The rule of precautionary policy is to first consider the welfare and safety of the human beings and the environment and then to pick up a policy and execute the plan which is more suited to obviate the possible danger or make such alternate precautionary measures which may ensure safety. To stick to a particular plan on the basis of old studies or inconclusive research cannot be said to be a policy of prudence and precaution."....

"if there are threats of serious danger, effective measures should be taken to control it and it should not be postponed merely on the ground that scientific

research and studies are uncertain and not conclusive. Prevention is better than cure. It is a cautious approach to avert a catastrophe at the earliest stage."

It has further been held by the Honourable apex Court of this country in the aforementioned case of Ms. Shehla Zia as under:---

"Article 9 of the Constitution provides that no person shall be deprived of life or liberty save in accordance with law. The word 'life' is very significant as it covers all facts of human existence. The word 'life' has not been defined in the Constitution but it does not mean nor can be restricted only to the vegetative or animal life or mere existence from conception to death. Life includes all such amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally. A person is entitled to protection of law from being exposed to hazards of electromagnetic fields or any other such hazards which may be due to installation and construction of any grid station, any factory, power station or such-like installations. Under the common law a person whose right of assessment (sic), property or health is adversely affected by any act of omission of a third person in the neighbourhood or at a far-off place, he is entitled to seek an injunction and also claim damages, but the Constitutional rights are higher than the legal rights conferred by law be it municipal law or the common law. Such a danger, as depicted the possibility of which cannot be excluded, is bound to affect a large number of people who may suffer from it unknowingly because of lack of awareness, information and education and also because such sufferance is silent and fatal and most of the people who would be residing near, under or at a dangerous distance of the grid station or such installation do not know that they are facing any risk or are likely to suffer by such risk. Therefore, Article 184, can be invoked because a large number of citizens throughout the country cannot make such representation and may not like to make it due to ignorance, poverty and disability. Only some conscientious citizens aware of their rights and the possibility of danger come forward."

"The word 'life' in terms of Article 9 of the Constitution is so wide that the danger and encroachment complained of would impinge fundamental right of a citizen. In this view of the matter, the petition under Article 184(3) of the Constitution of Islamic Republic of Pakistan, 1973, is maintainable."

"The word 'life' in the Constitution has not been used in a limited manner. A wide meaning should be given to enable a man not only to sustain life but to enjoy it."

"Article 14 of the Constitution provides that the dignity of man and subject to law the privacy of home shall be inviolable. The fundamental right to preserve and protect the dignity of man under Article 14 is unparalleled and could be found only in few Constitutions of the World."

"Where life of citizens is degraded, the quality of life is adversely affected and health hazards are created affecting a large number of people the Court in exercise of its jurisdiction under Article 184(3) of the Constitution may grant relief to the extent of stopping the functioning of units which create pollution and environmental degradation."

13. To my mind, pollution is form of slow poisoning, which the people living in the locality/area known as Mehmood Booti, are facing since long. Lives of tens of thousands of citizens of this country, some of them must be tax payer, are sinking in the ocean of dirt, solid waste, garbage and pollution and that too, at the hands of City District Government. It is high time that the public functionaries should realize their duties and perform their functions, keeping in view the import of word "life" as defined by the apex Court of this country in Shehla Zia's case *ibid*. The instant petition is treated as public interest litigation and, thus, this Court is inclined to give suggestions/directions to the public functionaries, especially to City District Government.

14. In view of the above, it is suggested that now as the City District Government has taken over the affairs of erstwhile Lahore Matropolitan (sic) Corporation, therefore, City District Government should make serious necessary endeavours for the redressal of grievances faced by the people of thickly populated locality of Mehmood Booti, should make alternative arrangements and to select suitable place for using as dumping ground and dumping solid waste, keeping in view the provisions of Pakistan Environmental Protection Act, 1997, and the observations and suggestions, made by the superior Courts of this country in Shehla Zia and Ms. Anjum Irfan cases, *supra*. This Court while giving suggestions/directions, is not completely oblivious of the difficulties, being faced by the City District Government and is considerate enough to provide ample time to the City District Government to make serious efforts and arrangement for the removal of dumping ground for solid waste from the area of Mehmood Booti and to make alternative arrangements for dumping of solid waste far away from the residential areas, so that the

lives of tens of thousands or people and their future generation could be saved from the catastrophe of pollution, which exercise is to be completed within a period of one year. Till the necessary arrangements are made by the authorities concerned, as suggested above, it is directed that the Lahore City District Government and Health Department shall deploy all possible resources at their disposal in that area to minimize the effects of the dumping ground.

15. Writ petition stands disposed of with the above suggestions/directions with no order as to costs.*

S.A.K./M-1495/L

Order accordingly.

* Emphasis added.

B. Order of the Court dated 11 December 2002 re appearance of Dr. Parvez Hassan and Syed Mansoor Ali Shah, as Amicus Curiae

**ORDER SHEET
LAHORE HIGH COURT, LAHORE
ICA NO. 798/2002
APPEAL/REVISION No. _____ 19**

City District Government

APPELLANT
PETITIONER

versus

Muhammad Yousaf etc.

RESPONDENT

Appeal/Revision against the decree or order (as the case may be) of _____

Date of order of proceeding: 11.12.2002

Khawaja Muhammad Afzal, Advocate,

The land subject matter of this appeal measuring 638 kanals was acquired by the appellant to use it as "Dumping ground" of solid waste. This act of the appellant was challenged in a Constitutional petition which stands disposed of with the observation that in view of the genuine apprehension of the inhabitants of the City of catastrophic effect pollution which may result on account of the afore-referred development the appellant should make alternate arrangement for disposing of the solid waste which exercise was directed to be completed within a period of one year. The City Government is aggrieved of this order on the ground, inter alia, that the writ petition petitioners had alternate remedy available to them under the law in terms of the Pakistan Environmental Protection Act, 1997; that the land in question was acquired by the City Government after spending huge amount and that the City Government is not in a position to make alternate arrangements.

2. Having gone through the impugned judgment and having heard the learned counsel for the appellant we are of the view that the issues raised in the Constitutional Petition and this appeal are the issues of general public importance; prima facie, they affect the fundamental right of the inhabitants i.e. the right to life and the City Government which is entrusted with the task of the public welfare cannot be permitted to

raise objection with regard to maintainability of the petition based on the availability of an alternate remedy. However, in view of the submissions made by the learned counsel for the appellant and the fact that alternate arrangement may entail an exercise entailing vision, dynamic approach and financial cost we are inclined to issue notice to respondents. Learned Advocate General, Punjab, shall personally appear to assist. Dr. Pervaiz Hassan and Syed Mansoor Ali Shah, Advocates shall appear as amicus – curiae. The case shall be listed in a date in the week of January, 2003.*

(Asif Saeed Khan Khosa)
JUDGE
(TASSADUQ HUSSAIN JILANI)
JUDGE

* Emphasis added.

C. Order of the Court dated 25 February 2003 re appointment of Lahore Solid Waste Management Committee

**ORDER SHEET
LAHORE HIGH COURT, LAHORE
ICA NO. 798/02
APPEAL/REVISION No. _____ 19**

City District Government

APPELLANT
PETITIONER

versus

Muhammad Yousaf etc.

RESPONDENT

Appeal/Revision against the decree or order (as the case may be) of _____

Date of order of proceeding: 25.2.2003

Kh. Muhammad Afzal Advocate for the appellant, with Muhammad Rafiq Jatoi District Officer Solid Waste Management.

Nawaz Malik A.D (Legal) DG, EPA Punjab.

Syed Mansoor Ali Shah Advocate as Amicus Curiae.

Ch. Aitzaz Ahsan Advocate for respondents No. 1 to 16.

Syed Mansoor Ali Shah learned Amicus Curiae has made his submissions and has placed on record certain material which have an important bearing on issues raised in this appeal:

2. Since serious objections have been raised with regard to the project which the appellant wishes to establish at Mahmood Booti and as there are more than one dumping grounds in and around the City of Lahore which may be hazardous to health and environment, we are persuaded to constitute a committee to carry out a detailed study and submit a report within six weeks. The terms of reference of the committee shall be as follow (sic):

- i) It shall examine the environmental impact assessment reports with regard to the project in hand and other dumping grounds to be submitted by the City Government in terms of section 12 of the Environmental Protection Act 1997. The City Government shall submit the requisite reports on dumping grounds at Mahmood Booti, Sugian, Kamaha and Ittefaq Town within 15 days of the receipt of this order.
- ii) The committee shall examine as to whether the existing sites at Mahmood Booti and other dumping grounds to which reference has been made in terms of Reference No.1 are suitable for land fill projects or not.
- iii) If the committee proposes alternate sites it shall also recommend measures to be adopted to restore land to its original state at places where the dumping grounds are situated at present. It shall also work out the expected cost involved.
- iv) The committee shall suggest appropriate legislation/regulations to be framed by the City Government on waste management and related issues.

2. The committee shall consists of the following:

- i) Dr. Pervaiz Hasan (Chairman)
- ii) Syed Mansoor Ali Shah (Coordinator)
- iii) City Nazim Lahore
- iv) D.C.O. Lahore
- v) Director General Environmental and Protection Department Lahore
- vi) Mrs. Sajida Wandal Principal National College of Arts Lahore.
- vii) Mr. Shahzad Hassan of A.F. Ferguson Company Lahore.
- viii) Professor Shaukat Hussain Department of Waste Management University of Engineering Lahore.

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- ix) Dr. Ikram Khawaja Engineering University Lahore.
- x) Dr. Fawad Hameed of Shalimar Hospital Lahore.
- xi) Sardar Aleem Khan MPA Lahore.

Any cost involved in carrying out tests etc. shall be borne by the appellant. The committee shall submit the report within six weeks and the case shall be fixed for hearing on 2.4.2003.

(BASHIR A. MUJAHID)
JUDGE

(TASSADUQ HUSSAIN JILANI)
JUDGE

D. Order of the Court dated 18 June 2003

**ORDER SHEET
LAHORE HIGH COURT, LAHORE
ICA NO. 798/02
APPEAL/REVISION No. _____ 19**

City District Government

APPELLANT
PETITIONER

versus

Muhammad Yousaf etc.

RESPONDENT

Appeal/Revision against the decree or order (as the case may be) of _____

Date of order of proceeding: 18.6.2003

Mr. Muhammad Afzal Advocate with Muhammad Rafique Jatoi, District Officer Solid Waste Management.

Mr. Aitzaz Ahsan, Advocate for respondents 1 to 16.

Mr. M. Akbar Tarar, Addl. A. G.

Mr. Muhammad Azeem Inspector Legal.

Syed Mansoor Ali Shah, Advocate/Amicus Curiae.

The learned Amicus Curiae submits that the committee constituted by this Court has decided to assign the project of carrying out E.I.A of the area of Mahmood Booti to NESPAK, the City Govt. has agreed to fund this exercise entailing a sum of Rs. 7,74,000/- the terms of reference of the assignment have also been settled and that the NESPAK shall submit a report within three months. He suggests that all the City Hospitals should be directed to send their Hospital waste to Shalimar Hospital for incineration which has this facility and they do it at very nominal cost. The City District Officer, confirms that the City Govt. shall fund the afore-referred exercise and for this purpose he adds that a private company has agreed to bear the expenses.

2. The committee has done qua (sic) job in a short span of time and the conduct of the City Govt. is also appreciable (sic). However, it is made clear that the

City Govt. shall fund EIA project from its own funds so that no private party is given a hope for awarding the contract without an open and transparent bid. So far as the question of Hospital waste is concerned the suggestion of a learned Amicus Curiae is reasonable. We are therefore, persuaded to direct the Secretary Health Govt. of Punjab to issue requisite instructions to all the Hospitals in Lahore to make requisite arrangements for disposing of the Hospital waste preferably through incineration and those Hospitals which do not have this facility in the Hospital shall utilize the services of Shalimar or United Christian Hospital, Gulberg. The Secretary Health shall submit a detailed report about the action taken within six weeks. The City Govt. shall release the requisite fund as undertaken by it within 10-days from today. To come up on 16.9.2003.*

M. Naeemullah Khan Sherwani
Judge

Tassaduq Hussain Jilani
Judge

* Emphasis added.

E. Report of the Committee dated 18 March 2004 (without Annexure)

IN THE LAHORE HIGH COURT, LAHORE

I.C.A. No. 798/2002

City District Government

Vs.

Muhammed Yousaf, etc.

**REPORT OF THE LAHORE SOLID WASTE MANAGEMENT
COMMITTEE ON DUMPING GROUND AT MAHMOOD BOOTI
CONSTITUTED BY THIS HON'BLE COURT VIDE ORDER
DATED 25 FEBRUARY 2003**

Respectfully Sheweth:

A. The Background

1. On the writ petition (W.P. no. 20406/1998) filed by the residents of Mahmood Booti, the single judge of this Hon'ble Court vide judgment dated 11 September 2002 directed that, "in view of the above, it is suggested that now as the City District Government has taken over the affairs of erstwhile Lahore Metropolitan Corporation, therefore, City District Government should make serious necessary endeavours for the redressal of grievance faced by the people of thickly populated locality of Mahmood Booti, should make alternative arrangements and to select suitable place for using as dumping ground and dumping solid waste, keeping in view the provisions of Pakistan Environment (sic) Protection Act, 1997 and the observations and suggestions, made by the superior courts of this country in Shehla Zia and Ms. Anjum Irfan case supra. This court, while giving suggestions/directions, is not completely oblivious of the difficulties being faced by the City District Government, and is considerate enough to provide ample time to City District Government to make serious efforts and arrangement for the removal of dumping ground for solid waste from the area of Mahmood Booti and to make alternative arrangements for dumping of solid waste far away from the residential area, so that lives

of tens of thousands of people and their future generation could be saved from the catastrophe of pollution, which exercise is to be completed within a period of one year. Till the necessary arrangements are made by the authorities concerned as suggested above, it is directed that the Lahore City District Government and Health Department shall deploy all possible resources at their disposal in that area to minimize the effects of dumping ground".

2. The City District Government (CDG) challenged the aforesaid order in ICA 798/2002 and vide order dated 11 December 2002, this Hon'ble Court held "...we are of the view that the issues raised in the constitutional petition and this appeal are issues of general public importance; prima facie, they affect the fundamental rights of the inhabitants i.e., the Right to Life and the City Government which is entrusted with the task of the public welfare cannot be permitted to raise objection with regard to maintainability of the petition based on the availability of an alternate remedy. However, in view of the submission made by the learned counsel for the appellant and the fact that the alternate arrangement may entail an exercise entailing vision, dynamic approach and financial cost, we are inclined to issue notice to respondents. ...Dr. Parvez Hassan and Syed Mansoor Ali Shah, Advocates shall appear as Amicus Curiae."

B. The Appointment of the Committee

3. On the submissions of Amicus Curiae vide Order dated 25 February 2003; this Hon'ble Court was pleased to constitute a Committee (for clarity referred to as "Lahore Solid Waste Management Committee" or "LSWMC" or "Committee") with the following members:

- (1) Dr. Parvez Hassan (Chairperson)
- (2) Syed Mansoor Ali Shah (Coordinator)
- (3) Mian Amer Mahmood (District Nazim)
- (4) Khalid Sultan (District Coordination Officer)
- (5) Director General, Environment Protection Department
- (6) Mrs. Sajida Vandal (Principal, NCA)

- (7) Shehzad Hussain (Partner, A.F. Ferguson)
- (8) Professor Shaukat Hayat (University of Engineering & Technology)
- (9) Dr. Ikram Khawaja (Environmental Geologist)
- (10) Dr. Fuad Hameed Rai (Shalimar Hospital)
- (11) Abdul Aleem Khan (Member, Provincial Assembly)

4. The terms of reference of the LSWMC, as per the Order of the Court dated 25 February 2003, were as follows:

The Committee:

- (1) Shall examine the Environmental Impact Assessment (EIA) reports with regard to project in hand [i.e. Mahmood Booti] and other dumping grounds to be submitted by the City Government in terms of section 12 of the Environmental Protection Act, 1997.
- (2) Shall examine as to whether the existing sites at Mahmood Booti and other dumping grounds were suitable for landfill projects or not.
- (3) If the Committee proposes alternate sites. It shall also recommend measures to be adopted to restore land to its original state where the dumping grounds are situated at present. It shall also work out the expected cost involved.
- (4) Shall suggest appropriate legislation/regulation to be framed by the City District Government on waste management and related issues.

5. On 16 September 2003, the terms of reference of LSWMC were expanded to attend to the issue of hospital waste raised in writ petition no. 14532/2002.

6. The Committee exercising the power vested in it vide Order dated 2-4-2003 co-opted the following members:

- (1) Hammad Naqi Khan (Director, Environment Pollution Unit –WWF Pakistan)

(2) Secretary, Punjab Health Department

C. The Work of the Committee

7. The LSWMC held twelve meetings. Mr. Kamran Lashari (DG-EPD) attended the meetings of the Committee before his transfer to the CDA in Islamabad; however, his successor in office could not attend a single meeting. In addition to the above membership, the Committee sought and received guidance on waste disposal issues from Mr. Farhan Sami of IUCN-Pakistan. The Committee gratefully acknowledges this support from IUCN-Pakistan. Mr. Rafiq Jatoi, District Officer, Solid Waste Management, CDG attended all the meetings of the Committee and provided most valuable support. The other participants who helped the work of the Committee included Mian Mohammad Ijaz, Executive District Officer, CDG, Mr. Tariq Zaman, CDG, Mr. Shabir Ahmed Qureshi, Director, EPA, Punjab, Ms. Saima Amin Khawaja, Mr. Ahmed Hassaan Ghazali, Mrs. Eram Aftab and Ms. Adeela Amir. Mr. Asif Faruki was invited to make a presentation to the Committee on the composting facility he has established near Lahore. The Committee is grateful to all of them for their guidance and support.

8. The LSWMC acknowledges, with gratitude, the support it received from the members. Meetings would, sometimes, take place at short notice and would be well-attended. The Committee places on record, particularly, the support it received from the City District Government and its representatives. Mr. Aitzaz Ahsan, counsel for the appellants took time to attend the first meeting of the Committee and was invited to attend the meeting when draft EIA was presented by NESPAK to the Committee. The workings of the Committee were brought on record with the submission of four interim reports/applications before his Hon'ble Court.

9. In its first meeting held on 21 March 2003, the LSWMC reviewed the materials supplied by the City District Government. The following materials were reviewed:

- (1) Sanitary Landfill with Optimized Gas extraction-Final Report. Environmental Assessment - Volume 6 by SWECO. Stockholm, March, 1994.
- (2) Waste Treatment Plant at Mehmood Booti - by SWECO. March, 1994.
- (3) Solid Waste Disposal Plan for Lahore - by Lahore Urban Development Project, 1990.

The Committee concluded that assessment in the above reports was not only outdated but also presented an inaccurate picture of present conditions at Mahmood Booti. It became vital, therefore, to collect fresh data on Mahmood Booti. The members Committee visited the site at Mahmood Booti on 21 March 2003 after its first meeting.

10. The Committee submitted its First Report on 2 February 2003 primarily requesting the Hon'ble Court that an EIA be conducted of Mahmood Booti by an independent consultant/expert.

11. Invitations to furnish financial and technical proposals were sent out to the under-mentioned short-listed consultants:

- (1) Mirza Arshad Ali Beg, President PEAA, Karachi;
- (2) Sami uz Zaman, GEL, Karachi;
- (3) Azharuddin Khan, National Environmental Consulting Lahore;
- (4) Hidayat Hassan, Hagler Bailly, Islamabad;
- (5) Junaid Hassan, Halcro, Islamabad;
- (6) Dr. Mohammad Hanif, ECTECH Lahore;
- (7) NESPAK Lahore;
- (8) Euroconsult Lahore;
- (9) EMC, Islamabad.

12. Mr. Azharuddin Khan, at (3), appeared before the Committee on 10 April, 2004 to present his proposal. The other consultants mentioned at (6) and (7) above also sent in proposals to the LSWMC.

13. The Committee after reviewing the proposals received, unanimously recommended NESPAK as the most suitable consultant for the EIA. NESPAK is 100% owned by the Government of Pakistan, has an excellent reputation for such studies and had the most competitive bid. Out of goodwill, it further reduced its price and the time required for the

EIA to three (3) months. Vide Order dated 18 June 2003, the Hon'ble Lahore High Court directed the City District Government to pay the agreed sum of Rs. 794,000 to NESPAK for carrying out the EIA.

14. That while work started on EIA by NESPAK, the Committee heard representations from M/s. Dalian Dazheng Environmental Engineering, M/s. Softel Worldwide (Pvt) Ltd and M/s. Green Technology on various proposals for solid waste disposal at Mahmood Booti.

15. That the Chairman, the Coordinator and some members also visited the composting plant called Green Force Composting, established near Lahore by Mr. Asif Faruki.

16. The City Government through the City Nazim requested the Committee on 23 December 2003 to review three feasibility reports on Mahmood Booti which were submitted by private companies to the CDG. The Committee formed a sub-committee for the purpose which met on 23 December 2003, 9 January 2004, 12 January 2004 and 9 February 2004. Each of the private companies (Dalian Dazheng Environmental Engineering Pakistan (Ltd.), Softel Worldwide (Pvt.) Ltd. and Lahore Compost (Pvt.) Ltd.) was given a full opportunity to present its proposal during the meeting of the sub-committee on 12 February 2004. The following recommendations of the sub-committee were fully and unanimously endorsed by the Committee in its plenary meeting held on 13 February 2004:

- (1) Incineration is generally inconsistent with the basic environmental objective of promoting 3 R's (reduce, reuse, and recycle). It does not, accordingly, appear to an attractive method of disposing solid waste and the Sub-Committee was initially inclined against it based on the failure of this approach particularly in India. The Sub-Committee notes that such technologies have larger environmental footprints than others, especially when they convert waste into other forms of toxicity. These high temperature technology options such as gasification, pyrolysis, incineration, and plasma are (sic) membrane are not only extremely expensive to operate safely but also inappropriate to the organic nature of Lahore's urban waste. However, the sponsors of the two proposals on waste to energy presented to the Sub-Committee pointed out that technology had improved in the intervening years and that the waste to energy projects are environmentally sound. One of the sponsors pointed out to its growing acceptance in the U.S.A. and its approval by the EPA of the U.S. Government.

- (2) The entry point for all projects in Pakistan under the Pakistan Environmental Protection Act, 1997, is a prior EIA to be approved by the EPAs. This means that the entire environmental aspects can be scrutinized and assessed at the stage of the ETA. It is this stage that can support or controvert the assertions made before the Sub-Committee that the present and improved waste to energy technologies are environmentally sound.
- (3) The Sub-Committee proposes that the sponsors of the waste to energy projects be allowed to proceed with finalizing their proposals so that their EIA can be approved by the Punjab EPA. The Sub-Committee, in any case, felt that both these waste to energy projects had not done sufficient homework with respect to the quality and quantity of solid waste available in Lahore.
- (4) The Sub-Committee was apprehensive about the non-enforcement of the requirements of the EIA and it, therefore, strongly recommends that no waste to energy project should be allowed in Lahore without an EIA to be approved by the Punjab EPA. The Sub-Committee further recommends that, in the assessment of such EIAs, the Punjab EPA should take particular account of the factors indicated in this Report.
- (5) Composting is increasingly accepted as an option for solid waste disposal and more suited to a developing country like Pakistan. Composting is generally to be combined with recycling and landfill disposal. One of the parties before the sub-committee had proposed a composting, land filling and recycling facility at Mahmood Booti. If this is found environmentally sustainable under an EIA, CDG may proceed with this option subject to its procedures and such additional environmental safeguards as may be deemed appropriate and as may be required under law.

17. That the Committee was authorized to attend to the issue of hospital waste raised in W.P. no. 14532/2001 titled Syed Mansoor Ali Shah etc vs. Govt. of the Punjab, etc vide Order dated 16 September 2003. The Committee issued "Request for Information" from 62 Hospitals on 18 December 2003. Replies from some of the hospitals have been received. The Committee co-opted Secretary Health, Government of the Punjab as a member to move this agenda further. The work is progressing and will be reviewed by the Committee in a plenary meeting.

18. The Committee also requested Syed Mansoor Ali Shah to develop a regulatory regime for the disposal of hospital wastes. The Hospital Waste Regulations are presently being drafted and, when ready by the middle of April 2004, these will be considered by the plenary meeting of the Committee.

D. The review of the EIA by the Committee

19. The draft EIA report was submitted to the LSWMC by NESPAK on 13 February 2004 and the Final EIA Report of NESPAK, with minor amendments was submitted on March, 2004, The Final Report concluded thus:

- (1) The project area is to be rated as sensitive with regards to environment degradation as it lies in the flood plain of the river Ravi. There is no buffer between the project area and the urban population. Moreover, the aquifer under the solid waste dumping site provides groundwater to the city through a network of tubewells installed nearby.
- (2) The comparison of the results of three ambient air pollutants with the NEQs show that their concentrations are well within the limits and air quality is good except the problem of odour.
- (3) Laboratory tests performed on the ground water samples obtained from sources near the project area indicate the concentration of the trace metals well within the WHO guidelines.
- (4) Soil tests performed on the soil obtained from the dumpsite show that most of the trace metals (Arsenic, lead, cadmium, mercury) are not present. Whereas, trace amount of phosphate, chromium and nickel as well as the high concentration of barium indicate the contamination by industrial effluents.
- (5) There is no evidence of contamination of groundwater and soil by the disposal of solid waste; rather it is due to industrial and domestic waste water which should not have been allowed to come in contact with the site.
- (6) Land filling process is haphazard open dumping and proper engineering of solid waste is not being followed.

A copy of the EIA conducted by NESPAK is Attachment A to this Report.

20. Following a full review and discussion, the LSWMC endorsed, unanimously, the above Report of NESPAK.

E. Recommendations of the Committee

1. As per the EIA of NESPAK, Mahmood Booti is a suitable site for the environmentally safe disposal of solid waste provided there is a proper composting plant, recycling facility and a sanitary landfill. Therefore, immediate action is required and recommended for the disposal of solid wastes at Mahmood Booti with the following facilities:

- (1) Composting plant
- (2) Recycling facility
- (3) Proper sanitary landfill

2. The Committee further recommends that the landfill, compost plant and recycling facility shall be housed in the area marked as cultivated land which falls within the Mahmood Booti (Acquired land) whereas the Operational Dumping Area needs to be covered with soil and subsequently turned into a park by planting greenery (reference Figure 2.2 of the EIA Report).

3. Contracts for the development and operations of Sanitary Landfill, Compost Plant and Recycling Facility shall be strictly subject to approval of EIA by EPD under section 12 of PEPA.

4. CDG to ensure that the hospital waste generated in three towns namely Shalimar Town, Ravi Town, Aziz Bhatti Town shall not be disposed of untreated at Mahmood Booti and shall be sent for treatment, for the time being to designated sites at Shalimar Hospital and United Christian Hospital till better technologies are available and adopted by CDG. All the hospitals to adopt a waste management plan that places a high priority on waste segregation, minimization and safe disposal of infectious waste.

5. As per EIA of NESPAK (page 7) the contamination of groundwater and soil is due to industrial and domestic waste water which should not have been allowed to come in contact with the site. Therefore, WASA may be directed to submit a detailed report and an action plan for the treatment of the industrial effluent, domestic waste water and sewage pond adjacent to Mahmood Booti.

6. Kahna Kacha has been identified by the EIA of NESPAK as the only suitable site out of three sites (Kahna Kacha, Bedian Road and Sheikhpura Road) proposed for disposal of municipal solid waste to meet the requirement of Southern Lahore. It is recommended that a complete EIA of the said site be conducted by CDG and placed for approval before EPD through LSWMC.

7. Additional Recommendations:

- (1) Mahmood Booti and Kahna Kacha do not have the capacity to handle the entire municipal waste of Lahore. Therefore, further sites need to be identified and their EIA to be conducted so that in order to build appropriate capacity to handle municipal solid waste of city of Lahore today and for the future. If the CDG is constrained financially to carry out this recommendation, the Provincial Government may be directed to support this important work.
- (2) The development and operation of sanitary landfill, composting plant and recycling facility at Mahmood Booti should be monitored and supervised by EPD in accordance with law. Periodical Reports of EPD shall be submitted to LSWMC till the Municipal Solid Waste Rules are promulgated.
- (3) Other solid waste disposal systems may also be considered for adoption subject to EIA by EPD Punjab and monitored in accordance with law.
- (4) Self-financing projects may be particularly encouraged within the above guidance.
- (5) That the Committee be allowed to continue till the promulgation of the appropriate legislation (i.e. Rules) relating to Solid Waste and Hospital Waste Disposal.

8. Outstanding work of the Committee:

- (1) Strategy for the disposal of hospital waste in Lahore.
- (2) Drafting of legislation for Municipal Solid Waste and Hospital Waste Disposal.

- | | |
|---|--|
| (1) Mian Amer Mahmood
City Nazim, Lahore | (2) Mr. Khalid Sultan
D.C.O., Lahore |
| (3) Director General EPD
Punjab | (4) Mrs. Sajida Vandal
Principal NCA, Lahore |
| (5) Mr. Shahzad Hussain
A.F. Ferguson, Lahore | (6) Professor Shaukat Hayat
University of Engineering
& Technology Lahore |
| (7) Dr. Fuad Hameed Rai
Shalimar Hospital, Lahore | (8) Sardar Aleem Khan
MPA/Minister, Lahore |
| (9) Dr. Ikram Khawaja
Environmental Geologist, Lahore
(relocated to U.S.A after attending
the first meeting) | (10) Mr. Hammad Naqi Khan
Director, Environment Pollution
Unit, WWF-Pakistan, Lahore |
| (11) Secretary Health Punjab | (12) Syed Mansoor Ali Shah
Co-ordinator |
| (13) Dr. Parvez Hassan
Chairman | |

F. Judgment of the Count dated 25 January 2005

JUDGMENT SHEET

IN THE LAHORE HIGH COURT LAHORE

JUDICIAL DEPARTMENT

**I.C.A. No. 798/2002 of 19
Judgment**

Date of Hearing: 13-1-2005

Appellant By: (City Disst. Govt.) by (sic) Kh. Muhammad Afzal, Advocate.

Respondent by: (Muhammad Yousaf etc.) by: M/s Aitzaz Ahsan, Shaukat Ali Javed, Ahmad Farooq Malik, Shahid Saeed, Advocates, Mr. Muhammad Rashid Ahmed, Advocate for LDA. Syed Mansoor Ali Shah, Advocate/ Amicus Curiae.

IFTIKHAR HUSAIN CHAUDHRY, C. J.-Muhammad Yousuf and others filed writ petition No. 20406/98 against Province of Punjab and six others. According to the petitioners, they were owners of land measuring more than 300 Kanals in Revenue Estate Mahmood Booti, Tehsil Cantt. District Lahore. The Lahore Municipal Corporation vide Notification dated 4-2-1996 issued under section 4 of Land Acquisition Act, acquired the land belonging to petitioners. Notification under section 6 of the Act was issued on 9-2-1998. Later, the land Acquisition Collector gave his Award on 22-7-1997.

2. The acquisition of land was challenged by appellants/petitioners through writ petition No.22157/97, which was subjudice at the time of filing of the above referred petition. The petition was filed on the ground that it was based on a fresh cause of action.

3. Appellant/petitioners claimed that they applied to respondents for withdrawal of Notifications, which prayer was not acceded to whereafter, they filed the petition on the ground that the respondents wanted to establish an industrial plant over the land belonging to petitioners which they could not do under the provisions of Pakistan Environment (sic) Protection Act No. XXXIV of 1997, within their municipal limits. It

was further urged that unless objections from public were invited and consulted by the Environment (sic) Protection Agency, no project of like nature could commence. It was further submitted that land belonging to petitioners was agricultural land and that acquisition of land was contrary to provisions of law and as the World Bank had refused to extend financial assistance for the project the very basis for the acquisition had vanished and therefore, the Notifications issued under the provisions of Land Acquisition Act, 1894 be annulled as having been issued without lawful authority.

4. Considerable proceedings were resorted to in the petition and subsequently, the same was disposed of by order dated 11-9-2002 directing the City District Government, Lahore to make serious efforts for removal of dumping ground from area of Mehmood Booti and to make alternative arrangements for dumping of solid waste away from the residential areas. It was further observed that the exercise was to be completed within a period of one year and till the necessary arrangements were made by authorities in that context, the City District Government, Lahore and Health Department shall employ all possible means of disposal to minimize the effects of the dumping ground.

5. Aggrieved of the order in Chamber, passed by the learned single Judge, under consideration Intra Court Appeal under section 3 of the Law Reforms Ordinance, 1972 was preferred by the City District Government, Lahore.

6. Notice of the appeal was issued to respondents. The Court also sought assistance from two eminent jurists, who were also well-versed with the environmental issues.

7. The District Officer Solid Waste Management was also directed on subsequent date to submit a detailed report and, thereafter, a Committee was constituted by the learned Division Bench, seized of the matter, with the following terms of reference:

- i. The appellant City Government shall submit a detail report about the composting scheme regarding Mehmood Booti by or before 30.5.03.
- ii. The Secretary Health, Government of Punjab shall be provided a copy of the list of Hospitals annexed with the report. He shall depute an official to obtain a report from each Hospital listed therein regarding disposal of the Hospitals waste. The

report shall be submitted to the Chairman of the committee appointed by this Court by or before 23.04.2003. Learned Addl: A.G. shall convey this order.

iii. The committee is authorised to co-opt two additional members/experts that it may deem proper.”

8. The Committee submitted an interim report and, later, a final report was also submitted. Matter has been posted for further proceedings today.

9. We have heard the learned counsel for the parties.

10. Learned counsel for the appellant contended that the petitioners earlier challenged acquisition proceedings through a writ petition and during pendency of the same, second petition on the subject was not competent and the petition should have been dismissed. It was further submitted that the only ground, urged by writ petitioners for setting aside the acquisition proceedings, was that the World Bank had declined to provide assistance in setting up an industrial plant for conversion of city waste into energy but the City Government had other options, as well and on that ground the acquisition proceedings could not have been set aside or even challenged by the writ petitioners. It was contended that the learned Single Judge had directed the appellant to shift the dumping ground to some other place, only on account of environmental hazard, but for that, the City Government had formulated, devised and designed an effective strategy by planning to set up a composting/landfill plant at the site, which was an internationally recognized method of disposal of municipal waste. It was contended that the acquisition proceedings stood concluded and Award was also given and many land owners had accepted the compensation and, though, a Reference under section 18 of the Land Acquisition Act, 1894 was answered by Senior Civil Judge, Lahore but a Regular First Appeal was also filed against that order. It was submitted that the amount determined by Land Acquisition Collector was placed at the disposal of the Land Acquisition Collector and possession of land was taken over and entire acquisition proceedings stood concluded and since everything was done for a genuine public purpose, the impugned order was liable to be set aside and the City Government allowed to proceed with setting up of the composting/landfill plant.

Learned counsel for the respondents (writ petitioners) submitted that about 300 Kanals of land was in the possession of the City Government-appellant, which was being used as a dumping ground and report of the Local Commission did reveal that it

was causing lot of problems to the local population and was extremely hazardous to general public, particularly, the residents of the locality. It was submitted that about half of the land was still under possession of the land owners and merely by announcement of Award, proprietary/possessory rights would not stand transferred to City Government/appellant and that at least to that extent, the Notifications issued under the Land Acquisition Act, 1894 should be set aside. Reliance in this regard was placed on *State of Bihar vs. D.G.H. Grant and another* (AIR 1960 Patna 382) in order to support the plea that title did not pass to State as soon as Award under section 11 of the Act was made and till possession was taken under section 16 of the Act, title would remain with that of the original owners. *F.K. Abbasi vs. M. I. Malik* (1985 CLC 1603) and *Union Sugar Mills Co. vs. U.P. Government and others* (AIR 1958 Allahabad 526) were relied upon by the respondents.

11. Mr. Mansoor Ali Shah, Advocate/learned *amicus curiae* also made submissions that the Committee, constituted by this Court, had submitted a final report, which was on record and it supported the manner of disposal of municipal-waste through setting up a composting/landfill plant.

12. Pollution is of various kinds. There is land pollution, water pollution, air and light pollution, chemical pollution etc. No doubt, all sort of pollution is extremely injurious to life as well as environment and the earth itself. This is one of the major concerns and not of few individuals but of the society, as a whole and we are of the view that removal of causes of pollution was one of the major duties of the civil society and the Government. Historically, when urban areas were not very large and people lived in small communities, garbage or waste of all nature was dumped away from the dwellings. As most of the waste/garbage/refuse was organic in nature, it degraded quickly and was not injurious to public. When the cities grew, the traditional method of disposal of municipal waste/refuse continued to be employed due to various reasons, which are economic, lack of technical expertise and infrastructure etc. In the city of Lahore or areas surrounding it, as interim report submitted by the Committee, constituted by the Court reveals, about 4000 metric tonnes of municipal-waste, is disposed of by the City Government, which is successor to the erstwhile Municipal Corporation of Lahore. Traditional method of disposal of this waste was employed by MCL as well as the City Government and municipal-waste, garbage, etc. was dumped at various places. The City Government was using an area of about 300 Kanals for dumping of city wastes near village Mehmood Booti, a locality, which was somewhat away from the major city centre and also at another place on the western side of the city. Subsequently, the Municipal

Corporation, Lahore acquired 613 Kanals of land for disposal of the municipal-waste/refuse. It planned to set up an industrial plant for conversion of wastes into energy, which is one of the methods, being employed in several advanced countries, as well. Assistance was sought from World Bank, which for certain reasons, declined to provide financial assistance. Thereafter, the plan was shelved and City Government decided to set up a compost fertilizer plant at Mehmood Booti-landfill site, Lahore. This is one of the internationally recognized methods of safe disposal of city waste, which consists of organic as well as inorganic materials, some of which are bio-degradable and some of which are not degradable but had to be separated for recycling etc. When the petitioners challenged the acquisition proceedings, the main ground urged was that the World Bank had declined to provide assistance for setting up the industrial plant. The learned single Judge had not set aside the acquisition proceedings on that ground but had disposed of the petition with the following observations, which are being reproduced for the sake of reference:

“14. In view of the above, it is suggested that now as the City District Government has taken over the affairs of erstwhile Lahore Metropolitan Corporation, therefore, City District Government should make serious necessary endeavours for the redressal of grievances faced by the people of thickly populated locality of Mehmood Booti, should make alternative arrangements and to select suitable place for using as dumping ground and dumping solid waste, keeping in view the provisions of Pakistan Environmental Protection Act, 1997, and the observations and suggestions, made by the superior courts of this country in *Shehla Zia* and *Ms. Anjum Irfan* cases, *supra*. This Court, while giving suggestions/directions, is not completely oblivious of the difficulties, being faced by the City District Government, and is considerate enough to provide ample time to the City District Government to make serious efforts and arrangements for the removal of dumping ground for solid waste from the area of Mehmood Booti and to make alternative arrangements for dumping of solid waste far away from the residential areas, so that the lives of tens of thousands of people and their future generation could be saved from the catastrophe of pollution, which exercise is to be completed within a period of one year. Till the necessary arrangements are made by the authorities concerned, as suggested above, it is directed that the Lahore City District Government and Health Department shall deploy all possible resources at their disposal in that area to minimize the effects of the dumping ground.”

13. A perusal of above observations of the learned single Judge shows that the City Government has been directed to make alternative arrangements for dumping of solid waste away from the residential areas and the order is based on environmental considerations only. It has been urged before us that due to rapid expansion of urban areas, the number of sites, available for dumping/disposal of municipal-wastage, was fast decreasing and the City Government had little choice in the matter, though, seven sites have been located for the purpose. We have also noted that the impugned order had not taken into account that alternative arrangements were being made by City Government for disposal of the municipal-waste. Due to haphazard and ill-planned expansion of urban areas, City Government has little choice to go to any other place but has come up with the viable proposition to dispose of the waste, which will not cause any environmental hazard to local population. In this regard, we might refer to the recommendations of the Committee constituted by this Court, which are contained in the final report of the Committee and are being reproduced here: *

.....

14. After having gone through these recommendations, we have found that solution of the problem, proposed by the Committee, is reasonable and the City Government should be allowed to go ahead with setting up of the composting fertilizer plant, as suggested by the Committee and, as envisaged and planned by the City Government. The reason for (sic) allowing the writ petition, which weighed (sic) the learned single Judge, essentially, was removal of environmental hazard, which objective, of course, would be achieved by allowing the City Government to set up the plant at the site, which is already in possession of the City Government.

15. Learned counsel for the respondents (writ petitioners) urged before us that as the land owners had not received the compensation, title of the land still vested in the respondents and that the Award given by Land Acquisition Collector was set aside by Senior Civil Judge and as the City Government had not paid the enhanced amount of compensation to persons, whose land was acquired, the land should be restored to original owners by setting aside the acquisition proceedings and this appeal dismissed. It was also submitted that the City Government could very well establish compost fertilizer plant in the land, which was being used as a dumping ground but about 300 Kanals of land, which was not being used as dumping ground, should be restored to the respondents.

* The Court reproduced Section E. Recommendations of the Committee from the Committee's Report (Section E. of this Chapter).

16. We have considered the arguments advanced on behalf of the respondents. The logic does not impress us. In this case, the Metropolitan Corporation, Lahore (predecessor of City Government, Lahore) through Office Memo. No.517-G MCL/1994 dated 4-12-1994, requested District Collector, Lahore for acquisition of land measuring 638 Kanals 11 Marlas situated in Revenue Estate, Mehmood Booti, Tehsil Lahore Cantt. Lahore for construction of landfill site (conversion of waste to energy project) being financed by the World Bank. Notification under section 4 of the Land Acquisition Act, 1894 was issued by the District Collector on 15-12-1994 and was published in the Official Gazette on 8-2-1995. Subsequently, Notifications under section 17(4) and 6 of the Land Acquisition Act, 1894 were issued on 4-2-1996. Later, the Land Acquisition Collector, after hearing the objections of the parties, announced Award dated 22-7-1997, whereby an amount of Rs. 1,52,96,610/- was determined as the compensation for the land acquired. Out of the land acquired, 337 Kanals had deep depressions, while about 300 Kanals was plain, levelled land. The Tehsildar, Lahore Cantt. was directed to deliver possession of acquired land to the MCL, immediately. Thereafter, on a Reference, made by land owners, the Senior Civil Judge, Lahore vide judgment dated 11-4-2001 enhanced the amount of compensation to Rs.8,03,62,000. The MCL, admittedly, is in possession of the land and is using a major part of it as a dumping ground. We do not subscribe to the view that the City government or its predecessor was not in possession of whole of land. If the Acquiring Agency was in possession of major portion of the land, we do not see any reason as to why rest of the land was not in possession of the City Government. The Award announced by Land acquisition Collector was set aside only to the extent of compensation in terms that it was enhanced. The Metropolitan Corporation, Lahore filed RFA on 24-12-2001 against the order passed by the Senior Civil Judge. The Institution Register does indicate that such an appeal was filed. In that year the current record was damaged and, thereafter, the RFA was not posted for further proceedings. The City Government, obviously, can have the record reconstructed and RFA reheard, if so advised. Simply, because the original Award given by LAC had been modified by the Senior Civil Judge as far as compensation to be awarded to land owners is concerned, that would not affect the acquisition proceedings, in any manner.

17. There is another aspect of the matter. The Municipal Corporation is using major portion of the land as a dumping ground for past many years and almost 3800 metric tonnes of garbage is being dumped at the site. Obviously, a compost fertilizer plant, which the City Government is planning to build for disposal of the waste, cannot be constructed at the site, which is being used as a dumping ground. Such a plant can only be constructed at the available land and if that land is restored to land owners, the

menace will continue and people would continue to suffer. What has been proposed by the City Government is that a compost fertilizer plan shall be set up in the area, which is not being used as a dumping ground and, thereafter, the dumping ground will be covered with layers of earth and after passage of some time when the garbage, after being covered will degrade and become part of the subsoil, then that area would be used as a park for the people of the area. Therefore, we consider the arguments, being advanced by the appellant and the submission made for restoration of the land to owners, as unjustified and also baneful to the public interest. We are of the view that the entire proceedings under the Land Acquisition Act, 1894 were taken in accordance with law and nothing unlawful was done by the appellant.

18. The land has been acquired for a genuine public purpose. The proposal of the City Government that it would set up a compost fertilizer plant is practical and feasible. It will remove the environmental hazard from the area and would benefit not only the locality but also better part of population of the city of Lahore. The public purpose for which the land is acquired warranted that City Government should have taken such an exercise much earlier.

19. For the foregoing reasons, we allow the appeal and set aside the impugned order. There shall be no order as to costs.

20. Before parting with the order, we would also like to observe that City Government, Lahore should take immediate steps with the assistance of Provincial Government to acquire land at other places indicated in the report of the amicus curiae, so that waste disposal plants are established at other places by an early date, as well. Open land around Lahore is being devoured by haphazard construction and little land will be available for such projects, if undue delay occurs in acquisition of the land at the proposed sites.*

Sh. Abdul Rashid
Judge

Iftikhar Hussain Chaudhry
Chief Justice

* Emphasis added.

CHAPTER 6

LAHORE CLEAN AIR COMMISSION

Syed Mansoor Ali Shah vs. Government of Punjab

Writ Petition No. 6927 of 1997

before the Lahore High Court, Lahore

(PLD 2007 Lahore 403)

A. Order of the Court dated 24 July 2003 re appointment of the Commission

B. Report of the Commission dated 26 May 2005 (without Annexures)

C. Judgment of the Court dated 21 September 2006

A. Order of the Court dated 24 July 2003 re appointment the Commission

ORDER SHEET

LAHORE HIGH COURT, LAHORE

Writ Petition No. 6927/1997

**APPELLANT
PETITIONER**

versus

RESPONDENTS

Revision against the decree or order (as the case may be) of _____

Date of order of proceeding: 24.7.2003

C.M. 3/2003 AND C.M.1197/2003

Syed Mansoor Ali Shah, Advocate, petitioner in person.

Malik M. Pervez Akhtar. DAG.

Ch. Jamshed Hussain, AAG, with Mr. Nawaz Manik A.D. (Legal).

Through the above stated applications the petitioner has requested for appointment of a Commission on the issue of status of Vehicular Air Pollution analysis of data available on the subject and to propose solutions thereto. Petitioner has also proposed the constituent members of the Commission and the terms of reference.

2. The above CMs were heard today. The learned Deputy Attorney General, the learned Assistant Advocate General and the representative of Environmental Protection Department have conceded to the appointment of the Commission and the terms of reference with slight modifications, which were accepted by the petitioner. The parties have thus, by consensus, proposed the members of the Commission and the terms of reference to the Commission.

3. Upon consensus and agreement of the parties, the Commission on the subject of "**Vehicular Air Pollution**" is constituted and following shall be the Members of the Commission:-

- (1) Dr. Parvez Hassan, Advocate; Chairman
- (2) Advocate General Punjab; Co-Chairman Member
- (3) Syed Mansoor Ali Shah, Advocate petitioner, Facilitator and Coordinator.
- (4) Deputy Attorney General of Pakistan.
- (5) Naib District Nazim, Lahore.
- (6) Director General Environment Protection Department, Lahore.
- (7) Hammad Naqi, Director (Environmental Pollution Unit), World Wide Fund for Nature (WWF), Lahore.
- (8) District Coordination Officer (DCO), Lahore.
- (9) Chief (Transport) Planning & Development Department, Lahore.
- (10) Anjum Jawaid Khan, Member APCEL, Environmental Lawyer, Lahore.
- (11) Muhammad Nazim, Associate Professor, Institute of Management & Technology (ILM), Lahore.
- (12) Deputy Inspector General, Traffic Police, Lahore.
- (13) Erum Aftab, Environmental Scientist and Member, Pakistan Environmental Lawyer Association (PELA).
- (14) Osama Siddique (Advocate), Minto & Mirza (Advocates).

3. The terms of reference as jointly suggested and agreed upon by the parties are also approved. The Commission shall formulate and submit its report on:-

The feasible and practicable solutions and measures for monitoring, controlling and improving the vehicular air pollution in the City of Lahore.

4. For above purpose the Commission will have the powers to:
 - (i) Investigate, inspect, take evidence or examine witnesses and undertake steps, if necessary for;
 - (ii) Collect (sic) of studies, data and reports, local or international;
 - (iii) Obtain reports from relevant agencies or departments of surveys, tests, investigations or examinations already carried out or to be carried out on Commission's advice by such agency or department on the subject of vehicular air pollution;
 - (iv) Obtain opinions, reports, suggestions from stake-holders, industries, organizations, entities or persons from private or public sector etc.; and
 - (v) Call upon or consult experts for opinions and suggestions, assistance or otherwise, for matters deemed appropriate by the Commission.
 - (vi) Commission may, at its discretion, adopt further terms on the referred subject if considered necessary and appropriate in the case perspective.
5. The Commission shall submit its report by or before 30.9.2003.

(MUHAMMAD SAIR ALI)
JUDGE

B. Report of the Commission dated 26 May 2005 (without Annexures)

IN THE LAHORE HIGH COURT, LAHORE

W.P. No. 6927/1997

Syed Mansoor Ali Shah etc. vs. Government of Punjab, etc.

**REPORT OF THE LAHORE CLEAN AIR
COMMISSION (LCAC) CONSTITUTED BY THIS
HON'BLE COURT VIDE ORDER DATED 24-07-03**

A. The Background

1. Syed Mansoor Ali Shah and others filed Writ Petition (W.P. No. 6927/1997) and Saima Amin Khawaja and others filed Writ Petition no. (8491/2000) in public interest as residents of the city of Lahore against Vehicular Air Pollution. The said source of air pollution causes serious life threatening diseases i.e., bronchial irritation, heart problems, anemia, asthma, eye irritation and many other respiratory diseases in addition to IQ reduction, especially in children and other serious consequences relating to newly born and unborn children. High level carbon dioxide concentration in the lungs exposes a person to high cancer risk especially in individuals with chronic lung disease. According to Pakistan National Conservation Strategy prepared in collaboration with the Environmental and Urban Affairs Department and IUCN - The World Conservation Union: motor vehicles emissions accounts for approximately 90% of the total annual emissions of Hydrocarbons, Aldehydes, Carbon Monoxide, Carbon Dioxide, Sulphur Dioxide and Nitrogen Oxide. The average Pakistani vehicle emits 20 times as much Hydrocarbon, 25 times as much Carbon Monoxide, 3.6 times as much Nitrous Oxide in grams per Kilometer as compared to an average vehicle in the United States of America. It has been identified by the petitioners that the major source of Air Pollution in the city of Lahore is the vehicular emission generated by the public transport i.e., rickshaws (both auto and motorcycle rickshaws), wagons, buses and other polluting private vehicles. This is also confirmed by the preliminary carbon monoxide survey in Lahore by EPA Punjab (Oct, 1990).

The petitioners also relied on the decision of the august Supreme Court of Pakistan in Re: POLLUTION OF ENVIRONMENT CAUSED BY SMOKE EMITTING VEHICLES, TRAFFIC MUDDLE (1996 SCMR 543) as also in M.C. Metha vs. Union of India and others¹, Writ Petition no. 300/95 with W.P. no. 1694/00 of the Supreme Court of Bangladesh.

B. The Appointment of the Commission

2. That on the application of the petitioners this Hon'ble High Court was pleased to appoint a Commission (for clarity referred to as "Lahore Clean Air Commission" or "LCAC" or "Commission") on 24-07-03 to study and analyze the existing data available and to propose suitable solution on the status of vehicular air pollution. The following Commission was appointed by the Hon'ble High Court on the request of the petitioner with the consensus of Deputy Attorney General, the learned Assistant Advocate General and the representative of Environment Protection Department:

1. Dr. Parvez Hassan, Advocate; Chairman.
2. Advocate General, Punjab; Co-Chairman Member
3. Syed Mansoor Ali Shah, Advocate/Petitioner/Facilitator & Coordinator
4. District Coordination Officer (DCO), Lahore
5. Deputy Attorney General of Pakistan
6. Naib District Nazim, Lahore.
7. Director General Environment Protection Department, Lahore
8. Hammad Naqi, Director (Environment Pollution Unit), World Wide Fund for Nature (WWF), Lahore.
9. Chief (Transport) Planning and Development Department, Lahore

¹ AIR 1998 SC 2340, AIR 1998 SC 2963, 2001 II AD (SC) 594, 2001 III AD (SC) 269 and 2001 (3) SCALE 185 (ref: The Environmental Activists' Handbook - chapter 5 - Vol- I).

10. Muhammad Nazim, Associate Professor, Institute of Management and Technology (ILM), Lahore.
11. Deputy Inspector General, Traffic Police, Lahore.
12. Erum Aftab, Environmental Scientist and Member, Pakistan Environmental Lawyer Association (PELA).
13. Osama Siddique (Advocate), Minto and Mirza (Advocates) (now Head of the Department, School of Law and Policy, LUMS, Lahore)
14. Anjum Jawaid Khan, Member APCEL, Environmental Lawyer, Lahore
15. Nihal Asghar, SEAL, Lahore, (co-opted)
16. Saigols Qingqi Motors Ltd (through Mr. Li Shu) (joint representative of Dawood Yamaha Ltd, Suzuki Motorcycles Pakistan Ltd and Saigols Qingqi Motors Ltd (co-opted))

The Commission has also benefited from the attendance and participation of the following persons, who took time to attend some of the meetings of the Commission:

17. Mian Amir A. Mehmood, Nazim, City District Government, Lahore.
18. Saima Amin Khawaja, Advocate High Court, Lahore.
19. Mr. Saleem Piracha, Business Strategy Manager, SHELL Pakistan Ltd.
20. Dr. Shazia Khawaja, Surgeon, Ammar Medical Hospital, Lahore.
21. Dawood Yamaha Ltd through Yunus Dawood.
22. Suzuki Motorcycles Pakistan Ltd through Midhat A. Kidwai-Chairman.
23. Atlas Honda Ltd through Mr. Maqsood Basraa, General Manager, Human Resource and Corporate Affairs.

The Pakistan Automotive Manufacturers Association (PAMA) through Kunwar Idris, Chairman, was in touch with the Commission but could not attend its meetings.

The final meeting of the Commission on 20-5-2005 and the following stakeholders participated in the finalization of the recommendations of the Commission:

1. Yunus Dawood - Dawood Yamaha Ltd
2. Li Shu, Saigols QINGQI Motors Ltd
3. Konozi Mohiuddin - VPL Pakistan Ltd (VOLVO), Lahore
4. Maqsood Basraa- Atlas Honda Limited
5. M.A. Kidwai - Suzuki Motor Cycles Ltd
6. Mehmood Ahmed Khan - Hino Pak Motors
7. Syed Farhan Azam - Pak Hero Industries (Pvt) Ltd
8. Zakaullah Virk - Suzuki Motor Cycles Pak Ltd
9. Masood Tahir - Qingqi Motors
10. Lt. Col (Retd) M. Latif Chaudry - Dawood Yamaha Ltd
11. Mubeen Hussain - Dewan Farooque Motors Ltd
12. Hassan Nasir- Pak Suzuki Motor Company Ltd
13. M. Ilyas Suri - Indus Motor Company Ltd
14. Hasan Raza Muttaqi - VPL Pakistan Ltd (VOLVO), Lahore
15. Saeed Ahmed Khan - Sohrab Motorcycles Ltd
16. Capt (Retd) Kashif Riaz - Indus Motor Company Limited
17. Sardar Abid Ali - Honda Atlas Cars

3. The **TERMS OF REFERENCE** of the Lahore Clean Air Commission as settled by the Hon'ble High Court vide order dated 24-7-2003 are **TO SUBMIT A REPORT ON FEASIBLE AND PRACTICAL SOLUTIONS AND MEASURES FOR MONITORING, CONTROLLING AND IMPROVING THE VEHICULAR AIR POLLUTION IN THE CITY OF LAHORE.**

4. In order to achieve the above, the Hon'ble High Court, conferred the powers under Order 26 of CPC on the Commission vide order dated 24-7-2003 which are reproduced at **Annex 1.**

C. The Work of the Commission

5. The LCAC held nine meetings², three sub-committee meetings³ and held a three day international workshop⁴ organized by CAI Manila, ADB, City District Government, Lahore, NEAP-SP (National Environmental Action Plan-Support Programme, Ministry of Environment, the LCAC, The World Bank and IUCN for all the concerned stakeholders.

6. The Commission sought and received guidance on air pollution issues from: **Mark Chernaik** of E-Law, Oregon, USA, **Cornie Huizenga**, Head of Clean Air Initiative for Asian Cities (CAI, Manila), **Anumita Roychowdhry** (Associate Director, Research and Advocacy Centre for Science and Environment, India), **Narayan V. Iyer** (Bajaj Auto Ltd, India), **Sameer Akbar** (South Asia Environment and Social Development Unit, The World Bank, India) **Robert O'Keefe** (Vice President Health Effects Institute, USA), **Heru Sugiarto**, Swisscontact, Indonesia, **Jane Nishida**, The World Bank, **Dr. Badar Ghauri** of SUPARCO, and **Arif Pervaiz**, IUCN.

² Meetings held on:

1st meeting 25-09-03

2nd meeting 11-10-03

3rd meeting 20-11-03

4th meeting 03-01-04

5th meeting 25-11-04

6th meeting 10-12-04

7th meeting 05-03-05

8th meeting 17-05-05

9th (final) meeting 20-5-05

³ 09-12-03, 10-01-04 and 11-01-04

⁴ 13-15th December, 2004 at PC, Lahore

7. The Commission is especially grateful to CAI Manila (Philippines) for funding and arranging the three days workshop on **National Workshop on Improvement of Urban Air Quality of Pakistan** and formulating the final recommendations. Our special thanks to **Glynda G. Bathan**, CAI for her untiring support in organizing the workshop alongwith **Saima Amin Khawaja** and **Fatima Qureshi**. We thank all the speakers and the participants who made valuable contribution at the workshop.

8. Other dedicated persons who helped in research work and in formulating the recommendation included **Saima Amin Khawaja**, **Ahmed Hassaan Ghazali** and **Anum Raza**.

9. The LCAC acknowledges, with gratitude, the support it received from its members. The Commission places on record, particularly, the support it received from **Mian Amir Mehmood** (Nazim-City District Government, Lahore), **Khalid Sultan** (District Coordinator Officer-City District Government, Lahore) and **Tariq Zaman Khan** (District Officer, (Environment), City District Government, Lahore) for taking out time and assisting the Commission at every step.

10. The detailed working/minutes of the Committee meetings are at **Annex II**.

D. The Research Work of the Commission

11. The Commission with the assistance of Saima Amin Khawaja, CAI and many other supporters was able to collect valuable material of experiences from world over regarding air pollution and ways to minimize the ill effects of the same. Summary of the research is at **Annex III**.

E. Detailed Recommendations of the Commission

12. The Commission formulated the following short term and long term recommendations after extensive deliberations and consultations with international experts and stakeholders mentioned in the Report;

a. AMBIENT AIR QUALITY (AAQ) STANDARDS

- i. Pakistan requires a comprehensive set of Ambient Air Quality Standards particularly for the following criteria pollutants:

PM 10; PM 2.5; CO; Ozone (O₃); SO₂; NO_x; Lead

- ii. AAQ Standards can be immediately⁵ adopted on the lines of WHO.
- iii. AAQ standards need to be health-based standards.
- iv. AAQ standards for mobile and stationary sources.
- v. Differentiate between AAQ and Emission Standards.
- vi. AAQ standards to provide for different time frames e.g., one hour, eight hours, twenty four hours and annual averages.

b. AIR QUALITY MONITORING

- i. Collection and collation of existing data (as done by SUPARCO, etc) and to make this accessible to all relevant stakeholders.
- ii. To assess and analyze the said data for future planning and monitoring.
- iii. Federal EPA to set up air quality monitoring stations (at appropriate locations) to ensure quality assurance and quality control.
- iv. To build capacity within authorities.
- v. Data dissemination strategies need to be developed by the authorities to help foresee the issuance of health alarms in case of serious exceedance of standards.

c. AIR QUALITY PLANNING

- i. Aim of air quality management in Pakistan is to bring all pollutants within ambient air quality standards.
- ii. On the short and medium term the aim is to reduce the period of time that air quality exceeds the ambient air quality standards.

⁵ In Nepal, Ambient Air Quality Standards were introduced through Court, at the instigation of an NGO, over a relatively short period of time.

- iii. Air Quality Monitoring will provide information on the status of air quality. Based on this, interventions and targets can be set and strategies and action plans can be formulated targeting at specific pollutants.
- iv. Emission inventories and source apportionment studies are required to plan air quality strategies and actions.

d. EMISSION & FUEL STANDARDS (CLEANER FUELS)

- i. It is important for Pakistan to adopt Euro Emission Standards for vehicles so to be in line with all other Asian countries. (*Annex IV for further explanation*).
- ii. Considering the urgency of the air quality situation, cleaner fuels and cleaner vehicles need to be introduced in the urban centers immediately. (*Annex V for further explanation*).

STANDARDS FOR PUBLIC TRANSPORT BUSES:

- iii. Immediate introduction of CNG buses conforming to Euro-3 standards.
- iv. Phasing out of the existing buses in TWO years (starting 1-7-2005).
- v. Certified conversion of the existing buses from authorized workshops. Penalty in case the certification policy is violated.
- vi. Cap age for buses is 10 years. Over-aged buses to be scrapped.

STANDARDS FOR RICKSHAWS (AUTO AND MOTORCYCLE)

- vii. Introduction of new FOUR stroke CNG rickshaws.
- viii. Phase out of the existing Rickshaws in ONE YEAR.
- ix. Immediate ban on the registration of two stroke auto and motorcycle rickshaws.
- x. Nomination of dedicated stations for procurement of pre-mix to be used by the existing two stroke rickshaws.

e. FISCAL INCENTIVES

- xi. Viability of implementing cleaner air initiative requires financial incentives e.g., Subsidized loan, Tax waiver or reduction, differential pricing and easy repayment.

f. AWARENESS RAISING FOR CNG USE

- xii. Design outreach programs for bus operators, 3 wheeler owner/drivers, and general public.
- xiii. Infrastructure Planning for CNG program. Plan adequate refilling centers.
- xiv. For buses, have fast filling dedicated centers.
- xv. Need system to regulate quality of spare parts.
- xvi. Clearly define responsibilities of major stakeholders (owner, manufacturer, converter, inspector, government agencies)

NEW VEHICLE EMISSION STANDARDS AND CORRESPONDING FUEL QUALITY* FOR LAHORE

Vehicle Category	1-7-2008	1-7-2010	1-7-2013
2-wheel	Euro II	Euro III	
Vehicle Category	1-7-2007		
3-wheel	Euro II OR 4-STROKE CNG	Euro III	
Vehicles Categories	1-7-2008	1-7-2010	1-7-2013
Cars	Euro II	Euro III	Euro IV
Vehicle Categories	1-7-2006	1-7-2010	
LCV (wagons)	Euro-II	Euro-III	
HDV (buses)	Euro-II	Euro-III	

*Current Fuel: Sulfur Content: Import: 0.5% Local: 1%
All unleaded gasoline/petrol

IN-USE VEHICLE EMISSION STANDARDS

	2006	2007*
2W	Idle Test Idle CO \leq 4.5%, Idle HC record	Revise as per new vehicle emission standards, should lead to formal adoption of HC standards.
3W	Idle Test Idle CO \leq 4.5%, Idle HC record	Revise as per new vehicle emission standards should lead to formal adoption of HC standards.
Car	Idle Test Idle CO \leq 4.5%, Idle HC record	Revise as per new vehicle emission standards should lead to formal adoption of HC standards.
LCV Diesel	Opacity on Free Acceleration \leq 65 HSU	Introduce loaded mode test.
HDV Diesel	Opacity on Free Acceleration \leq 65 HSU	Introduce loaded mode test.

*Further revisions will be required after 2007 based on the introduction of tighter emission standards for new vehicles.

g. INSPECTION AND MAINTENANCE

Institute and strengthen I/M functions with respect to motor vehicles. Develop a comprehensive policy including the recommendations made at Annex VI and at the workshop attached as Annex VII to this Report.

Some of the important recommendations are as follows:

- i. Type of tests: Gasoline and CNG vehicles-idle emissions tests of CO and HC Risks.
- ii. Develop test protocols to ensure tests are done correctly.
- iii. Measure HC, CO, CO₂ and O₂.

- iv. Improve accuracy requirements.
- v. In the long run switch to lambda measurements for catalyst equipped cars.
- vi. For Diesel vehicles - apply Free Acceleration Smoke Tests.
- vii. Need additional test parameters for authentic tests e.g., oil temperature measurement and engine rpm measurement built into the smoke meter.
 - a. Oil temperature will be used as an indication of warming up.
 - b. Engine rpm will be used to ensure consistency of operation.
- viii. Introduced loaded test for diesel vehicles. More effective and accurate.
- ix. Monitoring by private cum public sector bodies.
- x. Institutional issues - Computerize all test data.
- xi. Institute data management system.
- xii. Audit plan must be worked out i.e. Test Records, Audit reports, Mandatory AMC requirement etc.
- xiii. Maintenance/calibration status of equipment.
- xiv. Availability of trained operators.
- xv. Vehicle Inspection Program for CNG Vehicles
 - a. Introduce 3rd party inspection of CNG vehicles with pre-registration safety and emission inspection
 - b. Regular annual safety and emission inspection after registration
 - c. Specially designed checklist for inspection
 - d. Training and skill-building at the city level

- e. Introduce CO and NO_x as part of the vehicle inspection program
- f. Study trips to Delhi or Dhaka to learn about best practices

h. TRANSPORT PLANNING

- i. Promote public transport, especially Buses.
- ii. New dedicated CNG buses.
- iii. Repowering existing buses into CNG.
- iv. Increase in number of buses.
- v. Travel demand management - improving usage.
- vi. Infrastructure for better supply of CNG.
- vii. Vehicle scrappage - age cap (old buses) e.g. age - 10 years.
- viii. BRT (Bus Rapid Transport) - dedicated bus lanes and pick/drop areas.
- ix. Road planning, integration of transport and land use.
- x. Financial measures (incentives or disincentives) to facilitate the above.

i. INSTITUTIONAL ISSUES AND CAPACITY BUILDING

Institutional arrangements:

- i. Current institutional arrangements for air quality management in Pakistan are acceptable; emphasis to be on making it work better.
- ii. Main stakeholders in urban air quality management: government, civil society, private sector, and academe.
- iii. Government, federal, provincial and district EPAs require more staff and training.

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- iv. Other government departments: police, transport department, and urban planning department need more knowledge on AQM.
- v. Civil society requires strengthening of technical knowledge on air quality (people and knowledge).
- vi. Private sector: (a) polluter, (b) sendee provider, air quality management capacity is in both cases limited.
- vii. Academe: number of universities offer AQM courses but require additional capacity.

The Commission unanimously recommends:

[WHERE EVER IN THIS REPORT STANDARDS ARE

RECOMMENDED REFERENCE IS TO MINIMUM STANDARDS]

IN RESPECT OF BUSES:

1. INTRODUCTION OF DEDICATED CNG OR COMPLIANT TO EURO-II BUSES FOR PUBLIC TRANSPORT CONFORMING TO EURO- 2 STANDARDS.
2. PHASING OUT OF EXISTING BUSES IN TWO YEARS i.e. by 2006.
3. CERTIFIED CONVERSION OF THE EXISTING BUSES FROM AUTHORIZED WORKSHOPS. PENALTY IN CASE THE CERTIFICATION POLICY IS VIOLATED.
4. CAP AGE FOR BUSES IS 10 YEARS. OVER-AGED BUSES TO BE SCRAPPED.
5. SETTING UP DEDICATED BUS LANES IN THE EXISTING TRANSPORT PLANNING.

IN RESPECT OF WAGONS:

6. PHASING OUT OF THE WAGONS FROM THE URBAN CENTRES AND REPLACE THE SAME WITH BUSES WITHIN ONE YEAR.

7. IN ROUTES WHERE THE PLYING OF BUSES IS NOT FEASIBLE NEW WAGONS WHICH ARE EURO-II COMPLAINT BE USED.

IN RESPECT OF AUTOCAB RICKSHAWS:

8. INTRODUCTION OF NEW FOUR STROKE CNG AUTO CAB RICKSHAWS IN LAHORE.

9. PHASE OUT OF THE EXISTING AUTO CAB RICKSHAWS IN ONE YEAR FROM LAHORE.

10. BAN ON THE REGISTRATION OF TWO STROKE AUTO CAB RICKSHAWS BY JANUARY, 2006.

11. NOMINATION OF DEDICATED STATIONS FOR PROCUREMENT OF PREMIX TO BE USED BY THE EXISTING TWO STROKE RICKSHAWS.

12. TEMPORARY SHIFTING/CONVERSION TO CNG ON THE EXISTING TWO STROKE AUTOCAB RICKSHAW.

IN RESPECT OF MOTORCYCLE RICKSHAWS:

13. THE USE OF TWO STROKE MOTORCYCLE RICKSHAWS SHOULD BE PROGRESSIVELY ELIMINATED FROM LAHORE WITHIN SIX MONTHS.

14. IMMEDIATE INTRODUCTION OF NEW FOUR STROKE PETROL MOTORCYCLE RICKSHAWS.

15. INTRODUCTION OF NEW FOUR STROKE CNG MOTORCYCLE RICKSHAWS WITHIN TWO YEARS.

16. BAN ON THE REGISTRATION OF TWO STROKE MOTORCYCLE RICKSHAWS IN LAHORE BY JANUARY, 2006

17. NOMINATION OF DEDICATED STATIONS FOR PROCUREMENT OF PREMIX TO BE USED BY THE EXISTING TWO STROKE RICKSHAWS.

18. ALL CBU VEHICLES (completely built up units) IMPORTED INTO PAKISTAN SHALL COMPLY WITH EURO- II STANDARDS WITH IMMEDIATE EFFECT.

IN RESPECT OF AIR QUALITY AND FUEL STANDARDS:

19. SETTING, BY 2006, AMBIENT AIR QUALITY STANDARDS.

20. SETTING, BY 2006, VEHICULAR EMISSION STANDARDS AND FUEL STANDARDS. SHORT TERM AND LONG TERM PLANS.

21. NEW VEHICLE EMISSION STANDARDS AND CORRESPONDING FUEL QUALITY* FOR LAHORE

Vehicle Category	1-7-2008	1-7-2010	1-7-2013
2-wheel	Euro II	Euro III	
Vehicle Category	1-7-2007		
3-wheel	Euro II OR 4-STROKE CNG	Euro III	
Vehicles Categories	1-7-2008	1-7-2010	1-7-2013
Cars	Euro II	Euro III	Euro IV
Vehicle Categories	1-7-2006	1-7-2010	
LCV (wagons)	Euro-II	Euro-III	
HDV (buses)	Euro-II	Euro-III	

*Current Fuel: Sulfur Content: Import: 0.5% Local: 1%

All unleaded gasoline/petrol

IN RESPECT OF FINANCIAL INCENTIVES:

22. TO SET UP A GREEN FUND TO INCENTIVISE CLEANER FUEL AND VEHICLES.

23. TO INVOLVE THE FINANCIAL SECTOR THROUGH THE STATE BANK OF PAKISTAN IN FACILITATING GREEN FINANCING FOR THE INDUSTRY.

IN RESPECT OF MONITORING:

24. PRIORITIZE THE ESTABLISHMENT OF AMBIENT AIR QUALITY MONITORING SQUADS & STATIONS BY THE CITY DISTRICT GOVERNMENT.

25. PRIVATISING INSPECTION & MONITORING STATIONS (SUCH AS THROUGH THE OIL MARKETING COMPANIES AND MANUFACTURERS) BY JANUARY, 2006.

IN RESPECT OF CAPACITY BUILDING AND AWARENESS RAISING:

26. CAPACITY BUILDING PROGRAMS BY CITY DISTRICT GOVERNMENT.

27. AWARENESS RAISING FOR CNG USE.

IN RESPECT OF A STANDING BODY TO MONITOR THE IMPLEMENTATION OF THESE RECOMMENDATIONS:

28. THIS HON'BLE COURT MAY CONSIDER THE ESTABLISHMENT OF A STANDING COMMITTEE COMPRISING OF REPRESENTATIVES FROM THE PRIVATE AND PUBLIC SECTORS TO MONITOR AND IMPLEMENT THESE RECOMMENDATIONS AND TO PERIODICALLY REPORT THEREON TO THIS HON'BLE COURT.

IN VIEW OF THE ABOVE RECOMMENDATIONS it is most respectfully prayed that this Hon'ble Court may graciously direct the implementation of the above recommendations for achieving better air quality in the city of Lahore.

Dr. Parvez Hassan
Advocate Supreme Court of Pakistan
Chairman

Syed Mansoor Ali Shah
Advocate Supreme Court of Pakistan
Coordinator

C. Judgment of the Court dated 21 September 2006

PLD 2007 Lahore 403

Before Syed Hamid Ali Shah, J

Syed MANSOOR ALI SHAH and 4 others---Petitioners

Versus

**GOVERNMENT OF PUNJAB, through Housing, Physical and Environmental
Planning Department, and 3 others---Respondents**

Writ Petitions Nos. 6927 of 1997 and 8491 of 2001, heard on 21st September, 2006.

Syed Mansoor Ali Shah and Ms. Saima Amin Khawaja for Petitioners.

Malik Pervaiz Akhtar, D.A.G. for Federal Government.

Shujaat Ali Khan, A.A.G. for Respondents Nos.1 to 3.

Kamran Shuja for Transport Department, Government of the Punjab.

Malik Muhammad Naeem for Applicant (in C.M. 1949 of 2006).

Ijaz-ul-Hassan for Respondents Nos.5 to 7.

Javad Hassan on Court Call.

Date of hearing: 21st September, 2006.

JUDGMENT

SYED HAMID ALI SHAH, J.---This single judgment shall dispose of Writ Petitions Nos. 6927 of 1997 and 8491 of 2000 as both the petitions involve common subject matter and the relief claimed therein is also identical.

2. Lahore is the thirtieth largest city in the world, estimated to have 8 million inhabitants. The city has the capacity to absorb outsiders and for that reason its population is growing faster than other cities. It was once known as 'City of Gardens' then it became 'City of colleges' and now it is largely thought of as cultural centre of Pakistan. It is most accessible city of Pakistan, thus faces ever increasing traffic problems. It has very high levels of air pollution and smog, mostly due to motor vehicles emission. The petitioners being conscious of the threat of vehicular pollution, have invoked the extraordinary constitutional jurisdiction of this Court, for protection of the rights of the citizens as to life, guaranteed under Articles 9 and 14 of the Constitution of Islamic Republic of Pakistan, 1973, against health hazards, created and affected due to air pollution.

3. The case of the petitioners as set out, in these petitions, is that they are residents of the Lahore City and are aggrieved of air pollution. It is contended that air pollution has severe effect on human life, specially on newly born and unborn infants. It is creating bronchial irritation, heart problems, anaemia, asthma, eye irritation and other respiratory diseases. It is asserted in the petitions that according to the Pakistan National Conservation Strategy, (conducted in collaboration with the Environmental and Urban Affairs Department and World Conservation Strategy (IUCN) the motor vehicles emissions account for approximately 90% of the total annual emission of Hydrocarbons, Aldehydes, Carbon Monoxide, Carbon Dioxide, Sulphur Dioxide and Nitrogen Oxide. The average Pakistani vehicle emits 20 times as much Hydrocarbon, 25 times as much Carbon Monoxide, 3.6 times as much Nitrous Oxide in grams per Kilometer, as compared to an average vehicle in the United States of America. The preliminary Carbon Monoxide survey of the city conducted by Environmental Protection Agency, Punjab shows that the major source of air pollution in the city, is the vehicular emissions. Vehicular emissions lead to air pollution, primarily due to incomplete combustion on account of two stroke engines (Rickshaws, Motor Cycles, Scooters) and diesel engines i.e. mainly public transport in Lahore. The smoke by cars, rickshaws, wagons, buses, aeroplanes, railways etc. produce carbon monoxide, lead, nitrogen oxides, organic vapours, odours, etc. According to latest statistics the presence of Carbon Monoxide,

measured at various places of Lahore, on the average, showed the Carbon Monoxide level to be 50 P.P.M. (parts per million), above the level of Air Pollution violates (sic) of the National Environmental Quality Standards, formulated by the Environmental Protection Agency. The motor vehicles not only emit hazardous wastes but also create noise, which is unwanted and undesirable and its continuity can temporarily or permanently damage hearing a (sic) loss. High noise levels can also cause psychological disorder, variation in blood pressure, difficulty in respiration and changes in human behaviour. The main contributing factors in increasing noise levels are pressure horns, untuned engines, damaged silencers, over speeding and excessive use of first two gears. It is further asserted that according to rule 163 of the Motor Vehicles Rules, 1969, the owner of the motor vehicle is required by law to maintain the vehicle, so that it does not cause damage or annoyance to any other persons or property or endanger the safety of any other users of the road; fitted with an efficient appliance for the purpose of preventing the emission of sparks or grit etc. While the Regional Transport Authority, established under Motor Vehicles Ordinance, 1965, is issuing Fitness Certificates to Transport vehicles, which do not meet the required standards. This was result of collusion between the Motor Vehicles Inspectors and owners of vehicles. With this backdrop of the matter, the petitioners prayed that the respondents be directed to act strictly in accordance with law and immediately arrest the growing problem of Air Pollution, lest it is too late.

4. The respondents in their written reply and parawise comments admitted the facts narrated in the petitions. It was, however, stated that they are making all efforts to cure air pollution. My learned brother Mr. Muhammad Sair Ali, J., during the course of proceedings on 24-1-2003 constituted Lahore Clean Air Commission (shall now be referred as Commission) comprising of:--

- (1) Dr. Parvez Hassan, Advocate, Chairman.
- (2) Advocate General, Punjab, Co-Chairman/Member.
- (3) Syed Mansoor Ali Shah, Advocate/Petitioner/Facilitator and Coordinator.
- (4) District Coordination Officer (DCO), Lahore.
- (5) Deputy Attorney-General of Pakistan.
- (6) Naib District Nazim, Lahore.

- (7) Director General Environment Protection Department, Lahore.
- (8) Hammad Naqi, Director (Environment Pollution Unit), World Wide Fund for Nature (WWF), Lahore.
- (9) Chief (Transport) Planning and Development Department, Lahore.
- (10) Muhammad Nazim, Associate Professor, Institute of Management and Technology (ILM), Lahore.
- (11) Deputy Inspector General, Traffic Police, Lahore.
- (12) Erum Aftab, Environmental Scientist and Member, Pakistan Environmental Lawyer Association (PELA).
- (13) Osama Siddique (Advocate), Minto and Mirza (Advocates) (now Head of Department, School of Law and Policy, LUMS, Lahore).
- (14) Anjum Jawaid Khan, Member APCEL, Environmental Lawyer, Lahore.
- (15) Nihal Asghar, SEAL, Lahore (Co-opted).
- (16) Saigols Qingqi Motors Ltd., (through Mr. Li Shu) (Joint representative of Dawood Yamaha Ltd. Suzuki Motorcycles Pakistan Ltd. and Saigols Qingqi Motors Ltd. (Co-opted.)).

5. The Commission was assigned the task to study and analyse, the increasing problem of vehicular air pollution and formulate a solution. The Commission started its function, on the following term of reference:--

"To submit a report on feasible and practical solutions and measures for monitoring, controlling and improving the vehicular air pollution in the city of Lahore."

6. Various functionaries of Government and Semi-Government bodies also remained associated with the proceeding including:--

- (1) Mian Amir Mehmood, Nazim, City District Government, Lahore.
- (2) Saima Amin Khawaja, Advocate High Court, Lahore.
- (3) Mr. Saleem Piracha, Business Strategy Manager, SHELL Pakistan.
- (4) Dr. Shazia Khawaja, Surgeon, Ammar Medical Hospital, Lahore.
- (5) Dawood Yamaha Ltd. through Yunus Dawood.
- (6) Suzuki Motorcycles Pakistan Ltd. through Midhat A. Kidwai, Chairman.
- (7) Atlas Honda Ltd. through Mr. Maqbool Basraa, General Manager, Human Resource and Corporate Affairs.

The Commission received certain guidelines on the issue of air pollution, held various meetings and organized "Three Day International Workshop" with the help and association of Asian Development Bank, Clean Air Initiative (CAI) Manila, City District Government Lahore, NEAP and IUCN. The recommendations were finalized with the Stake holders in the meeting dated 20-5-2005. Commission after extensive deliberation and consultation formulated following recommendations:--*

7. The report was further deliberated upon by the Commission and final recommendations, suggested by the Commission, were submitted in this Court on 26-5-2005, which read as under:--**

8. Objections, comments and views of public as well as from the stakeholders, were invited through citation published in Daily Times in its print dated 7-7-2005. Pak-EPA submitted its comments on 18-7-2005, agreeing to suggestion in principle but objecting to time frame. Mr. Wasif Majeed Advocate, a Member of Lahore High Court Bar Association, gave additional suggestions without commenting on recommendations of the Commission. Communication was addressed to Federal Government through its concerned ministries, for comments, inviting their views qua the

* The Court reproduced paragraph 12 (a) to (i) of Section E. Detailed Recommendations of the Commission from the Report of the Commission (Section B. of this Chapter).

** The Court reproduced from Section E. of the Report of the Commission the Unanimous Recommendations of the Commission (Section B. of this Chapter).

problems/difficulties likely to be faced for the implementation of recommendations. The Commission thereafter held a detailed meeting on the direction of this Court on 26-7-2005 with Provincial Environmental Protection Agency, Pakistan Environmental Protection Council, Ministry of Industries and Production and Special Initiatives, Ministry of Commerce, Ministry of Finance, HDIP, PAMA-Atlas Honda Ltd., Qingqi Motors, DCO, CDGL and Dawood-Yamaha; the recommendations were examined in the meeting. A few suggestions were sent by Pak EPA over the net subsequently, but of no avail as same were already incorporated in the Final Recommendation.

9. Mr. Pervaiz Malik, learned Deputy Attorney General, representing Federal Government, suggested on 5-9-2005 for another notice to be published, resultantly, public notices were published afresh. Notices were issued to various ministries once again, along with the report/recommendations of the Commission. The officials of Federal Government representing Ministry of Industries and Production, Ministry of Environment, Ministry of Finance, Ministry of Petroleum and Natural Resources, Ministry of Commerce, Pakistan Environmental Protection Council and Export Promotion Bureau, attended the Court on 21-9-2005. They were asked to submit their approval, suggestion or reservation if any, on the report of the Commission. The report of the Commission was considered in a joint meeting of concerned ministries of the Federal Government. Additional Secretary (Mrs. Rukhsana Jabbar Memon) informed the Court on 17-11-2005 about the joint meeting of various ministries, wherein clean air programme was considered and found essential. She however, prayed for further time to convey the Court about acceptance or otherwise of the report of Commission. The representations of various ministries, who appeared in this Court on 29-8-2002, 19-7-2005, 21-9-2005, 25-10-2005 and 17-11-2005 conveyed the approval of recommendation of their respective ministries. Learned Deputy Attorney General remained associated with the proceedings. Provincial Government on the other hand through Environmental Protection Agency (EPA) in association with Planning and Development Department, submitted its suggestions on final recommendations, whereby the recommendations of the Commission were endorsed. Transport Department of Government of Punjab submitted comments, which reflect that ban had been imposed on registration of two stroke Rickshaws with effect from 1-1-2005, to give effect to recommendations of the Commission. Mr. Agha Nadeem, Secretary Transport was directed to remain associated with the Commission. Consequently, he attended meetings of Commission on 29-3-2006, 8-5-2006 and 22-5-2006. He submitted report on 29-5-2006 and conveyed the following progress in pursuance of the recommendations of the Commission:--

- (i) Meetings dated 8-5-2006 and 22-5-2006 were held to fine-tune the working Plan.
- (ii) Transport department has already launched the 4 Stroke CNG Motor Cab Rickshaws in 2005. The launching has encouraged 4 manufacturers, with the result that their product is already in the market.
- (iii) Target date to complete Phasing out of 2 stroke Rickshaws completely from Lahore, was fixed as 31-12-2007.
- (iv) A notification dated 1-1-2005 was issued by the Transport Department, in view whereof induction of new 2 stroke motor cab rickshaws was banned.
- (v) The suggestion of conversion of 2 stroke into 4 stroke CNG Rickshaws, for want of effective technology was declined.
- (vi) Punjab Small Industries Corporation and Punjab Provincial Cooperative Bank have been engaged for leasing out 4 stroke CNG Rickshaws, under the Chief Minister's Green Fund Scheme.
- (vii) Plying of 2 stroke Rickshaws have already been banned on the Mall Road, since 17-4-2006 and schedule has been made to phase out two stroke rickshaws in ten stages, to be carried out at Jail Road, Main Boulevard Gulberg, Canal Road, Allama Iqbal Road, etc.
- (viii) Plans are in process to phase out wagons and convert Diesel Buses. No Diesel bus has been inducted since September, 2005.

10. Viewing the report of Transport Department and various steps taken by the Government of Punjab as consequence of recommendations, Transport Department of Government of Punjab was restrained through order dated 30-5-2006, from issuing route permits or fitness certificates to diesel buses, in the light of ban. Ban on two stroke Rickshaws/Triwheeler was challenged through Constitutional Petitions i.e. Writ Petition No. 3941 of 2006 and Writ Petition No.16378 of 2005, on the grounds that imposition of ban on poor rickshaw owners will result into depriving them from earning their bread and livelihood. It was also urged in these petitions that introduction of four stroke rickshaw is aimed to encourage the monopoly of one manufacturer, to the exclusion of other

manufacturers. Both the contentions had no force. Firstly, as four different manufacturing companies are in the process of manufacturing of four (4) stroke Rickshaws, besides the field is open for others. Secondly, Government of Punjab has announced a package to encourage common/poor citizens to buy 4 stroke CNG Rickshaws from green fund on lease facility, at a nominal rate of mark-up. Additionally, Government of Punjab is bound by its undertaking (given in these proceedings) to extend loan to deserving applicants and in this respect preference is to be given to the affectees i.e. owners of two stroke rickshaws. Nominees of manufacturers of motor-cycle Rickshaws were directed through order dated 27-1-2005 to remain associated with working of the Commission. Consequently, they were co-opted as members of the Commission. They being stakeholder attended meetings and recommendation of this Commission, were thus finalized with their concurrence. The Commission accomplished the task assigned to it. Its recommendations have thoroughly been examined by the Federal as well as Provincial Government besides other stakeholders. These recommendations have now been submitted in this Court for issuance of appropriate writ.

11. Pakistan is party to 2001 Stockholm Convention, which is a global treaty to protect human health and environment from Persistent Organic Pollution (POP). Pakistan has also joined the global community being party to 1985 Vienna Convention on Protection of Ozone Layer. Pakistan has signed the 1992 United Nations Framework Convention on Climate Change (UNFCCC). The objective of the Convention is the stabilization of green house gas concentration in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Pakistan is also signatory of 1990 International Oil Pollution Preparedness, Response and Cooperation. Besides the international treaties, perseverance and protection of dignity of man is fundamental right of a citizen, guaranteed under Article 14 of the Constitution, 1973. Constitution of 1973 vide Article 9 protects the life of person/citizen. The cases where life of citizen is degraded, the quality of life is adversely affected and health hazards are created affecting large number of people, amounts to deprivation of life, which above referred articles prohibits. Further that nuisance caused through air pollution is punishable under sections 268 and 278 of Pakistan Penal Code. Pakistan Environmental Protection Act (Act XXXIV of 1979) has been enforced for protection, conservation, inhabitation and improvement of the environment. The redressal of grievance, voiced through these petitions, is covered under the constitutional provisions specifically Articles 9 and 14, provisions of Act XXXIV of 1979, other enactments. State functionaries are bound by contractual obligations under international treaties, to make effective measures for elimination of vehicular pollution.

12. I am not inclined to burden this judgment by referring to the various judgments of superior Courts of the country, where scope and ambit of jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, was considered and it was observed therein that Constitution confers vast powers on Courts to issue appropriate directions for the enforcement of fundamental rights guaranteed by the Constitution, yet the case of Ms. Shehla Zia and others v. WAPDA PLD 1994 SC 693 needs mention, wherein the Honourable Supreme Court has held as under:--

"Article 9 of the Constitution provides that no person shall be deprived of life or liberty save in accordance with law. The word 'life' is very significant as it covers all facts of human existence. The word 'life' has not been defined in the Constitution but it does not mean nor can be restricted only to the vegetative or animal life or mere existence from conception to death. Life includes all such amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally. A person is entitled to protection of law from being exposed to hazards of electromagnetic fields or any other such hazards which may be due to installation and construction of any grid station, any factory, power station or such like installations. Under the common law a person whose right of easement, property or health is adversely affected by any act of omission or commission of a third person in the neighbourhood or at a far off place, he is entitled to seek an injunction and also claim damages, but the constitutional rights are higher than the legal rights conferred by law, be it municipal law or the common law. Such a danger is depicted, the possibility of which cannot be excluded, is bound to affect a large number of people who may suffer from it unknowingly because of lack of awareness, information and education and also because such sufferance is silent and fatal and most of the people who would be residing, under or at a dangerous distance of the grid station or such installation do not know that they are facing any risk or are likely to suffer by such risk. Therefore, Article 184, can be invoked because a large number of citizens throughout the country cannot make such representation and may not like to make it due to ignorance, poverty and disability. Only some conscientious citizens aware of their rights and the possibility of danger come forward."

August Court in the referred case held further:

"The word 'life' in terms of Article 9 of the Constitution is so wide that the danger and encroachment complained of would impinge fundamental right of a

citizen. In this view of the matter, the petition under Article 184(3) of the Constitution of Islamic Republic of Pakistan, 1973, is maintainable.

It was also observed by the Court:--

"The word 'life' in the Constitution has not been used in a limited manner. A wide meaning should be given to enable a man not only to sustain life but to enjoy it."

14. Pollution of environment, caused by smoke emitting vehicles, traffic muddle came up before the august Supreme Court of Pakistan in Human Rights Petition No. 4-K of 1992, 1996 SCMR 543, where the apex Court on examination of reports, submitted by the different H.R. activists, through interim order gave number of directions for taking effective and remedial steps, to streamline the process of checking as first step in eliminating the pollution from Karachi, Lahore, a city of gardens, colleges and rich cultural heritage, is now faced with grave threat of vehicular pollution, which is creating health hazard to its inhabitants, affecting adversely their quality of life. Vehicular pollution needs elimination, which can be achieved by following the manner opted by the august Court in the above referred judgment 1996 SCMR 543. Appropriate writ for implementation of recommendations of the Commission is required, which is accordingly issued.

15. The City District Government, Lahore approved and stood behind the recommendations, with the assurance to implement the same in letter and spirit, Secretary, Transport and other departments of the Provincial Government including Planning and Development Department have consented to implement these recommendations. The representatives of various Federal Ministries, who appeared before this Court were asked to either give their consent/approval on the recommendations or submit objections or difficulties, if any, in implementation of the recommendations. None has filed objection or counter-proposals. The question of issuance of writ jurisdiction in the instant proceedings is not in issue as suggestions and recommendations of the Commission were finalized and approved by associating the stakeholders like manufacturers of Rickshaws, Motor-cycles etc. on one hand and various bodies of the Federal as well as Provincial Governments on the other hand.

15-A. The recommendations which remained uncontested by all concerned including Federal Government of Pakistan, Government of Punjab, concerned authorities

and bodies. The writ is thus issued with the following directions:*

All the concerned authorities, departments, in particular the Transport Department, the City District Government, Lahore, EPD (Punjab), Federal EPA to strictly implement the following:--

In Respect of Buses:--

- (1) Introduction of dedicated CNG or compliant to Euro-II buses for public transport conforming to Euro-II standards.
- (2) Phasing out of existing buses in two years i.e. by December, 2007.
- (3) Certified conversion of the existing buses from authorized workshops, penalty in case the certification policy is violated.
- (4) Cap age for buses is 10 (ten) years. Over-aged buses to be scrapped. Only those buses be permitted to ply on roads, which are in perfect condition, after the lapse of 10 years period.
- (5) Setting up dedicated bus lanes in the existing transport planning.

In Respect of Wagons:--

- (6) Phasing out of the wagons from the Urban Centres and replace the same with mini buses.
- (7) In routes where the plying of buses is not feasible new mini buses or wagons, which are Euro-II compliant be used.

In Respect of Motorcab/Autocab Rickshaws:--

- (8) Introduction of new four stroke CNG Motorcab/Autocab Rickshaws in Lahore.

* The directions of the Court closely followed the unanimous recommendations of the Commission at the end of its Report (see Section E. of the Report in Section B. of this Chapter).

- (9) Phase out of the existing Autocab Rickshaws from Lahore by December, 2007.
- (10) Strictly enforce the existing ban on the registration of two stroke Autocab Rickshaws imposed since January, 2005.

In Respect of Motorcycle Rickshaws:--

- (11) Strictly enforce the existing ban on the registration of two stroke Motorcycle Rickshaws in Lahore imposed since January, 2005.

In Respect of Air Quality and Fuel Standards:--

- (12) Setting, by 2007, Ambient Air Quality Standards.
- (13) Setting, by 2007, Vehicular Emission Standards and Fuel Standards. Short term and long term plans.
- (14) New vehicle emission standards and corresponding fuel quality* for Lahore.

Vehicle Category	1-7-2008	1-7-2010	1-7-2013
2-wheel	Euro II	Euro III	
Vehicle Category	1-7-2007		
3-wheel	Euro II or 4-stroke CNG	Euro III	
Vehicles Categories	1-7-2008	1-7-2010	1-7-2013
Cars	Euro II	Euro III	Euro IV
Vehicle Categories	1-7-2006	1-7-2010	
LCV (wagons)	Euro II	Euro III	
HDV (buses)	Euro II	Euro III	

* current fuel: sulfur content: import: 0.5% local: 1% all unleaded gasoline/petrol.

In Respect of Financial Incentives:--

- (15) To effectively use the existing Green fund to incentive (sic) cleaner fuels and vehicles.

In Respect of Monitoring:--

- (16) Priorities the establishment of Ambient Air Quality Monitoring Squads and Stations by the City District Government within a year.
- (17) Make effective measures for inspection and monitoring stations within a year.

In Respect of Capacity Building and Awareness Raising:-

- (18) Capacity Building Programs by City District Government.
- (19) Awareness raising for CNG use.

16. Standing Body of the Commission, comprising of Dr. Parvez Hassan, Advocate (Chairman); Syed Mansoor Ali Shah, Advocate/Petitioner (Facilitator and Coordinator), District Coordination Officer (DCO), Lahore, Hammad Naqi, Director (Environment Pollution Unit), World Wide Fund for Nature (WWF), Lahore and Nihal Asghar, SEAL, Lahore, is constituted to remain operational till the accomplished (sic) of the Commission, approved herein above from Lahore. The Transport Department and the City District Government Lahore shall regularly report their progress to the Standing Body and keep them involved in their deliberations and plans. In case the Standing Body is of the view that the recommendations are not being followed or are being deviated from, they are free to approach this Honourable Court for appropriate orders.

17. The efforts made by all concerned are appreciated.

18. Disposed of in the above terms.

S.M.B./M-746/L

Order accordingly.

CHAPTER 7

KARACHI OIL SPILL CASE

Dr. Amjad H. Bokhari vs. Federation of Pakistan

Constitutional Petition No. 45 of 2003

before the Supreme Court of Pakistan

- A. Letter dated 13 September 2003 from Dr. Parvez Hassan to Registrar, Supreme Court of Pakistan**
- B. Written Submission for 24 September 2003 of Dr. Parvez Hassan, Amicus Curiae, before the Supreme Court of Pakistan**
- C. Newspaper Reports on Suits before the Sindh High Court**
 - 1. Extracts from Dawn, 28 October 2003**
 - 2. Daily Times, 28 October 2003**

A. Letter dated 13 September 2003 from Dr. Parvez Hassan to Registrar, Supreme Court of Pakistan

Lahore
13 September 2003

By Courier

Registrar
Supreme Court of Pakistan
Supreme Court Building
Islamabad

Re: Karachi Oil Spill

Dear Registrar:

I found out from the newspaper today that I have been directed by the Supreme Court in the above captioned matter to appear as amicus curiae on 18 September 2003. Unfortunately, it is not possible for me to appear on 18 September 2003 and I would, therefore, request that this matter be taken up on any of 23, 24 or 25 September 2003. I should also inform you and the Supreme Court that I am travelling to Europe and the U.S.A. on 27 September and will be out of Pakistan for a few weeks.

With best regards.

Very truly yours,

Dr. Parvez Hassan

Copies:

(1) Mr. Makhdoom A. Khan
Attorney General for Pakistan
Supreme Court Building
Islamabad

(2) Mr. Akram Sheikh
Advocate Supreme Court of Pakistan
Lahore

B. Written Submission for 24 September 2003 of Dr. Parvez Hassan, Amicus Curiae, before the Supreme Court of Pakistan

Before the Supreme Court of Pakistan, Islamabad

Dr. Amjad H. Bokhari vs. Federation of Pakistan

(Constitutional Petition 45/2003)

**Written Submissions by Dr. Parvez Hassan,
Amicus Curiae**

(Prepared for submission on 24 September 2003)

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Lahore
23 September 2003

By Courier

Registrar
Supreme Court of Pakistan
Supreme Court Building
Islamabad

Re: Dr. Amjad H. Bokhari & another vs. Federation of
Pakistan & others (Constitutional Petition No. 45/2003)

Dear Registrar:

Further to your notice dated 16 September 2003, I was planning to be in Islamabad tomorrow morning to assist the Supreme Court in the above captioned matter. However, on a telephone call from our office to you, we were informed that the case has been rescheduled due to the non-availability of the Supreme Court Bench. In the meantime, I had prepared some submissions, of a preliminary nature, and in writing, which I am sending for the record of the Court.

As I will be travelling most of October 2003, these submissions could be graciously considered by the Supreme Court in the event that the matter is taken up during my absence from Pakistan.

If the matter is taken up in November 2003 or thereafter, I will be pleased to assist the Supreme Court.

With best regards.

Very truly yours,

Dr. Parvez Hassan

Enclosures:
Three copies of Preliminary Written Submissions

Before the Supreme Court of Pakistan, Islamabad

Dr. Amjad H. Bokhari vs. Federation of Pakistan

(Constitutional Petition 45/2003)

**Written Submissions by Dr. Parvez Hassan,
Amicus Curiae**

(Prepared for submission on 24 September 2003)

A. Karachi Oil Spill: The Magnitude of the Disaster

1. Grounding and structural collapse of the MV Tasman Spirit in Karachi port on 13 August 2003 resulted in the greatest marine environmental disaster in the history of Pakistan.
2. Out of a total cargo of 67,535 tons, about 26,000 tonnes of light crude oil flooded the coastline.
3. The immediate "environmental bill" of the catastrophe includes:
 - (1) Widespread marine pollution resulting in the destruction of phytoplankton-the so called "grass of the sea"- which is responsible for one third of the world's oxygen.
 - (2) Air pollution leading to respiratory problems for people exposed to petroleum carbon exposure.
 - (3) Whole-scale destruction of fish threatening the country's fisheries industry which exports Rs. 8 billion seafood, has an annual catch of 650,000 tonnes of fish and involves the livelihood of about 300,000 people.
 - (4) Extensive damage to the rich mangrove ecosystem including destruction of millions of mangrove seedlings.

- (5) Soiling of Clifton beach, the main recreational site for millions of city dwellers, from all social strata of society, with further threat to area of Port Qasim and the forty (40) kilometer Karachi coast line.
4. Long-term environmental damage to all of the above unknown but oil toxicity is known to have the following detrimental effects:
 - (1) Carcinogenic processes in sea animals and reproductive and genetic damage.
 - (2) Damage to the respiratory organs and clogging of the filtering mechanism of fish.
 - (3) Imbalance in the cycles of plant life - even when fish are not killed, the degradation process consumes large quantities of dissolved oxygen, which is vital to life at sea.

B. Inadequacy of National Response

1. State of preparedness and response of national authorities fundamentally and fatally inadequate.
2. Operationally, no national contingency plan, lack of adequate stockpiles of anti-pollution agents and absence of inter-agency co-ordination, all compounded by a failure to implement the 1990 International Convention on Oil Pollution Preparedness, Response and Co-operation to which Pakistan is a party.
3. Weak domestic legal framework on marine pollution marked by extremely low penalties, fragmentation of laws and responsibility of state organs and inadequate coverage of accidental and catastrophic spills (see Section G on National Laws, Institutions, and Policies).
4. Systemic legal vulnerability for the recovery of compensation due to failure to ratify key international conventions on civil liability (see Section H below on the International Regime and Framework) that generally operate under a principle of strict liability on the shipowner.

C. Scope of Public Interest Litigation (The Indian Experience)

- (1) Violation of fundamental or other legal rights.
- (2) Of a class of persons who by reason of poverty/disability/socially/economically disadvantaged position - voiceless, marginalized, vulnerable sections of the community.
- (3) By any public spirited individual or action group.
- (4) Not only by filing a regular writ but also by writing a letter to Court; epistolary jurisdiction.
- (5) Court to look at substance and not form.

Reliance:

- (1) M.C. Mehta vs. Union of India, AIR 1987 SC 1086.
- (2) Bandua Mukti Morcha vs. Union of India, AIR 1984 SC 802.
- (3) S.P. Gupta vs. Union of India, AIR 1982 SC 149.
- (4) Peoples Union for Democratic Rights vs. Union of India, AIR 1982 SC 1473.

D. The Genesis of Public Interest Litigation in Pakistan:
Toward Shehla Zia

1. Recognized early by the Supreme Court of Pakistan that procedure is the instrument and not the end of justice:

[t]he proper place for procedure in any system of the administration of justice is to help and not thwart the grant to the people of their rights. All technicalities have to be avoided unless it is essential to comply with on grounds of public policy. Any system which by giving effect to the form and not to the substance defeats substantive rights [and] is defective to that extent.... **Imtiaz Ahmad vs. Ghulam Ali, PLD 1963 SC 382.**

2. Rules of locus standi can be dispensed with in case of violation of fundamental rights of a class of persons who are unable to seek redress through the traditional means (**Benazir Bhutto vs. Federation of Pakistan**, PLD 1988 SC 416).
3. Development of epistolary jurisdiction of court on behalf of destitute bonded labourers, **Darshin Masih vs. the State**, PLD 1990 SC 513.
4. Original jurisdiction in public interest litigation cases rooted in three sources: letters written to the Chief Justices of the superior courts of Pakistan, newspaper reports (which become the basis of suo motu actions by the courts), and cases filed by petitioners that raised questions of human rights.
5. As noted by Dr. Nasim Hassan Shah, the superior courts of Pakistan have fashioned public interest litigation remedies in a broad sweep of cases:

(1) To correct malpractices in our educational system; (2) to afford protection to women of any origin (Pakistan or Foreign) subjected to any sex related offences and to stop the menace of obnoxious calls to them; (3) to protect the property rights of female heirs/owners by issuance of directions to the Attorney-General to take steps to amend the relevant existing law or to cause fresh legislation to be initiated for securing their rights; (4) to prevent exploitation of the children by restraining the authorities from taking them to public places for reception of dignitaries. It has also ruled that children shall not be forced to undertake any such work which under the law has only to be done by the labour force; (5) to suspend all restrictions imposed against Nurses working in Military Hospitals and Air Hostesses of Pakistan International Airlines to getting married while in service; (5) (sic) to stay public hangings as being contrary to the Constitutional provisions guaranteeing dignity of man; (6) to issue guidelines for controlling the traffic muddle in Karachi; (6) (sic) to check the practice of extortion of money by Railway staff from the passengers traveling in the Samjhota Express (train running between Pakistan and India) with a Commission of Advocates and Human Rights activists appointed to monitor the situation; (7) to direct the Federal and Provincial Governments to stop making appointment against the retirement rules, a practice which was violative of fundamental right of equal opportunity for all citizens to enter upon a profession; and (8) to issue guideline to be observed by the authorities to check environmental pollution

caused by fumes of motor vehicles, deforestation, open sewerages, dumping of nuclear waste etc.

(See Dr. Nasim Hassan Shah "Public Interest Litigation as a Means of Social Justice", PLD 1993 Journal 31)

6. Growth of public interest litigation leads to development of novel techniques of procedure, including appointment of expert commissions, for handling technically complex matters with extensive policy ramifications; in the words of Dr. Faquir Hussain of the Law Commission of Pakistan:

[i]n such like cases the judiciary, in the interest of justice, deviated from its set course of procedure and invented new and creative methods of finding facts and discovering the truth. The Courts did so by launching an investigation into the matter. A variety of techniques, ranging from calling of official record to deputing experts to probe and constituting socio-legal Commissions to investigate the matter were employed. The court then examined the reports submitted by the experts and Commissions and decided the case accordingly. In such cases the Court follows a certain pattern. It regards the report as prima facie evidence and supplies its copies to the parties for rebuttal on affidavit. The court then considers the report together with affidavit, if any, and proceeds to adjudicate the issues involved in the case. As is clear this procedure is new and imaginative and is altogether different from the traditional rules of procedure under the adversarial system of adjudication.

(Dr. Faquir Hussain, "Public Interest Litigation in Pakistan", PLD 1993 Journal 72)

7. Widespread poverty, illiteracy and institutional fragility make public interest litigation a necessity in this region; as noted by the High Court of Lahore in State vs. M.D. WASA 2000 CLC 471:

The rationale behind public interest litigation in developing countries like Pakistan and India is the social and educational backwardness of its people, the dwarfed development of law of tort, lack of developed institutions to attend to the matters of public concern, the general inefficiency and corruption at various levels. In such a socio-economic and political milieu, the non-

intervention by Courts in complaints of matters of public concern will amount to abdication of judicial authority.

8. A deep link exists between public interest litigation and environmental rights in South Asia - environmental movement in the west rooted in recreation and aesthetics whereas in this part of the world it is linked with basic rights of health, sanitation and livelihood-these ground realities boldly recognized by the Supreme Court in **Shehla Zia**.
9. On the development of public interest litigation in Pakistan, see generally (a) Dr. Parvez Hassan, "Environmental Rights as part of Fundamental Human Rights: The Leadership of the Judiciary in Pakistan", PLJ 2003 Magazine 209, (b) Parvez Hassan and Azim Azfar, "Securing Environmental Rights through Public Interest Litigation in South Asia", under publication in the Virginia Environmental Law Journal (2004), and (c) Werner Menski, Ahmad Rafay Alam and Mehreen Raza Kasuri, Public Interest Litigation in Pakistan (2000) Pakistan Law House, Karachi.

E. Shehla Zia case [PLD 1994 SC 693]

1. Right to a clean environment included in the right to life guaranteed in Article 9 and right to dignity guaranteed in Article 14
2. Court took notice of international trends and practices to formulate national obligations.
3. Rio Declaration on Environment and Development and its precautionary principle applied.
4. Its glow:
 - (1) has been followed and has unleashed a new paradigm in Public Interest Litigation on environmental issues in Pakistan; corpus of our jurisprudence already points to the superior courts appointing Commissions to progress environmental rights
 - (a) The Supreme Court appointed a Commission to visit the site and recommend remedial measures in West Pakistan Salt Mines Labour Union vs. Director of Industries, 1994 SCMR 2061.

(b) The Lahore High Court has appointed Commissions:

- Solid Waste Management Commission, in City District Government vs. Muhammad Yousaf (2003)
- Lahore Clean Air Commission, in Syed Mansoor Ali Shah vs. Government of Punjab and others (2003)

F. Powers of Court in Public Interest Litigation

1. Constitutional obligation to protect rights.
2. All incidental/ancillary powers including to forge new remedies and fashion new strategies.
3. Innovative approaches in the past.
4. Can determine and award compensation; in M.C. Mehta, supra, the Supreme Court of India held:

7. We are also of the view that this Court under Article 32(1) is free to devise any procedure appropriate for the particular purpose of the proceeding, namely, enforcement of a fundamental right and under Article 32(1) the Court has the implicit power to issue whatever direction, order or writ is necessary in a given case, including all incidental or ancillary power necessary to secure enforcement of the fundamental right. The power of the Court is not only injunctive in ambit, that is, preventing the infringement of a fundamental right, but it is also remedial in scope and provides relief against a breach of the fundamental right already committed vide Bandhua Mukti Morcha's case, (AIR 1984 SC 802) (*supra*). If the Court were powerless to issue any direction, order or writ in cases where a fundamental right has already been violated, Article 32 would be robbed of all its efficacy, because then the situation would be that if a fundamental right is threatened to be violated, the Court can injunct such violation but if the violator is quick enough to take action infringing the fundamental right, he would escape from the net of Article 32. That would, to a large extent, emasculate the fundamental right guaranteed under Article 32 and render it impotent and futile. We must therefore, hold that Article 32 is not powerless to assist a person when he

finds that his fundamental right has been violated. He can in that event seek remedial assistance under Article 32. The power of the court to grant such remedial relief may include the power to award compensation in appropriate cases. We are deliberately using the words "in appropriate cases" because we must make it clear that it is not in every case where there is a breach of a fundamental right committed by the violator that compensation would be awarded by the Court in a petition under Article 32. The infringement of the fundamental right must be gross and patent, that is, incontrovertible and ex facie glaring and either such infringement should be on a large scale affecting the fundamental rights of a large number of persons or it should appear unjust or unduly harsh or oppressive on account of their poverty or disability or socially or economically disadvantaged position to require the person or persons affected by such infringement to initiate and pursue action in the civil Courts. Ordinarily, of course, a petition under Article 32 should not be used as a substitute for enforcement of the right to claim compensation for infringement of a fundamental right through the ordinary process of Civil Court. It is only in exceptional cases of the nature indicated by us above, that compensation may be awarded in a petition under Article 32. This is the principle on which this Court awarded compensation in Rudul Shah v. State of Bihar, AIR 1983 SC 1086. So also, this Court awarded compensation to Bhim Singh, whose fundamental right to personal liberty was grossly violated by the State of Jammu and Kashmir. If we make a fact analysis of the cases where compensation has been awarded by this Court, we will find that in all the cases, the fact of infringement was patent and incontrovertible, the violation was gross and its magnitude was such and it would have been gravely unjust to the person whose fundamental right was violated, to require him to go to the Civil Court for claiming compensation (at p. 1091, emphasis added).

5. The Supreme Court of India, over the years, has followed M.C. Mehta, supra, to award compensation under its original jurisdiction by applying the "Polluter Pays Principle" against the offender, (1) to reverse the environmental damage and (2) to compensate the victims of the disaster in the following environmental pollution cases:
 - (a) Indian Council for Enviro-Legal Action and others vs. Union of India and others, AIR 1996 SC 1446.

(b) Vellore Citizens Welfare Forum vs. Union of India and others, AIR 1996 SC 2715.

(c) M.C. Mehta vs. Kamal Nath and others, AIR 2000 SC 1997.

6. The Supreme Court of India in M.C. Mehta vs. Kamal Nath, *supra*, further held that "pollution is a civil wrong" and "a tort committed against the community as a whole" and the person guilty of causing pollution can be held liable to pay exemplary damages so that it may act as a deterrent for others.
7. The Courts have used Commissions to facilitate their work and directions.
8. The Commissions appointed by the Courts are given certain powers; in West Pakistan Salt Mines Labour Union vs. Director of Industries, 1994 SCMR 2061, the Supreme Court constituted a Commission with the power of inspection, recording evidence, examining witnesses including the powers as provided by Order XXVI of the Civil Procedure Code (*id.* at 2073).

G. National Laws, Institutions and Policies

1. Pakistan Environmental Protection Act, 1997

- Pakistan Environmental Protection Council, section 3.
- Pakistan Environmental Protection Agency (Federal), section 5.
- Provincial Environmental Protection Agencies, section 8.
- The Act provides against all activities causing an adverse effect on the environment, section 16.
- Violators are required to pay the fine upto rupees one million, section 17(1) and are required to pay the cost of restoration, section 17(5)(e).

2. Pakistan Merchant Shipping Ordinance, 2001

- Establishes the Mercantile Marine Department, section 3.

- Prohibition against oil pollution from ships, section 555(1).
- Prohibition against pollution due to discharge of noxious liquid substances from ships, section 556(1).
- Competence of Federal Government to direct master/owner of ship to avoid/reduce pollution on shipping casualties, section 566(1).
- Violators to face imprisonment of not less than two years, and may be fined between \$US 50,000 to US\$ 1 million, section 555(3), section 556(2), and section 566(2).
- Place of trial, Federal Government may direct, section 578.
- Power to detain ship that has caused damages, section 586.

3. Karachi Port Trust (Amendment) Ordinance, 1994 [Karachi Port Trust Act, 1886]

- Responsibility of the Karachi Port Trust Board for maintaining the marine environment of the Port's limit free from pollution of the sea, section 90(1).
- No discharge of waste, oily noxious substances, section 90(2).
- Violators are required to pay a penalty not exceeding Rupees 10 million, section 90(3) and are required to pay the charges for cleaning of the port and removal of pollution therefrom, section 90(3).

4. The Ports Act, 1908

- Prohibits the discharge of ballast or rubbish into a port to ensure safe shipping, section 21.

5. Pakistan Territorial Waters and Maritime Zones Act, 1976

Section 14 gives the power to the Federal Government to make Rules on:

- Preservation and protection of marine environment and prevention and control of marine pollution, section 14(2)(e).

- Regulation of the exploration, development, exploitation conservation and management of the resources in Pakistan's Exclusive Economic Zone and Continental Shelf, sections 14(2)(b) and 14(2)(c).

6. Pakistan Coastal Zone Management Plan

H. International Regime and Framework

Background

Prior to World War II, the prevailing norm of customary international law governing the oceans was "freedom of use", with oceans regarded as an inexhaustible reservoir of resources and ideal dumping grounds for wastes. After 1945, the increase in international trade and shipping and growing size of oil tankers, alerted international community to the need to regulate pollution of the marine environment.

The International Maritime Organization (IMO) was set up in 1958 under the aegis of the United Nations to develop and monitor the highest technical standards for international shipping and to facilitate the adoption of the most practicable measures to counter marine pollution. IMO Conventions fall into three (3) major categories: maritime safety, prevention of marine pollution, and liability and compensation especially in relation to damage caused by pollution. The IMO has no powers to enforce conventions and where an offence occurs within the jurisdiction of a certain state it has the option to either cause proceedings to be taken in accordance with its own law or to give details of the offence to the flag state to take appropriate action.

1. The 1954 International Convention on the Prevention of Pollution of the Sea by Oil, 1954

- First international convention to prevent pollution of the sea by oil from tankers by setting limits on the scale and location of operational discharges.

2. The International Convention on Civil Liability for Oil Pollution Damage, 1969 (the "1969 Civil Liability Convention")

- The shipowner is strictly liable for oil pollution damage without need to prove negligence or fault, except in certain circumstances, notably war and insurrection.

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- Persons who suffer damage from oil pollution have recourse directly against the owner of the vessel without involving states.
- The owner's liability is limited according to a formula related to the tonnage of the ship unless the incident arose out of his own fault.
- The maximum liability is for ships over 140,000 gross tonnage for whom liability is limited to United States Dollars one hundred and fifteen million (US\$ 115,000,000).
- This Convention has not been ratified by Pakistan.

3. The Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (the "1971 Fund Convention")

- Establishes a fund to provide additional compensation to that available under the 1969 Civil Liability Convention and to provide compensation where no liability arises under the latter or the shipowners are unable to pay any compensation.
- The fund is established from a levy on oil importers, mainly oil companies whose cargoes the vessels are likely to be carrying.
- The shipowners bear the full cost up to their total liability under the 1969 Civil Liability Convention beyond which the resources of the Fund are available.
- The total amount of compensation payable by the Fund under the 1992 Protocol (as amended in 2000) is ordinarily United States Dollars two hundred and sixty million (US\$ 260,000,000).
- This Convention has not been ratified by Pakistan.

4. The Convention for the Prevention of Pollution from Ships, 1973, which was amended by a Protocol in 1978 (the "1973/78 MARPOL Convention")

- State parties are obliged to apply the provisions of the Convention to ships flying their flag and to ships within their jurisdiction.

- A major thrust of this Convention is towards the technical requirements of tanker safety; all tankers built after 1975 have been built to meet MARPOL requirements; all new tankers ordered after July 1993 must be fitted with double bottoms and double hulls and tankers which were built before 1970 also require the fitting of double hulls or equivalent design.
- Implementation of the Convention involves the right of inspection by port states and state parties are obliged to co-operate with each other in the detection of violations and the enforcement of the Convention.
- Ships in the port or offshore terminals of acceding parties are required to hold certificates pursuant to the Convention whereas states party to the Convention are required to provide oil reception facilities.
- The Convention is not confined to oil pollution but also regulates other forms of pollution by ships including noxious liquids, sewage and garbage.
- Under Article 17 of the Convention, states are obliged to provide, in collaboration with IMO and UNEP, support to other parties who are in need of and request technical and scientific assistance and supply of equipment and facilities for reception and monitoring.

5. The Convention on Oil Pollution Preparedness, Response and Cooperation, 1990 (the "1990 Oil Pollution Preparedness Convention")

- Encourages the establishment of oil pollution emergency plans on ships, offshore installations, ports and oil handling facilities.
- Encourages the establishment of national and regional contingency plans.
- Requires oil tankers of 150 gross tons and above to carry a shipboard oil pollution emergency plan.

6. Others

- United Nations Convention on the Law of the Sea, 1982 (UNCLOS).

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- International Regulations for Preventing Collisions at Sea, 1972 (COLREGS).
- Convention on Safety of Life at Sea, 1974 (SOLAS).
- [IMO] Standards of Training, Certification, and Watchkeeping, 1978.

7. Enforcement Main Challenge

Although the international community has reacted to problems as they arise (Torrey Canyon, for example, catalysed national and international responses), commentators are agreed that enforcement of the Conventions remains a major problem.

- To implement a Convention, a country must possess minimum technical and manpower requirements, or in other words a basic marine administration, which is no small task for a developing country; to cite one successful example, Singapore, which is strategically located at the crossroads of major shipping routes, studied the 1973/78 MARPOL Convention for several years before ratification; this effort included extensive consultations with all the stakeholders including shipping and oil companies, and the provision of adequate reception facilities for oil waste and chemicals.
- Technology and techniques in shipping industry change very rapidly, so there is a critical need to update laws and keep operational preparedness at par with the best international practices and standards.
- All of the above points to a need to invest in capital and human infrastructure ("capacity building") and to forge regional and international collaboration.

I. International Precedents

1. Torrey Canyon (English Channel)

18 March 1967

120,000 tonnes were spilled from Torrey Canyon entering the English Channel - biggest oil pollution incident ever recorded.

Investigators found Captain solely responsible for the accident because he had kept the ship on automatic steering and steaming at its top speed of nearly sixteen knots.

24 March 1967

In an effort to break up the slicks, Royal Navy ships sprayed a dispersal agent on the oil, and then sprayed the beaches when the oil began going ashore in Cornwall.

28-30 March 1967

Royal Navy planes hit the ship repeatedly with 1,000-pound bombs and dumped aviation fuel, kerosene, and napalm on the wreck in an effort to start fires that would consume the remaining oil before it could spread.

4 May 1967

Writ against the owner was filed in Singapore where the a sister/ship (sic) was berthed.

5 July 1967

Sister ship was arrested on behalf of British Government

19 July 1967

Sister ship was released against a bond of 3 million pounds as security for damages.

April 1968

French Government seized the other sister ship in Rotterdam and directed the security of 3.2 million pounds.

11 November 1969

After negotiations the owner settled the total compensation of 3 million pounds to be divided equally between the U.K. and France.

2. Exxon Valdez Disaster (Alaska, U.S.)

24 March 1989

38,000 tonnes of oil spilled near Prince William Sound on the Alaska Coast.

Congress enacted legislation requiring that all tankers in Prince William Sound be double-hulled by the year 2015.

20 September 1991

Agreement and Consent Decree were executed.

9 October 1991

The settlement among the State of Alaska, the United States Government and Exxon was approved by the U.S. District Court. It resolved various criminal charges against Exxon as well as civil claims brought by the federal and state governments for recovery of natural resource damages resulting from the oil spill. The settlement had three distinct parts:

(1) Criminal Plea Agreement: Exxon was fined \$150 million, the largest fine ever imposed for an environmental crime. The court forgave \$125 million of that fine in recognition of Exxon's cooperation in cleaning up the spill and paying certain private claims. Of the remaining \$25 million, \$12 million went to the North American Wetlands Conservation Fund and \$13 million went to the national Victims of Crime Fund.

(2) Criminal Restitution: As restitution for the injuries caused to the fish, wildlife, and lands of the spill region, Exxon agreed to pay \$100 million. This money was divided evenly between the federal and state governments.

(3) Civil Settlement: Exxon agreed to pay \$900 million with annual payments stretched over a 10-year period. The final payment was received in September 2001. The settlement contains a "reopener window" between September 1, 2002 and September 1, 2006, during which the governments may make a claim for up to an additional \$100 million. The funds must be used to restore resources that suffered a substantial loss or decline as a result of the oil spill, the injuries to which could not have been known or anticipated by the six trustees from any information in their possession or reasonably available to any of them at the time of the settlement.

3. Song San Case (Singapore)

August 1996

Pollution incident at Singapore's harbour and a beach resort.

Authorities conducted clean up operation and investigation of the sources of pollution.

After several weeks, the Authorities were certain that suspected vessel was the source of oil.

Criminal charges were brought in the Singapore Court against the owner, the master and the chief officer for violation of the laws and the MARPOL Convention for not maintaining the oil record book (comparable to Section 560 of Pakistan's Merchant Shipping Ordinance, 2001).

The offenders pleaded guilty before the Magistrate Court. The owners were fined S\$400,000 for discharging oil into the sea plus S\$50,000 on the failure to maintain oil record books. Judge imposed the heaviest sentence in Singapore's maritime history.

4. Prestige (Spain)

13 November 2002

20,000 tonnes of oil leaked from the Prestige which sank off the coast of northwest Spain.

15 November 2002

Prestige's captain, a Greek national, was detained on suspicion of an environmental crime and also on suspicion of disobeying Spanish authorities.

7 February 2003

Greek captain was released from jail on \$3 million bail with orders to report to the court regularly.

18 February 2003

A Spanish judge has placed three senior government officials under official investigation for their roles in the oil spill from a sunken tanker. Investigating magistrate ordered

the three senior officials to appear in court to respond to questions about why officials ordered the ship out to open sea after it cracked its hull on November 13 near the coast, starting the oil spill.

5. The Bhopal Disaster

- | | |
|---|--|
| 2 December 1984 | MIC toxic gas leaked from the plant in Bhopal of the Union Carbide India Limited (UCIL) a subsidiary of Union Carbide Corporation (UCC) of the U.S.A. which killed 4,000 persons. |
| 7 December 1984 | Law suits were filed in the U.S. - these numbered as many as 144 suits - these were later consolidated. |
| 29 March 1985 | Government of India ("GOI") enacted legislation, the Bhopal Gas Disaster (Processing of Claims) Act, 1985 (the "Act") which enabled the GOI to have exclusive rights to represent Indian plaintiffs in India and elsewhere in connection with the tragedy. |
| [8 April 1985
May 1987
the U.S. suits
and appeals] | GOI sued UCC in the US District Court, New York (USDC) |
| | USDC dismissed the consolidated cases on the ground of <i>forum non conveniens</i> . |
| | 145 plaintiffs filed an appeal in the US Court of Appeal - the UCC also filed cross appeal - the appeals were dismissed; in May 1987, GOI filed writ of certiorari in the US Supreme Court which refused relief. |
| 5 September 1986 | Union of India filed the damages suit No. 1113/86 in the Court of District Judge, Bhopal for US\$ 3.3 billion against UCC. |

17 November 1986	On the stay application of the Union of India, the District Judge granted a temporary injunction restraining UCC from selling its assets and paying dividends.
2 April 1987	District Judge, Bhopal, made written proposals to all parties for considering reconciliatory interim relief to gas victims.
17 September 1987	Union of India and UCC sought time to explore the settlement.
November 1987	Settlement failed.
17 December 1987	District Judge, Bhopal, directed UCC to deposit within two months US\$ 270 million as interim payment to be discharged to the victims (Union of India vs. UCC).
18 January 1988	UCC filed revision before the Madhya Pradesh High Court.
4 April 1988	MP High Court reduced the interim damages to US\$ 192 million (<u>UCC vs. Union of India</u> , AIR 1988 NOC 50 (MP)).
8 September 1988	UCC filed PLA in the Supreme Court of India.
8 September 1988	Union of India filed PLA in the Supreme Court of India.
14 February 1989	SC came out with an overall settlement of the claims and awarded US\$ 470 million to the GOI on behalf of the victims as full and final settlement. The SC also stayed all the civil and criminal proceedings pending in the Indian Courts against the corporate official of UCC and UCIL (<u>UCC vs. Union of India</u> , AIR 1990 SC 273).
15 February 1989	Victims opposed the settlement in a Review Petition filed in the SC.
December 1989	SC upheld the constitutional validity of the Act.

- | | |
|----------------|--|
| 14 April 1990 | SC ordered interim relief of Rs. 200 per month to the victims' families. |
| 3 October 1991 | SC upheld the US\$ 470 million dollars settlement recorded and set aside its earlier order quashing the criminal proceedings against the corporate officials (<u>UCC vs. Union of India</u> , AIR 1992 SC 248) |

J. Need for consolidation of all cases before Supreme Court

1. The Supreme Court should consider directing the transfer of the Karachi High Court case to itself (**AI-Jehad Trust vs. Federation of Pakistan and others**, PLD 1996 SC 324 (at page 370)). This will, among others, avoid multiplicity of litigation/possible different results as the subject-matter in both the matters is more or less the same.
2. The relief sought before Karachi High Court can be granted by the Supreme Court in Public Interest Litigation.

**K. Lessons from the Tasman Spirit Disaster and the Way Forward:
Turning a Tragedy into an Opportunity**

1. A prudent and wise nation will not wilt after a tragedy but will use the feedback to strengthen itself in all affected areas.
2. The following goals challenge the country and this Court:
 - (1) Immediate short-term response:
 - (a) To mitigate and reverse the ecological damage
 - (b) To provide financial compensation to the worst victims
 - (2) A broader long-term response:
 - (a) To prepare a national contingency plan to effectively deal with oil pollution through inter-agency co-ordination

- (b) To integrate domestic marine environmental law with global instruments and ensure that the domestic laws are kept updated
- (c) To seek international collaboration for adequate marine administration consisting of trained manpower competent to fulfill international conventions and domestic laws

3. Vessel oil pollution only approximately ten percent of marine pollution world-wide- this Court is presented with a historic opportunity to bring about a whole-scale structural and systematic improvement to Pakistan's marine law and administration.

L. Recommendations/Interim Measures (immediate, short-term and long-term)

1. Immediate health relief - directions to Health Ministry/Health Department to prepare action plan for affected areas in 2/4 weeks.
2. Directions to Fisheries/Wildlife/Ministry of Agriculture to establish site offices for relief.
3. Directions to Forestry Department for reafforestation particularly in the mangrove affected areas.
4. Directions to Government of Pakistan (under the lead of the Federal Ministry of Communications) to prepare an action plan with time lines in response to the Assessment Report dated 9 September 2003 prepared by IUCN, UNEP, UNDP and Sindh EPA on the directions of the Government of Pakistan.
5. Directions to Government of Pakistan to review its existing laws, policies and institutions and to amend the same to better prevent/meet similar accidents in the future; the emphasis should also be on capacity building and developing a cadre of trained professionals that can help avoid similar accidents (Singapore experience).
6. Directions to Government of Pakistan to review the international treaty framework and assess its suitability for future needs in the light of the experience of the present oil spill.

7. Government to immediately establish a national "Oil Spill Relief Fund" with its own donation and seek public and corporate donations - particularly from the shipping sector.
8. Government of Pakistan should consider event-specific legislation to facilitate claims against owners and insurance companies.
9. To set up a high-powered Commission headed by a former Chief Justice of Pakistan who resides in Karachi:
 - (1) With membership to include the Director General of the Pakistan Environmental Protection Agency and technical experts, doctors, civic leaders, NGOs, academics (from Universities and National Institute of Oceanography) and civil society representatives such as Nazim, MNA/MPA from affected areas
 - (2) To be serviced by Sindh Environmental Protection Agency/IUCN for secretariat purposes.
 - (3) To over-see 1 to 8 with periodic (monthly) reports to Supreme Court.
10. This case and the related cases should be heard by the Supreme Court in Karachi; the venue of and the damage from the oil spill is in Karachi; the institutional, technical and professional support needed by the Supreme Court will be more readily available in Karachi.

[Note: The Submissions have not addressed the issue of liability of the ship-owner/insurance company/others as these parties are not included in the Petition before the Supreme Court. Ordinarily, claims and damages are left to be determined in civil suits. But M.C. Mehta vs. Union of India, AIR 1987 SC 1086, points to the exceptional circumstances in which the Supreme Court can award compensation:

If we make a fact analysis of the cases where compensation has been awarded by this Court, we will find that in all the cases, the fact of infringement was patent and incontrovertible, the violation was gross and its magnitude was such and it would have been gravely unjust to the person whose fundamental right was violated, to require him to go to the civil court for claiming compensation (at p. 1091).

We believe that the present case meets the tests specified in the M. C. Mehta case.]

C. Newspaper Reports on Suits before the Sindh High Court

1. Extracts from Dawn, 28 October 2003 (Karachi)

...Tasman case: Justice Shabbir Ahmed of Sindh High Court adjourned till Dec 11 hearing a suit filed on behalf of citizens of Karachi against the federation, the KPT, the PNSC and the Environment (sic) Protection Agency for recovery of Rs 10 billion as damages injunction arising from Tasman Spirit disaster, with observation that it should be heard together with the suit filed by the trustees of the port against the owners of the tanker and the PNSC.

When the hearing began on Monday before Justice Shabbir Ahmed, counsel for the plaintiff Kamal Azfar bar-at-law (sic), pointed out that the KPT trustees had filed suit claiming recovery.

He stated that it was contention in both suits that sum of US\$1 billion is recoverable from P&I Club in terms of international law and practice relating to compulsory insurance of the tanker.

Mr Azfar submitted that many other contentions, including unseaworthiness of tanker Tasman Spirit are common to both suits. He stated that in a constitutional petition filed in the Supreme Court by Dr. Amjad Hussain Bukhari, advocate, in which Dr. Pervez Hasan, expert on environmental law, was appointed as *amicus curiae*, had submitted his submissions before the court.

He drew the attention of the court to submissions of Dr. Parvez Hasan and endorsed suggestions that Karachiites will be satisfied if a high-powered commission, headed by a retired chief justice (sic) of supreme court (sic), who resides in Karachi, is constituted to recover from insurers and distribute amounts for betterment of environment of Karachi and that it would be appropriate to wait for the observations of the court.

Justice Shabbir Ahmed adjourned the hearing of the suit to Dec 11 with the observation that the suit filed by Ms. Sherry Rehman be heard together with the suit filed by the KPT trustees against owners of the oil-tanker and the PNSC.

2. Daily Times, 28 October 2003 (Karachi)

Adjourns Citizen's Compensation Suit

KARACHI: Justice Shabbir Ahmed of Sindh High Court adjourned till December 11 hearing of suit filed on behalf of citizens of Karachi by Sherry Rahman MNA against the Federation, Karachi Port Trust, Pakistan National Shipping Corporation and Environment Protection Agency for recovery of Rs 10 billion as damages injunction arising from Tasman Spirit Oil tanker disaster. And, it observed that it should be heard together with suit filed by Trustees of Karachi port against owners of tanker and PNSC.

When the hearing began Monday before Justice Shabbir Ahmed, counsel for plaintiff Kamal Azfar bar-at-law (sic), pointed out that KPT Trustees have filed suit claiming recovery. He stated it is contention in both suits that sum of US\$1 billion is recoverable from P&I Club in terms of international law, and practice relating to compulsory insurance of the tanker.

Mr Azfar submitted that many other contentions, including unseaworthiness of the tanker, Tasman Spirit are common to both suits. He stated that in the constitutional petition filed in the Supreme Court the country's leading expert on environmental law was appointed as amicus curiae (sic), had submitted his submissions before the apex court.

He drew attention of the court to submissions of Dr. Pervez Hasan and endorsed suggestions that the people of Karachi will be satisfied if a high powered commission headed by a retired chief justice (sic) of the Supreme Court, living in Karachi, is constituted to recover from insurers and distribute amounts for betterment of the environment of Karachi and that it will be appropriate to await observations of the apex court in this regard.

Justice Shabbir Ahmed adjourned the healing of the suit to December 11, 2003 with the observation that suit filed by Ms. Rehman should be heard together with that suit filed by the KPT Trustees against the owners of the oil tanker and the PNSC.

CHAPTER 8

LAHORE CANAL ROAD MEDIATION COMMITTEE

Cutting of Trees of Canal Widening Project

SMC of 25 of 2009 and H.R.C. Nos. 16167-P, 18867-P, 20069-P of 2009 and H.R.C. No. 1048-P of 2010; H.R.C. No. 20350-P of 2009 a/w and H.R.C. No. P-21399 of 2009 and 4889-P of 2010

before the Supreme Court of Pakistan

(2011 SCMR 1743)

- A. Order of the Court dated 14 February 2011 re appointment of the Mediation Committee**
- B. Report of the Mediation Committee dated 14 May 2011 (without Annexures)**
- C. Judgment of the Court dated 15 September 2011**
- D. Judgment of the Court dated 5 August 2015**

A. Order of the Court dated 14 February 2011 re appointment of the Mediation Committee

IN THE SUPREME COURT OF PAKISTAN
(ORIGINAL JURISDICTION)

PRESENT:

Mr. Justice Iftikhar Muhammad Chaudhry, HCJ

Mr. Justice Muhammad Sair Ali.

Mr. Justice Ghulam Rabbani.

Mr. Justice Khalil-ur-Rehman Ramday.

S.M.C. No. 25 of 2009

And H.R.C. Nos. 16167-P, 18867-P, 20069-P of 2009 and HRC. No. 1048-P of 2010

H.R.C. No. 20350-P of 2009 a/w and HRC. No. P-21399 of 2009 and 4889-P of 2010.

(Cutting of trees of Canal Widening Project Lahore)

Lahore Bachao Tehrik: Mr. Ahmer Bilal Sufi, ASC
Ms. Imrana Tiwana, Architect/Convener

On Court Notice: Ch. Khadim Hussain Qaiser, Addl. A.G. Pb.
Mr. Salman Aslam Butt, ASC for LDA.
Mr. Asrar Saeed Khan, P.D. TEPA.

Date of Hearing: 14.02.2011

ORDER

Mr. Salman Aslam Butt, learned ASC stated that the case required to be disposed of expeditiously in view of the rush of traffic on the Canal Road as due to pendency of matter the project has already been delayed. On the other hand Ms. Imrana Tiwana stated that there are so many other alternate options available to the Punjab Government to manage the traffic flow instead of cutting off the trees on the Canal Road, Lahore. Dr. Parvez Hassan who was appearing in another case admittedly enjoys the expertise in law and has vast experience in the field of environmental management, offered to intervene between the petitioner i.e. Lahore Conservation Society and the Government of Punjab for finding a viable solution for the critical issue herein raised. Accordingly, both the

parties agreed to the mediation of Dr. Parvez Hassan who is thus nominated as the mediator and submit a report on the next date of hearing. Adjourned to a date in office after one month. Dr. Parvez Hassan may associate any other person or experts or officials of the Government of Punjab for the purpose of such mediation and for finding suitable resolution of the matter.

Sd:- Iftikhar Muhammad Chaudhry, HCJ.

Sd:- Muhammad Sair Ali, J.

Sd:- Ghulam Rabbani, J.

Sd:- Khalil-ur-Rehman Ramday, J.

ISLAMABAD.

14.02.2011.

B. Report of the Mediation Committee dated 14 May 2011 (without Annexures)

**IN THE SUPREME COURT OF PAKISTAN
(ORIGINAL JURISDICTION)**

S.M. C. No. 25 OF 2009

and

**H.R.C. Nos. 16167-P, 18867-P, 20069-P of 2009 H.R.C. No. 1048-P of 2010
H.R.C. No. 20350-P of 2009 a/w and H.R.C. No. p-21399 of 2009 and 4889-P of 2010
(Cutting of trees of Canal Widening Project Lahore)**

**RECOMMENDATIONS
OF THE
LAHORE CANAL ROAD MEDIATION COMMITTEE**

(Comprising of Syed Babar Ali, Mr. Sartaj Aziz, Mr. Ayaz Sadiq, Mr. Nadeem Hassan Asif, Dr. Mira Phailbus, Mr. Arif Hasan, and Dr. Abid Qaiyum Suleri)

**Dr. Parvez Hassan
Mediator
(14 May 2011)**

Recommendations of the Lahore Canal Road Mediation Committee (the “Committee”)



Any city gets what it admires and what it pays for and ultimately deserves. And we will probably be judged not for the monuments we build but the monuments we destroy.

Ada Louise Huxtable,
Pulitzer Prize Winning architecture critic

A. Introduction

Lahore is the second largest and one of the oldest cities of Pakistan. It is inhabited by about 10 million people and its history stretches millennia. Lahore was located on the Silk Route, was a destination on the Grand Trunk Road, the capital of the Mughal

Empire, the Sikh Khalsa and was envied for its numerous lush gardens and water tanks. It served as a major city in British India – a “jewel of the crown”. With its numerous educational institutions and universities, Lahore, a city of culture, is one of the intellectual capitals of the country.

The first canal to be built in Lahore was the Shahi Nalla commissioned by the Mughal Emperor Jehangir. This canal was dug from the Ravi at a place over two hundred kilometres away so as to provide water for the Shalimar Gardens. In the 1860s, the British commissioned the Lahore Branch of the Bari Doab Canal (the “Canal”) to bring the water of the River Ravi through Lahore and onwards to the head-works at Bolloki. Passing between the city and suburbs of Lahore and the nearby cantonment area, the Canal also irrigated the Mayo Gardens, Aitchison College, the Governor’s House, Lawrence Gardens, Kinnaird College, and thence onwards to storm water drains that then flowed to the Ravi River just south west of the city. From Dharampura to the new campus of the Punjab University, the Lahore Canal was flanked on the one side by a metalled road and by a katcha path (riding tan) on the other. Eventually, this katcha path was also metalled and residential enclaves were planned and developed on both sides of the Canal. With the execution of the Indus Waters Treaty, 1960, the waters of the Ravi River were allocated to India and water for the Lahore Canal was provided by the newly constructed Bhambhawalla-Ravi-Bedian Link Canal that diverts the waters of the River Chenab to the bed of the River Sutlej.

Since Partition and the creation of Pakistan, the city of Lahore has grown across, up and down the Canal. In doing so, the Canal has found its own place in the history of the city and the memory maps of its people. It has assumed a popular cultural role as a place where the common man has access to recreation, the beauty of nature and the enjoyment of communal life. Particularly in the summer, the Lahore Canal is much like the city’s public swimming pool.¹

¹ A short documentary highlighting the recreational role of the Canal may be seen on YouTube at <http://www.youtube.com/watch?v=IJUJYjwhkGg>



In 2006, the Traffic Engineering and Planning Agency (“TEPA”) of the Lahore Development Authority (the “LDA”) proposed widening the road running along the Lahore Canal (the “Canal Road”) from the Dharampura Underpass to Thokar Niaz Beg (the “TEPA Project”) in order to ease traffic congestion.

In June 2006, the Chief Justice of the Supreme Court of Pakistan took *suo motu* notice of letters written to him informing him of the TEPA Project. Because the adverse environmental effect of TEPA Project threatened the Fundamental Right of life and a clean and healthy environment, the Chief Justice of Pakistan summoned the Chief Secretary Punjab to the Supreme Court, where the said officer undertook that the TEPA Project would proceed only if it complied with the requirements of the Pakistan Environmental Protection Act, 1997 (“PEPA”) including, especially, the requirement of an approved Environment Impact Assessment (“EIA”).

Following the requirements of PEPA, the TEPA commissioned the National Engineering Services Pakistan Limited (“NESPAK”) to conduct an EIA of the TEPA Project. When the EIA was completed, it was submitted by the TEPA to the Environment Protection Agency, Punjab (the “EPA, Punjab”). The EPA, Punjab conducted a public hearing of the EIA of the TEPA Project on 14 March 2007 in which hundreds of Lahoris participated and submitted their comments on the EIA and the TEPA Project. On 18 July

2007, the EPA, Punjab granted conditional approval to the TEPA Project (the “Environmental Approval”).

WWF-Pakistan and other NGOs and citizens who form the Lahore Bachao Tehreek (“LBT”) challenged the Environmental Approval vide Writ Petition No. 6572 of 2007 titled World Wide Fund for Nature – Pakistan vs. Government of Punjab, through Communication and Works Department (the “Writ Petition”). Since then, the TEPA Project has remained dormant.

On 9 November 2009, various newspapers reported that the Chief Minister of the Punjab had approved Rs. 3.15 billion for the widening of the Canal Bank Road from the Dharampura underpass to Thokar Niaz Beg (the “Government of Punjab Project”).

Fearing that the environment of Lahore and Fundamental Rights of its millions of citizens would be irreparably harmed by the Government of Punjab Project, the members of the LBT resolved to petition the Chief Justice of Pakistan to take the matter up suo motu. It is the LBT’s submission that the widening of the Canal Road will not relieve traffic congestion and that, in fact, it is an environmentally unsustainable and economically unfeasible project that will destroy the ecosystem that has evolved along the green belts that run adjacent to the Canal and Canal Road. LBT also contends that the TEPA and Government of Punjab Projects are examples of poor urban planning practices.

The Chief Justice of Pakistan took suo motu notice (Suo Motu Case No. 25 of 2009, hereafter “SMC 25 of 2009”) of the Government of Punjab Project and summoned the Chief Secretary and Secretary, Environment Protection Department of the Government of Punjab to the Supreme Court on 1 December 2009. On that date of hearing, representatives of the LBT also appeared and made preliminary submissions. The Court was pleased to adjourn the matter to 21 December 2009 but directed that no trees be cut down in the interim, the Government of Punjab provide details of the TEPA Project and the Government of Punjab Project and that the LBT submit its alternative proposals regarding the urban planning and future of the city of Lahore.

SMC 25 of 2009 remained pending and unresolved, even after the parties met, on the directions of the Supreme Court, to see if they could evolve a consensus on the issue of widening the Lahore Canal Road for the purposes of easing traffic congestion. Vide Order (the “Supreme Court Order”) dated 14 February 2011 (Annexure A), the Supreme Court of Pakistan, with the agreement of the parties, appointed Dr. Parvez Hassan, Senior Advocate of the Supreme Court of Pakistan, as mediator (the “Mediator”) to find a

“viable solution for the critical issue herein raised.” The Supreme Court Order also enabled the Mediator to “associate any other persons or experts or officials of the Government of Punjab for the purpose of such mediation and for finding suitable resolution of the matter”.

B. The Committee

Dr. Parvez Hassan, the Mediator appointed by the Supreme Court, after consulting with Mr. Salman Aslam Butt and Mr. Ahmer Bilal Soofi, counsels of the Government of Punjab and LBT respectively, requested the following persons to join as members of a Committee: Syed Babar Ali, Mr. Sartaj Aziz, Mr. Ayaz Sadiq, Mr. Nadeem Hassan Asif, Dr. Mira Phailbus, Mr. Arif Hasan, Dr. Abid Qaiyum Suleri and Mr. Javed Jabbar. The constitution of the Committee was based on the relevance of the background of the members to the issues before the Committee.² Mr. Ahmad Rafay Alam, Advocate, was appointed as Secretary of the Committee.

The Secretary of the Committee developed and distributed a paper book for the assistance of the Committee. The paper book, Annexure B, contained the Petition filed on behalf of the LBT, the Reply filed by the Government of Punjab and the major documents before the Supreme Court in SMC 25 of 2009. The LBT also provided its separate paper book to all the members of the Committee.

The appointment of the Mediator by the Supreme Court received extensive press coverage (Annexures C/1 – C/4) that served as a public notice of the work of the Committee. Several persons/parties contacted the Mediator and they were all invited to the proceedings of the Committee.

The Committee held its preliminary meeting at the Beaconhouse National University (“BNU”) on 4 April 2011 (the “Preliminary Meeting”) and then held two (2) meetings on 13 and 20 April 2011 at the Lahore University of Management Sciences (“LUMS”). The

² Syed Babar Ali is the former President of World Wildlife Fund, Mr. Sartaj Aziz is a former Finance Minister and the Vice Chancellor of Beaconhouse National University, Mr. Ayaz Sadiq is a Member of National Assembly in whose constituency part of the Lahore Canal passes, Mr. Nadeem Hassan Asif is the Commissioner, Lahore Division, Dr. Mira Phailbus is the former Principal of the Kinnaird College, Mr. Arif Hasan is an urban planning expert, Dr. Abid Qaiyum Suleri is the Executive Director of the Sustainable Development Policy Institute, Islamabad, Mr. Javed Jabbar is the Vice President of the IUCN and Dr. Parvez Hassan is the President of the Pakistan Environmental Law Association. Mr. Javed Jabbar did not take part in the work of the Committee and recused himself due to his other commitments.

Preliminary Meeting was attended by Committee members, representatives of the LBT and Government of Punjab and experts invited by the Committee who teased out the issues to be resolved between the parties. The Preliminary Meeting concluded with a site visit organized for the Committee by Mr. Abdul Jabbar Shaheen, the Director General of the LDA and the Parks and Horticulture Authority (“PHA”).

The site visit extended from Jallo Mor on the Canal to Thokar Niaz Beg so as to give the Committee members an opportunity to view and appreciate the entire stretch of the Canal. On 13 April 2011, the Government of Punjab, as well as experts invited by the Committee gave presentations on the Canal Road widening issue. On 20 April 2011, the LBT along with experts invited by the Committee gave their presentations on the issue. At this meeting, representatives of the Government of Punjab and others were enabled to make rebuttal statements.

The minutes of the meetings of the Committee on 4, 13 and 20 April 2011, and, 14 May 2011 are attached as Annexures D/1 to D/4. Copies of the presentations and submissions made at these meetings are attached as Annexures D/5 to D/20.



Committee members and representatives of the Government of Punjab and LBT on their site visit

The meetings/hearings were conducted in an open, “town house meeting” style. Any body who had approached the Chair was invited to attend and participate. The participants at these meetings included students and faculty members from LUMS, BNU, Kinnaird College, Lahore and the Lahore School of Economics. Mr. Amer Mehmood, former Nazim, Lahore, who has had extensive experience in handling the civic issues of Lahore, approached the Chair and was invited to provide useful guidance on 13 April 2011.

The Experts, who guided the deliberations of the Committee, with their presentations annexed to this Report, included:

- (1) Dr. Khalid Hamid Sheikh, former Vice Chancellor, Punjab University, Lahore ([Annexure D/5](#))
- (2) Mr. Karamat Ullah Chaudry, former Managing Director, NESPAK ([Annexure D/6](#))
- (3) Dr. S. Gulzar Haider, Dean, School of Architecture, BNU ([Annexure D/7](#))
- (4) Dr. Rizwan Naseer, D.G. Punjab Emergency Services (Rescue 1122) ([Annexure D/8](#))
- (5) Mr. Khushal Khan, former Managing Director, TEPA ([Annexure D/9](#))
- (6) Mr. Umar Farooq, Director, Planning & Development Consultants (Private) Limited ([Annexure D/10](#))
- (7) Dr. Nasir Javed, Director, Urban Unit, Government of Punjab ([Annexure D/11](#))
- (8) Mr. Mustafa Kamal, Horticultural Group ([Annexure D/12](#))

Subsequent to the conclusion of the hearings, the Chair received letters from the Pakistan Substantiality Network, [Annexure E/1](#), and Lahore Environmental Youth Council, [Annexure E/2](#). These were generally in support of the LBT position. The Chair also received proposals, [Annexure E/3](#), from Mr. Waseem Afzal, former Project Director (Islamabad – Peshawar Motorway).

As all the members of the Committee with diverse commitments, in and outside Pakistan, could not attend all the meetings scheduled in view of the time line of the Supreme Court, the detailed documents, recommendations, presentations, and minutes were shared with the such members at different stages of the process.

Vide letter dated 12 April 2011, the LBT brought certain concerns regarding the constitution of the Committee. The Chairman of the Committee responded to these

concerns via email dated 18 April 2011. Vide letter dated 19 April 2011, the LBT again raised objections to the manner in which the Committee was constituted. Copies of the LBT letter dated 12 April 2011, the email of the Chairman dated 18 April 2011 and LBT letter dated 19 April 2011 are attached as Annexures F/1 to F/3. However, it is pointed out that, throughout the proceedings of the Committee, the LBT participated in and supported the proceedings and the manner in which they were conducted. An earlier draft of the Recommendations was shared with the LBT to seek its support in the process of mediating the dispute. The objections of the LBT dated 13 May 2011 to such earlier draft are attached as Annexure F/4. The final objections of the LBT dated 26 June 2011 to the final Recommendations are attached as Annexure F/5.

The Committee has approached its mandate with a view to protecting and sustaining the heritage of the Lahore Canal. The Committee feels responsible for preserving this heritage for future generations. It has been mindful of the jurisprudence of the superior courts wherein the Doctrine of Public Trust³ has been applied to public spaces and is inspired by the experiences of protecting public spaces in other jurisdictions. The Committee has held up the common man as the centrepiece of its concerns and attention in order to promote social equity.

Juxtaposed with the imperatives of sustaining Lahore's past into the future, the Committee also recognized the pressures brought on by an increasing population, urbanization, traffic congestion, pollution and poor urban planning.

C. Position of Lahore Bachao Tehreek (LBT)

The LBT was of the view that widening the Lahore Canal Road was an economically unfeasible, environmentally unfriendly and a poor example of urban planning and traffic management. Given the past and future growth of Lahore, the LBT was of the view that the Canal Road was not germane to the mobility requirements of the people. The LBT stressed that alternative means of traffic control, such as the adoption of public transport and traffic management initiatives, would be equally effective in reducing traffic congestion as the widening of the Canal Road. The LBT was of the view that the widening of the Canal Road was a short-term solution that would not address the medium term growth of the city.

³ See, generally, Sindh Institute of Urology and Transplantation vs. Nestle Milkpak Limited, 2005 CLC 424 (Karachi) and Muhammad Tariq Abbasi vs. Defence Housing Authority, 2007 CLC 1358 (Karachi).

The position of the LBT is highlighted in the following presentations made on its behalf:

- (1) Urban Planning, by Mr. Kamil Mumtaz (Annexure D/13 and D/14);
- (2) The Canal Road Widening, Ms. Imrana Tiwana (Annexure D/15);
- (3) Economic Feasibility and Canal Road Widening, by Dr. Akmal Hussain (Annexure D/16);
- (4) Ecological Review and Statement of the Project, by Mr. Ali Habib and Hammad Naqi Khan, WWF (Pakistan) (Annexure D/17);
- (5) Historical Aspects of the Lahore Canal, by Dr. Aijaz Anwar, Col. Ejaz Nazim and Ms. Sadia Bajwa (Annexure D/18);
- (6) Social Aspects, by Ms. Feryal Ali Gauhar (Annexure D/19);
- (7) Social Disparity, by Ms. Isbah Hameed (a student of Lahore School of Economics) (Annexure D/20); and
- (8) Urban Transport Planning, by Mr. Mazhar Iqbal.



Project site for Dharampura Underpass (before and after)



Project site for F.C. College Underpass (before and after)

D. Position of Government of Punjab

The position of the Government of Punjab was led by Mr. Abdul Jabbar Shaheen, Director General, LDA and PHA (Annexure G). He was supported by Mr. Israr Saeed, TEPA and others.

The Government of Punjab was of the view that the traffic congestion in Lahore was in desperate need of relief and that the traffic congestion along the Lahore Canal Road could be improved with the addition of a third lane on each side of the Canal Road dual carriageway. The Government of Punjab was also of the view that widening the Canal Road in this manner would also improve the response time of emergency services rushing patients to hospitals. The Government of Punjab took the responsibility of planting one hundred (100) trees for every tree that was found necessary to fell for the purposes of widening the Canal Road.

E. Experts

Though some of the Experts recognized the necessity of widening the Lahore Canal Road, all the views expressed by the Experts indicated the need of minimizing the adverse effects of the road widening. Many considered the road widening to be an option of last resort to be carried out with minimum disruption to the natural environment along

the Canal. All the Experts agreed that widening the Canal Road was not a long-term solution to the traffic congestion problems of the city. Each Expert also stressed the need for alternatives to relieve traffic congestion.

The Committee found the presentation made by Dr. Khalid Hamid Sheikh ([Annexure D/5](#)) and Mr. Mustafa Kamal ([Annexure D/12](#)) helpful in understanding the botanical and horticultural characteristics of the natural environment along the Canal. The presentation by Dr. Rizwan Naseer ([Annexure D/8](#)) and his staff brought home to it the importance of response time in emergencies and traffic safety. The presentation of Mr. Karamat Ullah Chaudhry ([Annexure D/6](#)) particularly highlighted the international standards of road safety. Dr. S. Gulzar Haider ([Annexure D/7](#)) submitted that slow, progressive and steady efforts should be made to permanently reduce the traffic load along the Canal. Mr. Khushal Khan ([Annexure D/9](#)) assisted the Committee in identifying the factors that have brought traffic congestion to the present state and made recommendations about reducing traffic. Mr. Umar Farooq ([Annexure D/10](#)) placed the Lahore Canal Widening Project into the context of the historical trends of urban planning for Lahore. Dr. Nasir Javed ([Annexure D/11](#)) also addressed the Committee on the issues that have prompted the need for the widening of the Lahore Canal Road.

F. Consensus of the Committee

Based on the information presented to it, the Committee notes the rapid increase in the number of automobiles registered in Lahore from 702,734 in 2004 to 1,747,600 in 2011. This rate of increase in the number of automobiles registered in Lahore is greater than the rate of population increase, which is a fact that points to the widening social and income disparities. The Committee also noted that, at the current rate, the number of automobiles registered in the city of Lahore could double every six (6) to seven (7) years.

The mushroom increase in automobiles has also led to an increase in automobile emissions (which are greenhouse gases that contribute to climate change) and to a detrimental effect on the quality of air in Lahore. The Committee noted with some concern that the recorded air quality in Lahore was in excess of National Ambient Air Quality Standards and was classified as unhealthy in some areas.

The urbanization of Lahore has also been unprecedented. The population of the city was less than 900,000 at the time of Partition and has since grown to about 10 million today. Future demographic projections estimate that, by 2020, the city will have a population of 15 million. This increase in population has placed – and will continue to place – considerable stress on available housing stock, the sewage and sanitation infrastructure,

healthcare facilities, education institutions and recreational spaces. The Committee noted with concern that the rapid growth of the city has not been helped by the unplanned mushrooming of private housing societies, industrial units and hospitals.

The Committee is of the view that societies that do not anchor their growth on long term plans are afflicted with the on-going urban issues the city of Lahore is currently facing. The Committee examined the salient features of the Master Plan for Greater Lahore, 1966, the Master Plan of Greater Lahore 1980, the Comprehensive Study on Transportation System in Lahore prepared by the Japan International Cooperation Agency ("JICA") in 1991 and the integrated Master Plan for Lahore 2021 prepared by the NESPAK and approved by the Lahore Zila Council in 2004 (for a detailed analysis of these previous plans, reference may be had to presentation by Mr. Umar Farooq attached as Annexure D/10 and for a quick reference to the 1991 JICA Plan and Lahore Mass Transit Project, reference may be had to Annexure G). The Committee was also informed of the Lahore Rapid Mass Transit Project and the ongoing Lahore Urban Transport Master Plan study being jointly conducted by the Transport Department of the Government of Punjab and JICA. It was also informed of the various road engineering projects underway and planned by the Government of Punjab.

The Committee is of the view that the cumulative effect of the forces affecting the city of Lahore has been to remove and exclude its residents, especially the common man, from the growth and development of their city. The Committee recognizes that every citizen of the city has, at some level, a right to the city and that this right, in its essence, is one of meaningful participation in the growth and development of the city. The Committee is of the opinion that its proceedings are atleast one example of the exercise of such a right and has proceeded with the intent and purpose of giving the city of Lahore back to the people. It appears imperative to move towards public transportation and mandatory school/college bus transportation to achieve these goals of social equity and thereby reducing traffic congestion.

G. Recommendations

There was a general consensus at the hearings that the present design and engineering of the Canal Road has serious flaws that contribute in no small measure not only to traffic congestion but also to road safety hazards.

Even if one were inclined to support the plea of the Punjab Government for the widening of the road on the ground of increasing traffic congestion, the most revealing admission

before the Committee was that this widening would, in the absence of other required mitigating measures, serve the traffic needs only for the next 4-5 years. In effect, we would need more lanes in the future. This way, most of the green belt of the Canal Bank Corridor, a valuable part of Lahore's legacy and heritage, could be lost for future generations. The Committee cannot, in all good conscience, be a party to the disappearance of the Canal and its green belt.

Based on the opinions and weighty engineering data provided by experts, the Committee makes the following recommendations:

1. Declare the Lahore Canal Area to be a Heritage Urban Park

The green belt along the Lahore Canal and on either side of the Lahore Canal Road, from where it begins near (Jallo) the BRB-Link Canal till Thokar Niaz Beg should be declared a heritage urban park under special legislation drafted specifically for this purpose. Declaring the Canal Road area a heritage urban park would be to protect its ecosystem from further degradation, make it accessible to the public and common man as well as for the purposes of controlling traffic along the Canal Road and for taking measures to clean the water that flows in the Lahore Canal. A proposed draft of the Lahore Canal (Heritage Urban Park) Act, 2011 is attached as Annexure H. The Government of the Punjab is requested to initiate the implementation of this recommendation.

2. Correct the "Incorrect Underpasses" on the Canal Road

During the proceedings of the Committee, it became clear that the design of the underpasses at Jail Road and Ferozepur Road (the "Incorrect Underpasses"), the first two underpasses built in Lahore and designed by NESPAK, were not in accordance with appropriate traffic engineering solutions and that these Incorrect Underpasses constitute a serious traffic safety hazard.

The Incorrect Underpasses are incorrectly situated in the slower/left lanes. International design standards and conventions stipulate that underpasses are to be located in the fast lane. Due to this flaw, the through traffic movement towards the Incorrect Underpasses is suddenly diverted to the left lane instead of flowing straight in the right lane as is the case with all the other underpasses later correctly constructed along the Lahore Canal Road. A diagrammatic representation of the design flaw in the Incorrect Underpasses is given below:



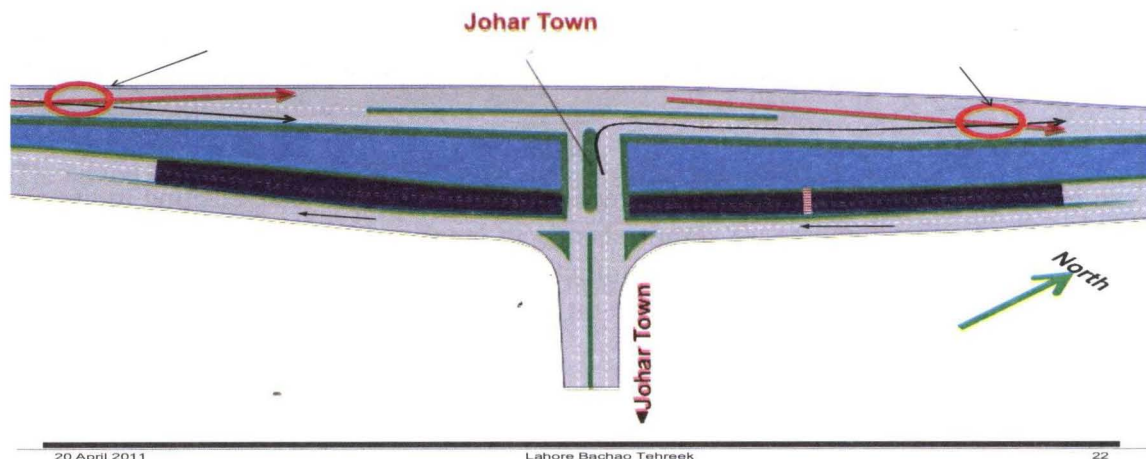
It can be seen that for the through traffic moving in the right/fast lane, electing to use an underpass (red lines) requires an abrupt change in lanes and a move to the slower/left lanes. This “weaving” creates a direct conflict with the traffic moving in the slow lane, which is forced to dangerously traverse on to the right lane towards the at-grade-junction/intersection.

Fast-moving traffic moving through and out of the Incorrect Underpasses also meets with slower vehicular movement coming from the at-grade-junction / intersection (green line). Resultantly, the fast-moving traffic going through and coming out of the Incorrect Underpasses criss-crosses with slow moving traffic and creates direct conflict points (red circles) instead of smooth weaving and merging. This raises serious road/traffic safety issues and destructs the smooth flow of traffic. As Mr. Karamat Ullah Chaudhry, former Managing Director, NESPAK, explained, in an email to the Committee dated 3 May 2011:

The reason I said the design was wrong was based on the fact that in these two underpasses at Jail and Ferozepur Road, the traffic from the slow lane not wishing to enter the underpass has to cross the fast lane if it wants to exit. Secondly, on the other side the traffic entering the main flow coming out of the underpass enters the fast lane. ... [I]f the vehicle is a rickshaw how it can manage this.... Traffic wishing to leave or enter a main flow should always do so from/to slow lane, or the lane on the left. If traffic enters the fast lane, it is downright dangerous.

The Incorrect Underpasses, therefore, need to be re-aligned and reconstructed in accordance with internationally accepted design standards and parameters.

Similarly, the Committee noted that the bypasses at the Jinnah and Doctor's Hospital intersections required geometric improvements as the fast and slow-moving traffic do not smoothly weave and merge. This causes traffic conflict points and creates traffic safety hazards. A representation of the problem is given below:



3. Re-engineer the Junctions along the Canal Road

There are, broadly, two (2) categories of intersections along the Canal. These are:

(1) Roads traversing through the Canal Road

With respect to these types of intersections, the Committee noted the fact that, in all, there were twelve (12) such intersections over the Lahore Canal and that several of these intersections carried significantly higher traffic volumes across the Canal Road than the traffic that flowed on the Canal Road.

The straight and turning traffic movement along the Canal Road that does not go through the underpasses also uses these intersections. It was observed by the Committee that the designed capacity of these intersections is not sufficient to accommodate the large traffic volumes and that as a result, there are bottlenecks on these intersections. It is recommended that these intersections are re-modelled after a traffic capacity analysis and

designed in accordance with standard geometric design. This will help to have a smooth flow of traffic at these intersections and will reduce congestion. In addition, signals along the corridor and at intersections over the Canal Road should be gully actuated and traffic signage should be of international standard.⁴

(2) Roads and streets connecting to the Canal Road

These roads and streets connect the Canal Road and predominantly emanate from housing schemes and individual houses. The Committee noted that these were unplanned access routes built for a variety of reasons, which provide connectivity to the housing schemes or private residences along the Canal Road. The traffic entering and exiting from these intersections slows traffic movement along the Canal Road. This leads to undue stoppages and causes congestion.

The Committee is of the opinion that there should not be direct connections of the Canal Road to housing schemes and private residences. Traffic generated and attracted by these housing schemes and residences requires the construction of a network of service roads, preferably in a one-way loop system, with proper geometrics to enable smooth weaving and merging of traffic from and onto the Canal Road.

Also, bus bays constructed along the length of the Canal Road require redesigning in order to facilitate the smooth entry and exit of vehicles and to minimize traffic turbulence.

4. Construct Service Roads along Certain Parts of the Canal Road

The Committee specially notes that there is no service road along the stretch of the Lahore Canal from the Doctor's Hospital intersection to Thokar Niaz Beg. The absence of a service road along this stretch of the Canal road corridor has resulted in numerous direct access roads, connecting the various housing schemes and private residences. The direct traffic entry and exit from these developments on to the Canal Road results in traffic conflict points, disrupts smooth flow of traffic and causes congestion, delays and accidents.

⁴ Reference here may be made to the Punjab Manual of Uniform Traffic Control developed and published by the Urban Unit, Government of Punjab.

The Committee is of the opinion that there is an immediate requirement to provide a one-way loop service road system along the entire length of the Canal Road (except the Punjab University premises between the Campus underpass and the Jinnah Hospital underpass) with appropriately designed smooth entry and exit points to avoid traffic turbulence and congestion. In addition, the Committee recommends that housing schemes and academic institutions that have absorbed service lanes within their boundaries or in violation of zoning laws should be approached to rectify this mistake. However, the Committee also noted that some of these measures are already being undertaken by the Punjab Government.

The service lanes can also serve as an alternative route for emergency vehicles during traffic congestion as pointed out by Dr. Rizwan Naseer (Annexure D/8).

5. Implement Traffic Management Programs

The Committee noted with some concern that the TEPA, LDA and Government of Punjab had no medium term traffic management programs for the city of Lahore. Such programs, which are in contrast to the road development and infrastructure projects being pursued elsewhere in the city, are for the management of traffic. Such programs treat the existing road network as a resource and generate management plans geared to maximizing the usage of the resource. Management proposals could include restricting the usage along certain parts of the Canal Road to certain categories of vehicles. For example, goods vehicles should be required to use the Ring Road to access the M2 or N5, private vehicles can be discouraged at certain times and along certain places and so on. Incentives/disincentives can be created to influence traffic frequency on the Canal Bank Road. These can, inter alia, be congestion charges during certain hours, staggering the school hours of educational institutions, requiring minimum number of passengers in a car at peak hours to encourage pooling arrangements.

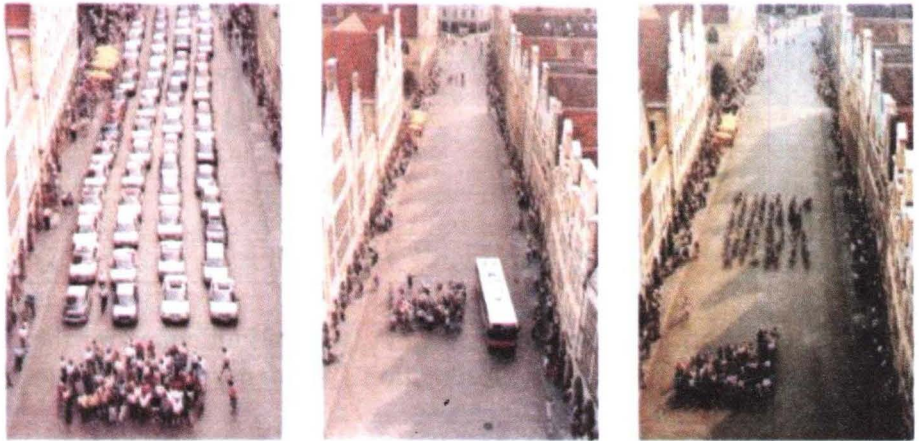
6. Public Transportation

The Punjab Government has announced a dedicated commitment to public transport. In the first phase, it plans to put 400 new buses on the road by December 2011. This number should be increased. Apart from increasing the number of buses, the Punjab Government should require all major educational school and college systems to provide mandatory bus services for all their students and staff. This would drastically reduce congestion of

cars on the Canal Bank Road and other roads. Public transportation systems should be supported by state of the art maintenance and servicing facilities.

There is need for a rapid mass transit system. This would be planning in the right direction for a major urban metropolis. A pictorial representation of the effect of potential public transport on reduction of traffic congestion is given below:

Figure 2.6 Amount of space required to transport the same number of passengers by car, bus or bicycle. (Poster in city of Muenster Planning office, August 2001).

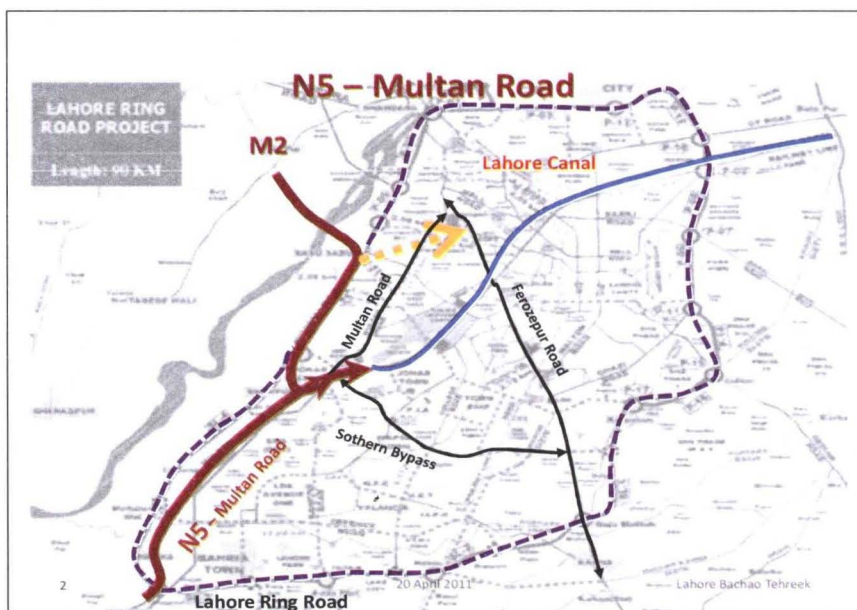


7. Divert the Through-Traffic on the Canal Road onto New Traffic Corridors

The Committee noted that the main entry and exit traffic hub for the city of Lahore was towards its northern side from Shahdara along the G.T. Road (N-5). This is due to the up and down country traffic movement and the heavy influx from nearby Gujranwala and Sheikhpura cities.

The traffic congestion on the Canal Bank Road is already being relieved by recent completion/construction/planning of the Northern Loop of the Ring Road and Multan Road. It is imperative that the Southern Bypass connecting Ferozepur Road be completed soonest.

A pictorial representation of the diversion to other/new traffic corridors is given below:



A detailed description of the broad overall planning guidelines for the city of Lahore can be seen in Mr. Umar Farooq’s presentation ([Annexure D/10](#)) and to a summary of the same provided for in [Annexure G](#).

8. Declare the Punjab University New Campus area as a “Go-Slow” Area

The Committee noted the fact that the present site of the New Campus of the Punjab University was selected, befitting an educational institution, because of its tranquil and serene nature removed from the bustle of the city and perfect for academic reflection. The unplanned growth of the city, however, has placed the New Campus in the middle of the city and along an increasingly congested and noisy Canal Road. The Committee is of the view that the length of the Lahore Canal through the New Campus of the Punjab University is of a particularly significant nature and that efforts to reduce traffic congestion along this length of the Canal Road was most important. Accordingly, given the status of the educational institution, the Committee recommends that the length of the Lahore Canal and Canal Road along and through the New Campus of the Punjab University should be declared a special traffic calming zone where a much lower speed limit, coupled with speed breakers and other traffic calming devices, should be enforced.

9. Treat the Lahore Canal in a Holistic Manner

The Committee was mindful that its terms of reference extended along the Lahore Canal only from the Dharampura underpass to the Thokar Niaz Beg overpass. However, the Committee was of the opinion that the traffic management and urban planning issues of Lahore were such that the Canal Road should be considered in its entirety from where it begins near the BRB-Link Canal through the Thokar Niaz Beg overpass. A holistic view of the city was necessary and this could only be done if the Lahore Canal is perceived within the overall comprehensive future of Lahore and its surroundings.

10. Noise Pollution

The Committee also recognized that the increasing traffic on the Lahore Canal Road would create huge noise and air pollution in the years to come. The present noise levels already require some mitigation measures such as the use of noise pads for adjoining residential colonies, hospitals, and schools. But the trend to keep adding more traffic lanes to meet increasing traffic over years would reduce the Lahore Canal corridor to an unacceptable noisy and polluted part of Lahore. The Committee's recommendations are shaped by this vision of the future.

11. Ecosystem Preservation

In his presentation, Study of Some Tree Species in Canal Bank Area – The Long Green Corridor of Lahore (Annexure D/5), Dr. Khalid Hamid Sheikh concluded, on a study of twenty four (24) species of randomly selected trees, that the trees along the Canal were “well developed”.

The WWF-Pakistan, in its Study of Ecology and Ecological Linkages of Lahore Canal Bank from Mustafabad Bridge to Thokar Niaz Beg⁵ found that there were some 21,430 trees and shrubs along the Canal and some forty-four (44) bird species were identified. The study also found that birds were ecologically linked to the tree species growing along the Canal. Also, cavity nesters such as rose-ringed parakeets, common mynas, spotted owl and coppersmith barbets were observed nesting in the poplar, eucalyptus and pipal

⁵ A copy of this study/survey may be downloaded from the WWF-Pakistan website at http://www.wwfpak.org/pdf/lahore_%20canal_report_%2012309.pdf

trees along the Canal. A copy of the WWF-Pakistan ecological survey is attached as Annexure I.

The Committee was of the opinion that the ecological heritage represented by the Canal should be preserved for future generations of Lahoris to enjoy.

12. Cleaning and Improving Water Quality of Canal

The sources of effluent, sewage and waste into the Lahore Canal should be identified. Civil society as well as government agencies should team up to clean the Lahore Canal so that exposure to its water is not harmful or dangerous to health and with an aim of bringing the quality of the water of the Lahore Canal to the minimum guidelines determined by the World Health Organization for recreational water use. The Committee was inspired by the examples of civil society and government initiatives in cleaning up the Boston Harbour in the USA and the Cheonggyecheon Stream in Seoul, South Korea.



The Cheonggyecheon Stream before and after its greening

13. People-Centric Planning

The Committee noted that the urban planning agenda currently in place is heavily in favour of automobile induced urban sprawl. Sprawl is resource inefficient and takes away from what the Committee believes should be the inspiration for urban planning and development: the people of the city. The Committee would like to recommend a change in the urban agenda to include a more people-friendly and people-centric development. Pedestrians and cyclists are routinely ignored in road planning. This orientation needs to be balanced.

14. Restoring Communal Life on Canal

With reference to Recommendation 13 above, the Committee appreciated the efforts of Mr. Abdul Jabbar Shaheen in creating people-friendly environments along the Canal Road particularly near Dharampura. The sight of the common man enjoying recreational facilities, so ably put in place by Mr. Jabbar, is a great example of how small efforts can restore communal life in our cities. The Committee recommends the addition of such recreation spots along the entire length of the Canal so as to promote and protect democratic social interaction. In addition, and in furtherance of Recommendations 12 and 13, the Committee recommends the introduction and implementation of a monthly “car free day” along the Canal Road. Such an event can be organized in selected sectors of the Canal Bank Road, on a rotational basis, with the assistance of the local administration and would involve declaring the Lahore Canal a “car free” pedestrian zone between given times of the day, promoting various sports and recreational activities along the Canal and encouraging residents and citizens to participate. This needs to be planned around available parking facilities. The cleaner waters of the Canal would be reclaimed as the largest urban swimming pool and a monthly Lahore Canal “Carnival”/Meena Bazaar developed around the “car free day” would soon develop into the city’s most used park.



Example of the PHA’s work along the Canal Road near Dharampura/Shalimar Underpasses

15. Public Participation in Lahore Canal Governance

The Committee is of the view that active communities and civil society are necessary conditions for good governance and that, the commitment of the members of the LBT in campaigning for the preservation of the Lahore Canal displays an enormous goodwill. The Committee is of the view that this enormous goodwill should be harnessed for the greater good of this and future generations of Lahoris and that, to this end, an Advisory Committee should be established for the purposes of implementing and overseeing the recommendations of the Committee. This is included in Chapter III of the proposed Lahore Canal (Heritage Urban Park) Act, 2011 (Annexure H).

16. Ambulance/Medical Emergencies

The officials of Rescue 1122 emergency services repeatedly stressed the importance of removing encroachments along the Canal Road and ensuring a smooth flow of traffic at all times for the purpose of facilitating emergency vehicles taking patients to hospitals. The officials were of the view that while it was acceptable that alternative routes to hospital and healthcare facilities should be identified and developed in the long term, there was a strong need for a short term solution to the congestion along the Canal Road such as selected widening of the Road.

17. Limited Widening of Road

The total distance on one side of the Canal Road from Dharampura to Thokar Niaz Beg is 14.5 KM. Out of these different sections, 6.59 KM road has already been widened before the reference of this matter to mediation.

The congestion on the remaining about 8 KM is particularly acute in certain locations, leading not only to prolonged delays but also causing safety hazards because ambulances and rescue vehicles are caught up in traffic and unable to move swiftly.

The Committee, after a detailed site visit to these stretches of the Canal Road and discussion with the concerned officials, recommends that this short-term congestion can be relieved to some extent if the third lane is allowed to be added at the following locations on both sides of the Canal:

- Mall Road to Jail Road ... 525 M (Eastern)
460 M (Western)

• Jail Road to F.C. College	...	550 M (Eastern)
	...	550 M (Western)
• University Campus to Jinnah Hospital	...	1,700 M (Eastern)
	...	1,700 M (Western)
• Jinnah Hospital to Doctors Hospital	...	700 M (Eastern)
	...	750 M (Western)

These stretches totalling a maximum of 3.525 KM on each side, as shown in Annexure J/1 to J/4, have 642 trees. And 60% (about 385) of these trees are of eucalyptus specie. Every effort should be made to build the third lane in these stretches on the edges of the existing road to reduce to a minimum the area taken from the green belt on both sides of the Canal Road.

The last stretch from Doctors Hospital to Thokar Niaz Beg (2.6 KM) is getting increasingly congested because of the volume of traffic generated from housing colonies like M.A. Johar Town and a large number of other colonies beyond Thokar Niaz Beg and areas on and around Raiwind Road. However, with the construction of service roads, as per Recommendation No. 4, the flow on the Canal Road can be reduced. In addition, some improvement can be achieved without encroaching on the green belt, if the trees on the edges of the road causing bottlenecks (about 460 trees including about 310 eucalyptus) (Annexure K), are removed to improve earthen shoulders and bus bays are provided at suitable points. The Committee does not recommend the widening of the Canal Road through a third lane in this stretch.

For each tree felled in any sector of the Lahore Canal Road, the Punjab Government will plant atleast a hundred (100) mature trees in replacement.

18. Sector-Specific Recommendations

Although the mandate of the Committee from the Supreme Court was only for the Canal Bank Road from Dharampura to Thokar Niaz Beg, our recommendations cover, because of the interdependence of urban planning issues, the area upstream of Dharampura as well as downstream from Thokar Niaz Beg in the following, sector-specific recommendations:

(1) Jallo Mor to Dharampura Underpass

The Committee recommends a moratorium on all new commercial activity and draws attention to the ongoing unplanned development and encroachment (of green belt) activity in this sector. Service roads in this sector deserve special attention.

The Punjab Government has no proposal for the Canal Bank Road or an underpass in this sector but its future planning should be guided by the Recommendations of the Committee.

(2) Dharampura Underpass to Mall Road Underpass

The Committee is of the opinion that this sector is working well but indicates that the encroachments and restrictions along the service road should be removed in order to facilitate a smooth flow of traffic.

The Punjab Government has no proposal for the Canal Bank Road or an underpass in this sector but its future planning should be guided by the Recommendations of the Committee.

(3) Mall Road Underpass to Jail Road Underpass

The Committee is of the opinion that entry and exit points along this sector may be streamlined to promote smooth entry and exit from the Canal Road and to minimize traffic turbulence.

(4) Jail Road Underpass to F.C. College Underpass

In addition to its Recommendation No. 2 above, the Committee recommends the enforcement of land-use and zoning laws in the areas adjacent to the Lahore Canal in this sector.

(5) Campus Underpass to Jinnah Underpass

As per the recommendation of the Committee, this sector of the Canal will be subject to traffic diversions to Multan Road on the north of the Canal and Usmani Road on the South of Canal. Appropriate signage will also be necessary to announce these diversions. These diversions will also benefit from the signal free corridor being constructed at Kalma Chowk for traffic flowing from Garden Town to Liberty Market.

(6) Jinnah Underpass to Thokar Niaz Beg

The Committee reiterates its Recommendation No. 7 above, namely that traffic to the Old CBD and New CBD should be diverted from the Canal Road and onto the Multan Road and the Southern Bypass respectively. The Committee also recommends the construction of radial/arterial roads along a northwest-southeast axis as proposed by the 1991 JICA

Lahore Urban Transport Master Plan.⁶ These radial/arterial roads will also assist in diverting traffic from the Canal Road as envisaged in Recommendation No. 4 above.

The Committee is also of the view that the results of the current Lahore Urban Transport Master Plan study being conducted by the Transport Department of the Government of the Punjab will be instructive in this regard.

(7) Beyond Thokar Niaz Beg

The Committee recommends a moratorium on new commercial development as well a check on unplanned development along this sector of the Lahore Canal just as it recommended in No. (1) above.

H. Conclusions

In conclusion, the Committee points out that its Recommendations form a complete package with each component interlinked and complementing each another. The Committee is of the opinion that the strength and weight of its recommendations will be diluted if there is any "cherry picking" of its recommendations. The implementation of the Recommendations should be owned by the Government of the Punjab at the outset so that these recommendations are implemented holistically both in letter and spirit, through a detailed and co-ordinated work plan, as a "compact" of the Government of the Punjab with the city of Lahore.

The Committee would like to express its thanks and gratitude to the LBT, Government of Punjab, Counsels of the parties, the Secretary of the Committee, the Experts, Beaconhouse National University, Lahore University of Management Sciences (LUMS), and Ms. Maham Naqshband and Ms. Beenish Batool Ali who provided research assistance to the Committee. Most of all, we felicitate the Supreme Court of Pakistan without whose order this remarkable example of public-private interaction for the future of the city of Lahore could not have been undertaken.

The Chair, additionally, thanks all the members of the Committee for their guidance and, particularly, Mr. Sartaj Aziz, Dr. Mira Phailbus, and Mr. Nadeem Hassan Asif for their dedication in attending all the meetings of the Committee.

⁶ Reference to this 1991 JICA Urban Transport Master Plan is made in Annexure D/10.

I. The Endorsement and Withdrawal of the Endorsement of Mr. Arif Hasan

The Committee, at one time, appeared to move with unanimity and consensus. When the preparatory draft of the Report and Recommendations of the Committee was prepared in early May 2011, it was sent to Mr. Arif Hasan. Throughout the proceedings and meetings of the Committee, Mr. Arif Hasan was sent all the minutes of the meetings of the Committee, and all the annexures, presentations, and other documentation provided during the proceedings of the Committee. During his telephonic conversation with the Chair in early May 2011 and through his email dated 11 May 2011, Mr. Arif Hasan “fully” endorsed and was the first member of the Committee who signed the draft Report sent in an email of the Chair dated 9 May 2011 ([Annexure L/1](#)). A copy of his signature to that Report is attached as ([Annexure L/2](#)). The Committee, in its final meeting on 14 May 2011, made some changes in the draft Report, as explained to Mr. Arif Hasan in the Chair’s email of 21 May 2011 to him ([Annexure L/3](#)). The Chair felt obligated to seek, once again, the endorsement of Mr. Arif Hasan to the revised Report and sent an email dated 9 June 2011 ([Annexure L/4](#)) alongwith the revised Report, duly highlighted for changes.

The Chair’s email of 9 June 2011 also explained the few substantive changes made in the final Report. After review of the revised changes, Mr. Arif Hasan, through his email dated 10 June 2011 ([Annexure L/5](#)), also endorsed the final Report. However, during a meeting of the Chair with members of LBT on 14 June 2011 at his office to seek the support of the LBT (which was not successful) to the unanimous recommendations of the Committee, Ms. Imrana Tiwana informed the Chair that Mr. Arif Hasan is “revisiting” his endorsement. The Chair emailed Mr. Arif Hasan in terms of his email dated 14 June 2011 ([Annexure L/6](#)) and Mr. Arif Hasan responded through his emails dated 14 June 2011 ([Annexure L/7](#)) and 15 June 2011 ([Annexure L/8](#)). In his email of 15 June 2011, Mr. Arif Hasan withdrew his endorsement of the Report. Subsequent correspondence with Mr. Arif Hasan is attached as ([Annexures L/9 - L/11](#)).

In view of the above, the Committee reports that, but for the withdrawal of the endorsement of Mr. Arif Hasan as per his email of 15 June 2011 ([Annexure L/8](#)), the other members of the Committee have joined in the support of this Report.

[This Section was added after the formal adoption of the Report to reflect the developments covered in this Section].

Syed Babar Ali

Mr. Sartaj Aziz

Sardar Ayaz Sadiq

Mr. Javed Jabbar
(recused himself from the Committee
on account of his other engagements)

Mr. Arif Hasan

Dr. Abid Qaiyum Suleri

Mr. Nadeem Hassan Asif

Dr. Mira Phailbus

Dr. Parvez Hassan, Chair

14 May 2011

C. Judgment of the Court dated 15 September 2011

2011 SCMR 1743

[Supreme Court of Pakistan]

Present: Tassaduq Hussain Jillani and Mian Saqib Nisar, JJ

**CUTTING OF TREES FOR CANAL
WIDENING PROJECT, LAHORE: In the matter of**

Suo Motu Case No. 25 of 2009, decided on 15th September, 2011.

Ms. Imrana Tiwani, Convenor LBT (Lahore Bachao Tehrik/Save Lahore Movement), Ms. Iram Aftab, LBT, Ms. Ayesha Batool, Ali Hassan for WWF, Pakistan, Ms. Naumana Amjad, Assistant Professor of Psychology, Punjab University, Kamil Khan Mumtaz, (Architect), Ms. Saima Ameen Khawaja, Lt. Col. (R) Ijaz Nazim, NGO Shajardost and Alexander Uvidine in Attendance.

Ch. Hanif Khatana, Additional A.G. Punjab, Jawwad Hassan, Additional A.G. Punjab, Salman Aslam Butt, Advocate Supreme Court and Nasim-ur-Rehman, Dy: Director, Environmental Protection Authority for Government of Punjab.

Dr. Parvaiz Hassan, Senior Advocate Supreme Court, Court Mediator.

Date of hearing: 15th August, 2011.

JUDGMENT

TASSADUQ HUSSAIN JILLANI, J.---*Any city gets what it admires and what it pays for and ultimately deserves. And we will probably be judged not for the monuments we build but the monuments we destroy.* Echoing the spirit behind this powerful quote (by Ada Louise Hustable, Pulitzer Prize Winning Architecture Critic), the petitioner Lahore Bachao Tehrik ('LBT') has challenged the project of Government of Punjab for widening of the 14 km long Canal Bank Road ("Canal

Road") Section falling between Dharampura Underpass and Thokar Niaz Baig in Lahore ("Canal Road Project") which, according to it, would not only destroy the green belt/park on both sides of the Bambawali-Ravi-Bedian (BRB) Canal, but also fail to solve the problem of traffic congestion at Canal Road for which the Canal Road Project has purportedly been designed. It is contended by the petitioner that the issues of traffic congestion can be resolved by complying with Urban Town Planning and sustainable urban transport which include alternatives based on public transportation instead of private transportation. The petitioner has also prayed that the Canal Park/Green Belt along the Canal Road be notified as a heritage site. The petition reflects a strong passion for issues of environmental and ecological concern.

2. Petitioner is statedly an umbrella organization consisting of members from other organizations such as Institute of Architects Pakistan, Pakistan Council of Architects and Town Planners, the World Wide Fund for Nature-Pakistan, the Pakistan Medical Association, the Pakistan Environmental Lawyers Association, Simorgh, Shirkatgah, Shehri-CBE, the Lahore Conservation Society, Shajar Dost, Subh-e-Nau, Lahore Chitkar, the Office of Conservation and Community Outreach, the Punjab Urban Resource Center, other NGOs, professionals, architects, town planners, environmentalists, doctors, lawyers, historians, economists, the academics and students of schools, universities, colleges as well as the citizens of Lahore. It was formed in 2006 with the object to protest against the proposal framed by the Traffic Engineering and Planning Agency ("TEPA") to widen the Canal Road.

3. Initially this petition was a letter from LBT addressed to the honourable Chief Justice of Pakistan in which LBT claimed that the Canal Road Project was a violation of fundamental right of life guaranteed under the Constitution. The Hon'ble Chief Justice converted it into a petition and issued a suo motu notice under Article 184(3) of the Constitution to the respondent-authorities. In compliance of the suo motu notice, the Government of Punjab filed its comments/written statement.

4. In support of this petition, it was submitted and argued by the petitioners as follows:--

- (i) that the declared objectives of the Canal Road Project i.e. (i) the facilitation of fast and efficient traffic movement; (ii) overcoming traffic congestion and bottlenecks, and (iii) to provide easy travelling conditions between the northern and southern parts of the city of Lahore would not be

achieved by widening of the road.

- (ii) that Environmental Impact Assessment carried out and the report (EIA Report) so submitted approving the Canal Road Project is flawed because it does not consider the following alternatives to alleviate traffic congestion which are (i) investment in public transport including taxi services; (ii) rationalization of parking fees, (iii) congestion charging; (iv) soft traffic management; (v) demand management; (vi) better use of existing facilities; (viii) avoiding VIP traffic congestion and (ix) enforcement and implementation of traffic regulations.
- (iii) that the three traffic bottlenecks along the Canal Road which have been cited as justification for widening the said road are not caused by the width of the road but by the fact that traffic must "crisscross" on account of underpasses position on alternate sides of the road. The EIA Report failed to point out that this cause of traffic disruption would be further confounded by widening of the road and allowing more traffic unto it.
- (iv) that both the EIA Report and the TEPA have not considered the impact of Lahore Ring Road Project as well as of proposed public transport initiative of the Government of Punjab i.e. Lahore Rapid Mass Transit Project and the Lahore Bus Company Project which have taken place after the grant of environmental approval. The Precautionary Principle in environmental regulations warrants that a separate EIA of Canal Road Project should include consideration of the afore-referred new developments.
- (v) that according to the Precautionary Principle of environmental regulations, enshrined in our jurisprudence by the *Shehla Zia's case* (PLD 1994 SC 693), it is imperative "*to first consider the welfare and safety of the human beings and the environment and then to pick up a policy and execute the plan which is more suited to obviate the possible dangers or make such alternate precautionary measures which may ensure safely*", it is argued that the Government of Punjab should adhere to the Precautionary Principle and have EIAs conducted of Canal Road Project. The Precautionary Principles enjoins decision makers to err on the side of caution when it comes to project likely to cause an adverse environmental effect.

- (vi) that the environmental approval granted to the Canal Road Project is illegal, void and of no legal effect because the Environmental Protection Agency, Punjab ("EPA-Punjab") unlike the Pakistan Environment (sic) Protection Agency (the "Pak-EPA") set up under section 5 of the Pakistan Environmental Protection Act, 1997 ("PEPA"), is not an independent agency. The EPA-Punjab is very much part of the Government of Punjab and, to date, no clear demarcation has been made of between its functions and the functions of the Environment Protection Department of the Government of Punjab. As such, it is a violation of the principles of natural justice that EPA-Punjab presided over the determination/ consideration of the Canal Road Project when the main financier of the said project was the Government of Punjab. In the afore-referred circumstances, it was contended that EIA of the TEPA Project ought to have been carried out by the Pak-EPA, which is the only unbiased institution within the scope of PEPA that can conduct reviews of EIAs submitted by Provincial or Federal Government agencies.
- (vii) that the environmental impact of the Canal Road Project should be taken into account before commencing it.
- (viii) that the World Wide Fund for Nature-Pakistan conducted an ecological assessment of flora, fauna and wildlife along the Canal Road. This area has immense ecological importance with a lot of wild life specie of birds, trees and small animals. With the proposed widening of the road, the centuries old ecological linkages would be broken resulting in habitat destruction for birds and small animals.
- (ix) that the habitat of Lahore Canal Bank has different types of trees and shrubs. As per WWF-Pakistan 2008 Report, there are 14,873 trees and 6,557 shrubs in the area. Major trees include Eucalyptus, Poplar, Jaman, Mango, Banyan, Pipal, Amaltas and Bottle Brush etc. All these trees and shrubs were thoroughly identified and counted.
- (x) that the trees and plants contribute significantly towards purification. They make their own food from Carbon Dioxide and release Oxygen for us to breath. They also help to settle out, trap and hold particulate pollutant (dust, ash, pollen and smoke) that can damage human lungs. Particulates are

trapped and filtered by leaves, stems and twigs, and washed to the ground on rainfall. The loss of trees in our urban areas not only intensifies the urban heat-island effect from the loss of shade and evaporation but we lose a principal absorber of carbon dioxide and the trappers of air pollutants as well. A single tree can absorb as much as 330 lbs of carbon dioxide, 4 lbs of ground level ozone and 3 lbs of particulate matter.

- (xi) that the Lahore Canal through its distributaries has played a pivotal role in nurturing the city landscape in the growth of gardens and other green areas.
- (xii) that the canal with the passage of time, however, has lost its original role of supplying water to the city but has assumed a new role as a roadway and a continuous belt of green space that stretches from one end of the city to the other. The widening of the road project is likely to adversely affect the said green belt/park.
- (xiii) that the well known "Doctrine of Public Trust" as recognized and reiterated in various judgments of the High Court and of this Court enjoins city fathers to maintain guardianship and stewardship of the people's priceless and historic natural resources as they transform their utility, over the course of time, to meet the needs of people of a city.

5. In the concise statement submitted by the Government of Punjab, it has been averred as follows:--

- (i) that the Canal Road Project was designed and approved in public interest and with a view to improve the drastically deteriorating traffic conditions on the Canal Road. The total cost of Canal Road Project is Rs.800 Million.
- (ii) that the Canal Road Project contemplates addition of 18 feet wide lane to the already existing two lane Canal Road along with earthen shoulder of 6 feet on both sides of the canal as well as bus bays and shelters, traffic control and service level improvements, development of green areas along the Canal Road and plantation of trees thereon.
- (iii) Explaining the background and justification of the project, it was further averred that according to Economic Survey of Pakistan for the year 2008-2009 conducted by the Ministry of Finance, Government of Pakistan, the current

population of Pakistan is 163.76 Million which is estimated to grow to 197 Million by the end of 2020 and 55% of the population lives in the Province of Punjab.

- (iv) that Lahore besides being the socio-economic and cultural capital of the Province of Punjab is the second largest city in Pakistan and its current population is estimated to be in excess of 9 Million. In addition thereto, the city accommodates an additional one million visitors from the adjoining areas/districts as well as from across Pakistan.
- (v) that on account of the population explosion and demographic changes in the city of Lahore, following factors have led to increase in volume of traffic in general and on the Canal Road in particular:-
 - (a) In order to accommodate the ever growing population of Lahore, after 1978, a number of housing schemes like Awan Town, Campus Colony, Canal View Cooperative Housing Society, Hamid Park Housing Scheme (HS), Rehmanabad, Township etc. got approval from the Government of Punjab. As the demand for housing further increased at an exponential rate, there was a boom of housing schemes in Lahore from early 1990's onwards. The major schemes developed in this period were West Wood Colony, Ittefaq Town, Campus View Town, Tech Society, Pakistan International Airline (PIA) Housing Scheme Phase I and II, Ghousia Town, Pakistan Council of Scientific and Industrial Research (PCSIR) Cooperative Housing Society Phase I and II, National Fertilizer Corporation Housing Scheme, Punjab Govt. Employees Housing Scheme Phase-II, WAPDA Town, Beharia (sic) Town, Eden Housing Scheme to name but a few (collectively the Southern Residential Areas) wherein reside hundreds of thousands of people from all socio-economic backgrounds. It may be noted that most, if not all, of these housing schemes are situated south/south-west of Lahore and are accessible from various points within the city mainly via the Canal Road.
 - (b) Lahore also witnesses rapid industrialization due to the phenomenal success of the textile industry in Pakistan. As a consequence whereof, at present there are currently hundreds of industrial units operating on the southern/south-western side of Lahore, particularly along the Multan Road

and Raiwind Road which employ hundreds of thousands of people from Lahore. In this regard, it is pertinent to point out here that both Multan Road and the Raiwind Road are accessible from various points within the city mainly via the Canal Road.

- (c) The Multan Road, being situated at the tip of the southernmost section of the Canal Road, also serves as Lahore's main entry/exit point for millions of people annually.
- (d) The Canal Road is the main artery and the spine of Lahore. It is also the longest double road connecting areas lying to the north of the City (for example Dharampura, the Mall Road etc.) to those in the south (for example the southern residential areas, the Multan Road and Raiwind Road). In addition thereto, as the Canal Road cuts across the city, it also serves as the main feeder/link road to all the major inner-city roads such as the Link Road, Ferozpur Road, Jail Road, the Mall Road etc.
- (e) The traffic conditions on the Canal Road have been gradually deteriorating over the past many years on account of the fact that over the past two decades (1981-2000) the number of vehicles in the city have increased from 13 vehicles per 1000 inhabitants to 35 vehicles per 1000 inhabitants and are likely to grow even further in the coming years. Furthermore, in the years leading up to 2006, traffic volumes on the Canal Road have grown to more than twice the existing road capacity of approximately 100,000 vehicles per day, making it one of the busiest roads in Lahore.
- (vi) that on account of immense increase in volume of traffic, the successive Provincial Governments have been taking steps to improve the traffic conditions in Lahore especially along the Canal Road which included construction of nine underpasses and inter-sections at major junctions along the Canal Road. There has also been widening of other roads along the length of underpasses/inter-sections to a certain extent i.e. several roads including Jail Road, Ferozpur Road, Wandat (sic) Road and Bund Road were widened.
- (vii) that the Provincial Government also took steps to promote public transport

by setting up Lahore Transport Company, acquisition of more than 2000 environmental friendly CNG busses, phasing out of existing diesel busses, conversion of existing diesel busses to CNG buses, phasing out of pollution causing two stroke auto rickshaws and replacing it with environmental friendly four stroke CNG rickshaws in the city and the rickshaws drivers have been given loans on easy installments to purchase the afore-referred four stroke CNG rickshaws. Besides the above, the Government has also decided to introduce Rapid Mass Transit System in the city.

- (viii) that despite the measures taken by the Provincial Government from time to time to which reference has been made above, traffic load on the Canal Road has been ever increasing and many traffic related problems/issues necessitated the need for widening Canal Road. Some of these issues are as follows:-
- (ix) that before commencement of the project, it was deemed imperative to conduct Environmental Impact Assessment (EIA) for approval of the *Punjab Environmental Protection Agency in terms of section 12(1) of PEPA read with Pakistan Environmental Protection Agency (Review of IEE and EIA) Regulations, 2000* ("Review of IEE and EIA Regulations"). For the said purpose a public notice was given through English Daily 'Pakistan Times' and Urdu Daily 'Nawa-e-Waqt' and tenders were called from reputable companies having requisite skill and experience to carry out the EIA of the Canal Road Project. Two consulting firms applied and ultimately National Engineering Services of Pakistan ("NESPAK") was chosen as consultants for carrying out the EIA of the Canal Road Project.
- (x) that EIA of the Canal Road Project was duly prepared by the NESPAK in January 2007 in accordance with PEPA, the Review of IEE and EIA Regulations as well as the Guidelines for Preparation of and Review of Environmental Report.
- (xi) that EIA Report explained in depth the rationale of the Canal Road Project, its benefits and also cautioned against its negative impact as it required cutting down of trees growing along the right of way of the Canal Road. It also conducted a tree count along the Canal Road in order to determine type and number of trees required to be removed. For the said purpose, the Canal

Bank is divided into three sections. According to the said report, approximately 60% of trees on the road are eucalyptus (Sufaida) which according to it is not a native tree of the country and is rather hazardous because it consumes much quantity of water and thereby lowering the water table; it causes soil erosion of the adjoining areas; the oil released from the roots of the eucalyptus plant is known to contaminate underground water reservoirs; it does not have any significant impact in removing air pollution. It does not support nestling for local as well as migratory birds and because of its negative environmental impact, the Government of Punjab had banned its plantation except in water-logged areas. The EIA Report concludes that cutting of eucalyptus trees would in fact have positive impact on environment. Nevertheless, cutting of trees in general was found to have overall adverse effects on environment and the EIA Report recommended certain mitigation measures during the construction phase as well as the operation phase of the Canal Road Project. Among other measures, it suggested that TEPA in coordination with the Punjab Parks and Horticulture Authority should initiate a program for plantation of four type of indigenous tree specie along the Canal Road for every tree felled/removed. EIA concluded that new plantation of indigenous tree species would not only improve the ecological habitat of the Canal Road, but would also minimize excess noise, vehicular and dust pollution. This suggestion qua tree plantation, according to EIA, is being implemented forthwith.

- (xii) that EIA Report was duly submitted by TEPA to the EPA-Punjab for approval pursuant to S.R.O. 1251(1)/98 dated 27-10-1998 of the Ministry of Environment, Local Government and Rural Development, Government of Pakistan. Prior to its approval in terms of Regulation 10 of Regulations read with section 12(3) of PEPA, a public hearing was done through public notice appearing in two daily newspapers. The public hearing took place and various objections and suggestions were considered. Some of the objections raised concern that the number of trees to be cut down would be approximately 30,000; that the project would entail conversion of 50 acres of green belt/park running along the Canal Road and thereby resulting in change of land use; that since both EPA and respondent No.1 are under control of Government of Punjab, the EIA should have been submitted to Federal Environmental Protection Agency and that NESPAK was not

competent to undertake EIA of the project. Respondent made the afore-referred objections by filing a detailed statement before the Environmental Protection Agency and among other things, it was pointed out that the number of trees to be cut down would not be 30,000 but only 1850 and that the apprehended adverse effects on environment resulting from the project after removal of trees stand negated by complying with the Environment Mitigation Plan recommended in the EIA by NESPAK.

- (xiii) that the EPA-Punjab after receipt of written reply from TEPA constituted a Committee of experts in terms of Regulation 11 of the IEE and EIA Regulations with a view to assist it in assessing the environmental impact of the Canal Road Project. The recommendations of said Committee of Experts were considered by EPA-Punjab whereafter it approved the Canal Road Project vide approval bearing No. DDEIA/F22/Cir/EIA/3725 dated 19-7-2007 (Environmental Approval). The said Environmental Approval laid down stringent conditions for TEPA in undertaking the construction phase of the Canal Road Project wherein some of the measures which were directed to be undertaken are as follows:-
 - (a) strict adherence to the Environmental Management Plan in order to minimize any negative impacts on soil, ground water, air and biological resources of the project area;
 - (b) strict compliance with the National Environmental Quality Standards;
 - (c) the carrying out of extensive tree plantation, especially indigenous species in and around the project area in consultation with the PHA and to make all arrangements for the transplantation of existing trees; and
 - (d) the plantation of four (4) trees having 6-7 feet height for every single uprooted tree.
- (xiv) that on account of delay in its implementation, the cost of the Canal Road Project has increased significantly, the traffic conditions on the said road have been worsening/deteriorating in line with the traffic forecast of EIA Report submitted by NESPAK and the Government of Punjab has to inject an additional sum of Rs.2.00 billion for initiation/completion of the Canal Road Project.

6. On 14-2-2011, a Bench of this Court headed by the Hon'ble Chief Justice of Pakistan Mr. Justice Iftikhar Muhammad Chaudhry with the consent of the convener of LBT Ms. Imrana Tawana and respondent-Provincial Government nominated Dr. Pervez Hassan (who has an expertise in environmental law and has illustrious background of public service in the said field both at international and domestic levels) as a mediator. The order further stipulated that he may associate any other person or expert or official of the Government of Punjab for the purpose of such mediation and for finding suitable resolution of the matter.

7. Dr. Pervez Hassan submitted a detailed report to the Court on 14th of May, 2011 which indicates that he in consultation with learned counsel for the petitioner Mr. Ahmer Bilal Soofi and counsel for the Provincial Government Mr. Salman Butt formed a Committee of eight members having illustrious background of public service in various fields. The members of Committee were:--

- (i) Syed Babar Ali, former President, WWF International and WWF Pakistan.
- (ii) Mr. Sartaj Aziz, Vice Chancellor, Beaconhouse National University.
- (iii) Sardar Ayaz Sadiq, Member, National Assembly.
- (iv) Mr. Javed Jabbar, Vice President, IUCN.
- (v) Mr. Arif Hassan, urbanist and planner.
- (vi) Dr. Abid Qaiyum Suleri, Executive Director, Sustainable Development Policy Institute Islamabad.
- (vii) Mr. Nadeem Hassan Asif, Commissioner Lahore.
- (viii) Dr. Mira Phailbus, former Principal, Kinnaird College for Women.

8. One of the petitioners namely Mr. Ahmad Rafay Alam was appointed as Secretary of the Committee. The committee held several meetings, made visits of the Canal Road, solicited the opinions of experts, carried out public hearings, considered the stand of LBT and also of the Government of Punjab and barring one exception (Dr. Arif Hassan) made recommendations with consensus which are as follows:--*

.....

* The Court reproduced (1) Section F. Consensus of the Committee, (2) Section G. Recommendations, and (3) Section H. Conclusion from the Report of the Committee (Section B. of this Chapter).

9. Copies of the Mediation Committee Report were given to the petitioner and all concerned. Petitioners mostly agreed with the recommendations but have raised written objections mainly qua clause 17. Some of the objections related to the procedure adopted by the Committee and some related to inclusion of three members who according to petitioner, have political affiliations with the Provincial Government and which may have affected their neutrality. It was averred that out of eight committee members only two professional experts were included. During course of arguments, on Court query, the Convener of the LBT, Ms. Imrana Tiawana however, candidly stated that she agreed with 95% of the recommendations made by Mediation Committee but took serious exception to Clause 17 of the recommendations wherein the widening of road has been increased from initial 1.5 km to 3.5 km without any reason. This widening was opposed by the petitioner as according to her, after adoption of the proposed Heritage Park Act and the recommended policy for the Canal Road as suggested by the Mediation Committee, there would be no need for widening of the road because the alternate measures proposed by the Mediation Committee would solve the traffic congestion and other related issues. The recommended measures include improvement of junctions, better traffic management systems, better utilization of service roads, completion of other traffic related projects such as the ring road and southern bypass, and the improvement of public urban transport, creation of "go slow" areas and the improvement of the secondary and tertiary road network etc. will obviate the need of widening the Canal Road.

10. Mr. Arif Hassan who represented the petitioners in the Mediation Committee also objected only to the proposed widening. He was of the view as follows:--

"I fully endorse the conceptual framework of mediation report and recommendations 1 to 16. However, I do not endorse recommendation 17 and feel the recommendations in item 18 should be subservient to concept of not widening any length of Canal Bank Corridor

The loss of 3.525 kilometers of exceptionally beautiful landscape and flora should, in my opinion, not be permitted simply because of automobile pressure. I would go a step further and say that the some of the areas lost to automobile along the Canal Bank can be reclaimed without increasing traffic congestion."

11. Having considered the submissions made by petitioners, learned counsel for the parties, the report submitted by the Mediation Committee and the precedent case-law relied upon, the issues which crop up for consideration broadly speaking are as follows:--

- (i) Whether the Canal Road Project is violative of the Pakistan Environmental Protection Act (PEPA) and the regulations framed thereunder?
- (ii) Whether the approval granted by the Environmental Protection Authority-Punjab (EPA-Punjab) was mechanical at the asking of the Government of Punjab and does not reflect conscious application of mind?
- (iii) Whether the Canal Road Project is in consonance with the concept of sustainable urban development?
- (iv) Whether the precautionary principles of ecological protection as reiterated in Shehla Zia's case have been ignored in designing and approving the Canal Road Project?
- (v) Whether having consented to the referral of the matter to the mediation, can the petitioners join issue with the recommendations made by the Mediation Committee?
- (vi) Whether the policy making domain in which the Canal Road Project falls, is the exclusive preserve of Executive Authority and can this Court, in these proceedings, interfere in the said domain?
- (vii) Whether the project entailing widening of the road on both sides of the Canal, which would have the effect of reducing the area of green belt, is violative of the Doctrine of Public Trust? and
- (viii) Whether the Canal Road Project, if implemented, is likely to cause environmental degradation and thereby would be violative of the fundamental rights of Right to life (Article 9 of the Constitution) and Right to human dignity (Article 14 of the Constitution)?

Issues No. (i)

Whether the Canal Road Project is violative of the Pakistan Environmental Protection Act (PEPA) and the regulations framed thereunder?

12. Before dilating on the legality of the Canal Road Project, it would be in order to refer to some of the relevant provisions under which it was examined and approved. Section 12 of the PEPA mandates that initial environmental examination and EIA would be carried out by concerned government agency which in the instant case is Provincial Government of Punjab. Section 12 reads as follows:--

"12. Initial environmental examination and environmental impact assessment.---(1) *No proponent of a project shall commence construction or operation unless he has filed with the Federal Agency an initial environmental examination or, where the project is likely to cause an adverse environmental effect, an environmental impact assessment, and has obtained front (sic) the Federal Agency approval in respect thereof.*

(2) The Government Agency shall subject to standards fixed by the Federal Environmental Protection Agency--

(a)

(b) review the environmental impact assessment and accord its approval subject to such conditions as it may deem fit to impose, require that the environmental impact assessment be re-submitted after such modifications as may be stipulated or reject the project as being contrary to environmental objectives.

(3) Every review of an environmental impact assessment shall be carried out with public participation and no information will be disclosed during the course of such public participation which relates to--

(i)

(ii)

(iii)

(4) The Federal Agency shall communicate its approval or otherwise within a period of four months from the date the initial environmental examination or environmental impact assessment is filed complete in all respects in accordance with the prescribed procedure, failing which the initial environmental examination or, as the case may be, the environmental impact assessment shall be deemed to have been approved, to the extent to which it does not contravene the provisions of this Act and the rules and regulations made thereunder.

26. Power to delegate.---(1) *The Federal Government may, by notification in the official Gazette, delegate any of its or of the Federal Agency's powers and functions under this Act and the rules and regulations made thereunder to any;*

Provincial Governments, any Government Agency, local council or local authority.

(2) The Provincial Government may by notification in the official Gazette, delegate any of its or of the Provincial Agency's powers or functions under this Act and the rules and regulations made thereunder to any Government Agency of such Provincial Government or any local council or local authority in the Province."

13. The powers of the Federal Government to carry out the EIA under the law were delegated to the Provincial Government under the afore-referred provision vide Notification No. S.R.O.1251(I)/98 dated 27-10-1998 which reads as follows:--

"S.R.O. 1251(I)/98.---*In exercise of the powers conferred by subsection (1) of section 26 of the Pakistan Environmental Protection Act, 1997 (XXXIV of 1997), the Federal Government is pleased to delegate to the Provincial Government, Province of the Punjab, the powers and functions of the Pakistan Environmental Protection Agency under the provisions of the said Act specified in column (2) of the table below subject to the conditions and limitations specified in column (3) of that table."*

14. To give effect to PEPA, the Federal Government issued the Review of IEE and EIA Regulations. A reference to some of these regulations would be in order:--

"3. Projects requiring an IEE.---A proponent of a project falling in any category listed in Schedule I shall file an IEE with the Federal Agency, and the provisions of section 12 shall apply to such project.

4. Projects requiring an EIA.---A proponent of a project falling in any category listed in Schedule II shall file an EIA with the Federal Agency, and the provisions of section 12 shall apply to such project.

8. Filing of IEE and EIA.---(1) Ten paper copies and two electronic copies of an IEE or EIA shall be filed with the Federal Agency.

(2) Every IEE and EIA shall be accompanied by---

(a) an application, in the form prescribed in Schedule IV; and

(b) copy of receipt showing payment of the Review Fee.

10. Public participation---(1) In the case of an EIA, the Federal Agency shall, simultaneously with issue of confirmation of completeness under clause (a) of sub-regulation (1) of Regulation 9, cause to be published in any English or Urdu national newspaper and in a local newspaper of general circulation in the area affected by the project, a public notice mentioning the type of project, its exact location, the name and address of the proponent and the places at which the EIA of the project can, subject to the restrictions in subsection (3) of section 12, be accessed.

(2) The notice issued under sub-regulation (1) shall fix a date, time and place for public hearing of any comments on the project or its EIA.

(5) All comments received by the Federal Agency from the public or any Government Agency shall be collated, tabulated and duly considered by it before decision on the EIA.

11. Review

(1) The Federal Agency shall make every effort to carry out its review of the IEE within 45 days, and of the EIA within 90 days, of issue of confirmation of completeness under Regulation 9.

- (2) *In reviewing the IEE or EIA, the Federal Agency shall consult such Committee of Experts as may be constituted for the purpose by the Director-General, and may also solicit views of the sectoral Advisory Committee, if any, constituted by the Federal Government under subsection (6) of section 5.*
- (3) *The Director-General may, where he considers it necessary, constitute a committee to inspect the site of the project and submit its report on such matters as may be specified.*
- (4) *The review of the IEE or EIA by the Federal Agency shall be based on quantitative and qualitative assessment of the documents and data furnished by the proponent, comments from the public and Government Agencies received under Regulation 10, and views of the committees mentioned in sub-regulations (2) and (3) above.*

12. Decision

On completion of the review, the decision of the Federal Agency shall be communicated to the proponent in the form prescribed in Schedule V in the case of an IEE, and in the form prescribed in Schedule VI in the case of an EIA.

13. Conditions of approval

- (1) *Every approval of an IEE or EIA shall, in addition to such conditions as may be imposed by the Federal Agency, be subject to the condition that the project shall be designed and constructed, and mitigatory and other measures adopted, strictly in accordance with the IEE/EIA, unless any variation thereto have been specified in the approval by the Federal Agency.*
- (2) *Where the Federal Agency accords its approval subject to certain conditions, the proponent shall --*
 - (a) *before commencing construction of the project, acknowledge acceptance of the stipulated conditions by executing an undertaking in the form prescribed in Schedule VII;*
 - (b) *before commencing operation of the project, obtain from the Federal*

Agency written confirmation that the conditions of approval, and the requirements in the IEE/EIA relating to design and construction, adoption of mitigatory and other measures and other relevant matters, have been duly complied with."

15. An examination of the material placed before this Court reveals that the afore-referred provisions of the Act and the Regulations framed thereunder were strictly complied with. Admittedly, the project designed by TEPA was initially approved by the Provincial Government and then was referred to EPA-Punjab which in terms of subsection (3) of section 12 read with Rule 4 of the Regulations carried out public hearing. It also constituted a committee consisting of ten experts in terms of Regulation No.11(2) of Review of IEE and EIA Regulations who were consulted before the grant of approval and in terms of Rule 13. The EPA-Punjab also laid down stringent conditions/precautionary measures as also ameliorative steps to minimize the effect of cutting of some trees and damage to the green belt on both sides of the road. In the light of the afore-referred facts, we find that the approval was granted by strictly complying with PEPA and the regulations framed thereunder and there was no illegality whatsoever.

Issues Nos. (ii), (iv) & (viii)

(ii) Whether the approval granted by the Environmental Protection Authority Punjab (EPA-Punjab) was mechanical at the asking of the Government of Punjab and does not reflect conscious application of mind?

(iv) Whether the precautionary principles of ecological protection as reiterated in Shehla Zia's case have been ignored in designing and approving the Canal Road Project? and

(viii) Whether the Project, if implemented, is likely to cause environmental degradation and thereby would be violative of the fundamental rights of Right to life (Article 9 of the Constitution) and Right to human dignity (Article 14 of the Constitution)?

16. This Court took suo motu notice of the letter addressed to the Hon'ble Chief Justice of Pakistan because it was canvassed that the project under challenge would result in de-forestation and depletion of the green belt; would give fatal blow

to the Flora and Fauna on both sides of the Canal Road and thereby lead to an ecological and environmental disaster. This fallout, it was contended, would be violative of the Fundamental Right to Life (Article 9 of the Constitution) and may also have the effect of degrading human existence (violation of Article 14 of the Constitution). The Courts in almost all liberal democracies have given an expanded meaning to the Fundamental Right to Life in the wake of growing urbanization and the environmental changes that it brings. Dilating on the ambit of fundamental right of right to life, this Court in Shehla Zia v. WAPDA (PLD 1994 SC 693) held as follows:--

“Article 9 of the Constitution provides that no person shall be deprived of life or liberty save in accordance with law. The word 'life' is very significant as it covers all facts of human existence. The word 'life' has not been defined in the Constitution but it does not mean nor can it be restricted only to the vegetative or animal life or mere existence from conception to death. Life includes all such amenities and facilities which a person born in a free country, is entitled to enjoy with dignity, legally and constitutionally. For the purposes of present controversy suffice to say that a person is entitled to protection of law from being exposed to hazards of electromagnetic fields or any other such hazards which may be due to installation and construction of any grid station, any factory, power station or such like installations. Under the common law a person whose right of easement, property or health is adversely affected by any act or omission or commission of a third person in the neighborhood or at a far off place, is entitled to seek an injunction and also claim damages, but the Constitutional rights are higher than the legal rights conferred by law be it municipal law or the common law. Such a danger as depicted, the possibility of which cannot be excluded, is bound to affect a large number of people who may suffer from it unknowingly because of lack of awareness, information and education and also because such sufferance is silent and fatal and most of the people who would be residing near, under or at a dangerous distance of the grid station or such installation do not know that they are facing any risk or are likely to suffer by such risk. Therefore, Article 184 can be invoked because a large number of citizens throughout the country cannot make such representation and may not like to make it due to ignorance, poverty and disability. Only some conscientious citizens aware of their rights and the, possibility of danger come forward and this has happened so in the present case. According to Oxford dictionary, 'life' meant state of all functional

activity and continual change peculiar to organized matter and specially to the portion of it constituting an animal or plant before death and animate existence."

In Black's Law Dictionary, 'life' means "that state of animals, humans, and plants or of an organized being, in which its natural functions and motions are performed, or in which its organs are capable of performing their functions. The interval between birth and death. The sum of the forces by which death is resisted....."Life" protected by the Federal Constitution includes all personal rights and their enjoyment of the faculties, acquiring useful knowledge, the right to marry, establish a home and bring up children, freedom of worship, conscience, contract, occupation, speech, assembly and press".

The Constitutional Law in America provides an extensive and wide meaning to the word 'life' which includes all such rights which are necessary and essential for leading a free, proper, comfortable and clean life. The requirement of acquiring knowledge, to establish home, the freedoms as contemplated by the Constitution, the personal rights and their enjoyment are nothing but part of life. A person is entitled to enjoy his personal rights and to be protected from encroachments on such personal rights, freedom and liberties. Any action taken which may create hazards of life will be encroaching upon the personal rights of a citizen to enjoy the life according to law. In the present case this is the complaint the petitioners have made. In our view the word 'life' constitutionally is so wide that the danger and encroachment complained of would impinge fundamental right of a citizen. In this view of the matter the petition is maintainable."

17. The Canal Road Project is neither a plant omitting hazardous gases nor releasing pollutants in the canal water. It aims at widening the road on both sides of the Canal Bank which of necessity would cause some damage to the green belt and thereby affect environment. The apprehended change or damage which has neither been quantified nor ascertained per se may not be violative of Fundamental Right of Right to Life (Article 9 of the Constitution) unless it is shown by placing incontrovertible material before this Court that it would lead to hazardous effects on environment and ecology to an extent; that it would seriously affect human living. A close perusal of Canal Road Project indicates that before its approval, TEPA referred

the matter to NESPAK which carried out the requisite studies and after detailed analysis came to the conclusion that the Canal Road Project is environmentally viable; that only 1800 trees would be cut as against the apprehension that it would lead to cutting of 33000 trees; that 60% of the trees which are likely to be affected are eucalyptus which are even otherwise not beneficial to the soil and environment. The EIA Report also reflects that feasibility of other alternative solutions suggested to combat traffic congestion were considered by it and it was found that the project prepared by TEPA was most feasible. It also suggested mitigative measures and precautions to ensure that there was minimum damage to ecology and environment of the area. The argument that the widening of roads on both side of the Canal would be devastating and would have irreparable effects on ecology has been attended to, both while granting environmental clearance by the competent authority and also by the report of the Mediation Committee. Every project of this kind would have some adverse impact on environment but that would be negligible as compared to the ameliorative effects it is expected to have on traffic congestion and convenience of commuters and on improvement in traffic safety levels. When challenge is thrown to such projects, the Courts have to take into consideration the issues and problems that would remain unresolved and the resultant hardship of the people if the road is not widened and project is stayed. The ecological and environmental concerns, on the one hand, and hardship of the city commuters, on the other, faced with traffic congestions pose a dilemma. A balance needs to be struck between these two competing issues. The Courts may not be ideally suited for striking such a balance because such an exercise would entail factual enquiry, research work and expert knowledge of specialists in the relevant field. The Court noted that when NESPAK carried out the requisite EIA, it held public hearing, considered the objections of the petitioners, examined the alternative solutions suggested and found that the project in hand was preferable to all other solutions suggested. The report submitted by NESPAK in turn was placed before the EPA-Punjab, which granted approval and environmental clearance to the Canal Road Project. This approval was neither mechanical nor without conscious application of mind, rather the precautionary principles of environmental regulations reiterated by this Court in *Shehla Zia (Supra)* were fully kept in view.

18. Conscious of some change which may be caused in environment, some of the measures/conditions recommended by EPA-Punjab while granting environment clearance are as follows:--

- (a) strict adherence to the Environmental Management Plan in order to minimize any negative impacts on soil, ground water, air and biological resources of the project area;
- (b) strict compliance with the National Environmental Quality Standards;
- (c) the carrying out of extensive tree plantation, especially indigenous species in and around the project area in consultation with the PHA and to make all arrangement for the transplantation of existing trees; and
- (d) the plantation of four (4) trees having 6-7 feet height for every single uprooted tree.

19. In the afore-referred circumstances, in our judgment, the approval of the Canal Road Project was granted with conscious application of mind considering all relevant material and the attending circumstances. The Canal Road Project neither contravenes Fundamental Right of Right to Life (Article 9) nor the Right to Human Dignity (Article 14).

Issue No. (vii)

(vii) Whether the project entailing widening of the road on both sides of the Canal, which would have the effect of reducing the area of green belt, is violative of the Doctrine of Public Trust?

20. The concept of Public Trust is as old as the organized human living and the advent of State. This concept appeared in codified law for the first time during the Roman Empire. Roman Emperor Justinian codified the law in Corpus Juris Civilis about 1500 years ago. The genesis of this concept was laid by Justinian in 529 BC in a section of the said Code in these words: *"By the law of nature these things are common to all mankind, the air, running water, the sea and consequently the shores of the sea"*. Much after the fall of the Roman Empire, the Corpus Juris Civilis was rediscovered in Pisa and the concept spread throughout Europe. In England this concept was codified in the Magna Carta and in 1225 King John was forced to revoke his cronies' exclusive fishing and hunting rights, because this violated the public's right to access these common resources. Thereafter, it became a part of the Common Law and traveled to U.S. during its founding years. As part of the Common Law tradition, it became a concept of judicial comment for the first time in 1821 in U.S. in

the case of *Arnold v. Mandy* (6N.J.L.1, 53 (1821) wherein it as (sic) held:--

“.....the government could not, "consistently with the principles of the law of nature and the constitution of a well ordered society, make a direct and absolute grant of the waters of the state, divesting all the citizens of their common right.”

21. This was followed by another case *Illinois Central Railroad v. Illinois* (146 U.S. 387 (1892) wherein the Supreme Court thwarted the attempt of the executive to give the entire lakeshore to a private railroad. The Supreme Court held that:

“..... a title held in trust for the people of the State that they may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing therein freed from the obstruction or interference of private parties.”

22. According to Professor David Takacs ("The Public Trust Doctrine, Environmental Human Rights, and the Future of Private Property", (<http://www.ielrc.org/content/a0804.pdf>), the afore-referred case is seminal as it played a pivotal role in the evolution of Public Trust Doctrine in American jurisprudence and its three elements are: (i) the sovereign holds certain resources in trust for the common good; (ii) the public has some kind of right to protection of these resources; and (iii) while democracy may seem subverted when a court overrules the acts of elected officials, such judicial acts in fact serve democracy by preserving rights invested in all the people.

23. The academic debate on this concept was laid by Professor Joseph Sax and according to one estimation, it was he who revived a dormant area of law which now continues to be relied upon by the courts in several jurisdictions. Over the years it has come to serve two purposes: first, it mandates affirmative State action for the effective management of natural resources, and, second, it enables the citizen to question the decision making in the management of those resources. It guarantees public access to public trust resources and also adds an element of accountability in how the State treats these resources.

24. The concept of public trust has given birth to new area of jurisprudence i.e. to treat environmental rights as Fundamental Human Rights. Professor Joseph L.

Sax in his Article titled as *"The Public Trust Doctrine in Natural Resource Law; Effective Judicial Intervention"* (<http://www.uvm.edu/~gflomenh/PA395-CMN-ASSTS/articles/sax.pdf>) justified the doctrine by holding that, *"some public interests in the environment are intrinsically important, the gifts of nature's bounty ought not be constrained for private use, and some uses of nature are intrinsically inappropriate"*. The advocates of environmental human rights canvass that clean water or clean air or functioning ecosystems are rights because human life cannot exist without them; these gifts of nature's bounty ought not be traded away for the use of private entities at the expense of what is essential to every single human's life.

25. Courts in many jurisdictions have sanctified the environmental human rights by raising environmental concerns and by equating them with other Fundamental Rights. The innovative approach gave an extended meaning to the Fundamental Right of Right to Life. For instance, in India the Fundamental Right of Right to Life (Article 21 of the Indian constitution) which declares that no person shall be deprived of his life or personal liberty except according to procedure established by law was interpreted to include the right to healthy environment and ecosystem as they ultimately effect to the Right to Life. In Rural Litig. and Entitlement Kendra v. State of Uttar Pradesh (AIR 1985 SC 652, 656), the Supreme Court of India stopped unauthorized mining causing environmental damage by observing that said order was imperative for protecting and safeguarding the rights of the people to live in a healthy environment with minimal disturbance of ecological balance.

26. In Charan Lal Sahu v. Union of India (Bhopal Disaster case) (AIR 1990 SC 1480), this view was reiterated. In M.C. Mehta v. Kamal Nath (1997 1 S.C.C. 388), the Court stopped a developer to build a motel at the mouth of a river by propounding the public trust doctrine and held that:--

“[t]he notion that the public has a right to expect certain lands and natural areas to retain their natural characteristic is finding its way into the law of the land.”

27. In M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu (1999 S.C.C. 464), the Supreme Court of Indian for the first time hitched the Public Trust Doctrine to the constitutionally guaranteed right to life.

28. In Th. Majra Singh v. Indian Oil Co. (AIR 1999 J&K 81), the Court granted a manufacturing plant to be constructed conditionally only if the Government observed its Public Trust Doctrine duties to ensure that all possible pollution safeguards were implemented.

29. In Pakistan, the Supreme Court as early as 1994 in Shehla Zia's case (PLD 1994 SC 693), interfered with the construction of an electricity grid station where it was apprehended that it would cause damage to the safety of human beings and to the environment by extending the meaning of Fundamental Right of Right to Life.

30. In Moulvi Iqbal Haider v. Capital Development Authority (PLD 2006 SC 394), the Supreme Court stopped the conversion of a public park into a commercial project (Mini Golf Course) by giving an extended meaning to yet another Fundamental Right i.e. the right to have access to public places without discrimination under Article 26 of the Constitution. Speaking for the Court, Mr. Justice Iftikhar Muhammad Chaudhry, Hon'ble Chief Justice of Pakistan observed as under:--

“Now we will examine whether in view of the given facts and circumstance of the case, any of the fundamental rights guaranteed to the citizens of Pakistan have been denied. Islamabad, being a capital city, attracts representation from all over Pakistan in different capacities. Thus it is their right to enjoy access to the places of entertainment like the Jubilee Park, etc. under Article 26 of the Constitution. The same is the position of the inhabitants of the area where the Park is situated. As it has been stated herein above that necessary documents have been withheld by the C.D.A. from the Court for which, observation have been made herein above. Thus, it is held that Jubilee Park was earmarked in the original scheme of Sector F-7, as it was meant for low income group, who are deprived of the benefits of having their own private gardens, comparing to higher income groups, therefore, converting such Parks for commercial activity with the collaboration of multinational companies, would deny the rights guaranteed to them.”

31. South Africa is one of those few countries where the Environmental Rights have been protected as Fundamental Human Rights in the Constitution. In terms of section 24 of the Bill of Rights, it has been unequivocally declared that

everyone has the right: (a) to an environment that is not harmful to their health or well-being; and (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that: (i) prevent pollution and ecological degradation; (ii) promote conservation; and (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

32. The afore-referred survey of the academic, judicial pronouncements and Constitutional provisions indicate that the concept of Public Trust Doctrine is increasingly becoming part of the jurisprudence in several jurisdictions and Environmental Human Rights are being classified as Fundamental Human Rights. But what are the parameters of this concept? How far the public or private project can be stalled by invoking this concept and to what extent the public use of a trust resource can be converted to private use or for a different public purpose? This aspect has also been a subject of academic comment. Prof. Serena A. Williams in his (sic) article titled as *"Sustaining Urban Green Spaces: Can Public Parks be Protected under the Public Trust Doctrine?"* (http://works.bepress.com/serena_williams/2/) lays down two broad approaches: the legislative approach which prohibits the alienation or diversion of resource without plain and explicit legislation to that end and second the substantive test approach. The latter approach consists of five factors to be considered by a Court while determining whether diversion or alienation of public trust property violates the said test. These factors are as follows:--

"(1) that public bodies would control use of the area in question; (2) that the area would be devoted to public purposes and open to the public; (3) the diminution of the area of original use would be small compared with the entire area; (4) that none of the public uses of the original area would be destroyed or greatly impaired; and (5) that the disappointment of those wanting to use the area of new use for former purposes was negligible when compared to the greater convenience to be afforded those members of the public using the new facility."

33. According to Professor Williams if alienation of a parkland is allowed, courts must rigorously scrutinize the alienation from public use to a private entity to ensure that the transfer continues to serve a public use and is carried out with minimum possible harm to the remaining parkland. He further observed that:--

“Diversions in the use of public trust land should be approved only when three factors are met: (1) the area would continue to be devoted to a broad public purpose which is either consistent with the public uses of the original area or is one that outweighs the public use of the area as a park; (2) a public body would retain control over the use of the area in question; and (3) the diverted use would be one open to the public. These three factors are the crux of the five-criteria balancing approach. If the park use must succumb to a new public use that is determined to be paramount to the park use, the public must maintain control over the new use and continue to have easy access to it for a general public purpose.”

34. He adds that *"Courts generally find such a change in purpose valid when the diversion is from one broad public purpose to another, particularly when the area diverted is relatively small compared to park area preserved. For example, a road widening project that would require the diversion of one half acre of park space was upheld under the public trust doctrine as "merely a diversion of a minimal quantum of public land from one public purpose to another public purpose." (Emphasis is supplied).*

35. The case in hand, if examined, in the light of the Doctrine of Public Trust as explained by the academics and construed by the Courts including the Pakistan Supreme Court leads to an inescapable conclusion that the green belt around both sides of the Canal is a Public Trust resource; that it cannot be converted into private use or any other use other than a public purpose; that widening of the road as proposed is a public purpose; that a minimum area is being affected and the remaining green belt/public park is much larger; that the same has been recommended by the Mediation Committee to be declared as Heritage Park and the recommendations of the said Committee have been accepted by the Province of Punjab in totality. In these circumstances, the Doctrine of Public Trust cannot be said to have been compromised.

Issue No. (iii)

(iii) Whether the Canal Road Project is in consonance with the concept of sustainable urban development?

36. The concept of "Sustainable Development" was given recognition for

the first time in Stockholm Declaration of 1972 and its definition given in the Brundtland report was accepted i.e. *'development that meets the needs of the present without compromising the ability of the future generations to meet their own needs.'* In Pakistan this concept though referred to in some of the earlier judgments of this Court (Shehla Zia Supra) was defined for the first time in section 2 of PEPA which is as under:--

"(2)(xlii) 'sustainable development' means development that meets the needs of the present generation without compromising the ability of future generations to meet their needs."

37. This is an evolving concept and the definition given in section 2(xlii) above appears to have been inspired by the Stockholm Declaration 1972. In the preparatory meeting for the URBAN21 Conference (Berlin July 2000) a more comprehensive definition of sustainable urban development was adopted which lays down as under:--

"Improving the quality of life in a city, including ecological, cultural, political, institutional, social and economic components without leaving a burden on the future generations. A burden which is the result of a reduced natural capital and an excessive local debt. Our aim is that the flow principle, that is based on an equilibrium of material and energy and also financial input/output, plays a crucial role in all future decisions upon the development of urban areas."

38. Yet another definition focuses more on communities, on human spirit, on goals and visions of sustainable development and participatory dimension of social, economic and ecological development of a society. According to the Institute for Sustainable Communities (<http://www.iscvt.org/FAQscdef.html>), sustainable communities are defined as under:--

"Sustainable communities are defined as towns and cities that have taken steps to remain healthy over the long term. Sustainable communities have a strong sense of place. They have a vision that is embraced and actively promoted by all of the key sectors of society, including businesses, disadvantaged groups, environmentalists, civic associations, government agencies, and religious organizations. They are places that build on their

assets and dare to be innovative. These communities value healthy ecosystems, use resources efficiently, and actively seek to retain and enhance a locally based economy. There is a pervasive volunteer spirit that is rewarded by concrete results. Partnerships between and among government, the business sector, and nonprofit organizations are common. Public debate in these communities is engaging, inclusive, and constructive. Unlike traditional community development approaches, sustainability strategies emphasize: the whole community (instead of just disadvantaged neighborhoods); ecosystem protection; meaningful and broad-based citizen participation; and economic self-reliance."

39. Examining the project under challenge, in the light of concept of sustainable development, as defined in section 2(xiii) of the Act, we note that given the resource constraint, the values of sustainable development were kept in view while designing and approving the Canal Road Project which is evident, inter alia, from the following measures. It has been assured to this court:--

- (a) that the green belt on both sides of the Canal Road would be retained and the entire area would be declared/notified as Heritage Park, through an Act of the Legislature;
- (b) that minimum possible area from the green belt be affected on account of the widening of the Canal Road;
- (c) that the widening of the road was necessitated to cater to the needs of the current and future generations;
- (d) that the existing traffic flow and the likely increase in the volume of traffic on the road was kept in view while designing the project;
- (e) that stringent conditions were attached by the EPA-Punjab while granting environmental approval to the project which included strict adherence to the Environmental Management Plan in order to minimize any negative impacts on soil, ground water, air and biological resources of the project area;
- (f) that strict compliance with the National Environmental Quality Standards would be observed;

- (g) that carrying out of extensive tree plantation, especially indigenous species in and around the project area in consultation with the PHA (Parks and Horticulture Authority) and to make all arrangement for the transplantation of existing trees; and
- (h) that the plantation of four (4) trees having 6-7 feet height for every single uprooted tree.

40. In the afore-referred circumstances, the contention that the Canal Road Project approval is violative of the concept of sustainable development would not be tenable.

Issue No. (v)

Whether having consented to the referral of the matter to the mediation, can the petitioners join issue with the recommendations made by the Mediation Committee?

41. The matter was referred for mediation in terms of this Court's order dated 14-2-2011 which reads as follows:--

“Mr. Salman Butt, learned Advocate Supreme Court stated that the case required to be disposed of expeditiously in view of the rush of traffic on the Canal Road as due to pendency of matter the project has already been delayed. On the other hand Ms. Imrana Tawana stated that there are so many other alternate options available to the Punjab Government to manage the traffic flow instead of cutting off the trees on the Canal Road, Lahore. Dr. Parvez Hassan who was appearing in another case admittedly enjoys the expertise in law and has vast experience in the field of environmental management, offered to intervene between the petitioner i.e. Lahore Conservation Society and the Government of Punjab for finding a viable solution for the critical issue herein raised. Accordingly, both the parties agreed to the mediation of Dr. Parvez Hassan who is thus nominated as the mediator and submit a report on the next date of hearing. Adjourned to a date in office after one month. Dr. Parvez Hassan may associate any other persons or experts or officials of the Government of Punjab for the purpose of such medication and for finding suitable resolution of the matter.”

42. Although Dr. Parvez Hassan was the sole Mediator appointed to

mediate with agreement of both the parties, however, it was stipulated in the order that he could *"associate any other persons or experts or officials of the Government of Punjab for the purpose of such mediation and for finding suitable resolution of the matter"*. In accord with canons of propriety and to keep the petitioners on board at each stage, he constituted a Committee of eight members to be called the Mediation Committee in consultation with learned counsel for the petitioners Mr. Ahmer Bilal Soofi and respondents' counsel Mr. Suleman Butt. One of the petitioners namely Mr. Ahmad Rafay Alam who has the reputation of being a dedicated environmentalist was made Secretary of the Committee. The Mediation Committee comprised of people of eminence from various fields and they arrived at a consensus barring one dissent in terms of which the report was submitted which has been reproduced in Para-11 above. The only dissenting report opinion is of Dr. Arif Hassan whose note of dissent was placed on record along with the report which has been reproduced in para 10 above.

43. As noted earlier, in the written objections to the report of the Mediation Committee, the petitioner did not join issue with most of the recommendations made except clause 17 of the report i.e. widening of road on both sides of canal. On Court query, Miss Imrana Tiwana candidly conceded that she agrees with 95% of the report submitted by the Mediation Committee but reiterated that arguments/suggestions given by her would effectively tackle the issue of traffic congestion and the widening of road besides being hazardous to environment is unnecessary. This Court in detail has considered the report of the NESPAK with reference to alternate suggestions as also the approval report of the EPA-Punjab and finds that the exercise carried out by the concerned agency and authority under the law is well reasoned and do not call for review in these proceedings. Even otherwise, in absence of any cogent material, it would not be possible for this Court in these proceedings to hold that the alternative solutions suggested by the petitioners should be preferred to the project designed by competent authorities under the law.

44. In a case decided by the International Court of Justice in not distant past (The Gabčíkovo-Nagymaros Project dispute between Hungary and Slovakia decided on 25-9-1997), the construction of a barrage system at Danube River was challenged and Hungary contended that it was violative of a treaty to which both Hungary and Slovakia were party and that it would adversely affect the rights of the former as it would divert the waters of Danube thereby causing loss and damage to the country and its nationals. Despite taking note of the environmental concerns of

Hungary with regard to apprehended loss to the nationals and damage to environment, the Court restrained itself from interfering in the ongoing project and advised the parties to settle the dispute through mutual negotiations. The Court did not interfere, *inter alia*, for the reason that the issue mooted entailed factual enquiry and left the matter to be resolved through negotiation in the spirit of mediation. The Court observed as follows:--

“The Court is mindful that, in the field of environmental protection, vigilance and prevention are required on account of the often irreversible character of damage to the environment and of the limitations inherent in the very mechanism of reparation of this type of damage.

Throughout the ages, mankind has, for economic and other reasons, constantly interfered with nature. In the past, this was often done without consideration of the effects upon the environment. Owing to new scientific insights and to a growing awareness of the risks for mankind --- for present and future generations --- of pursuit of such interventions at an unconsidered and unabated pace, new norms and standards have been developed, set forth in a great number of instruments during the last two decades. Such new norms have to be taken into consideration, and such new standards given proper weight, not only when States contemplate new activities but also when continuing with activities begun in the past. This need to reconcile economic development with protection of the environment is aptly expressed in the concept of sustainable development.

For the purposes of the present case, this means that the Parties together should look afresh at the effects on the environment of the operation of the GabCikovo power plant. In particular they must find a satisfactory solution for the volume of water to be released into the old bed of the Danube and into the side-arms on both sides of the river. It is not for the Court to determine what shall be the final result of these negotiations to be conducted by the Parties. It is for the Parties themselves to find an agreed solution that takes account of the objectives of the Treaty, which must be pursued in a joint and integrated way, as well as the norms of international environmental law and the principles of the law of international watercourses. The Court will recall in this context that, as it said in the North Sea Continental Shelf cases:

"[the Parties] are under an obligation so to conduct themselves that the negotiations are meaningful, which will not be the case when either of them insists upon its own position without contemplating any modification of it" (I.C.J. Reports 1969, p.47, para. 85).

45. In the instant case as well, the Court referred the matter for mediation on similar considerations and with consent of both the parties. Petitioner's attempt to resile from the said mode of resolution may not warrant a flattering comment. Because the Mediation Committee was constituted in consultation with petitioner's learned counsel, Mr. Ahmer Bilal Soofi and the allegation that two members of the Committee had affiliation with the Provincial Government is too general and vague to shake their credibility. In S.E. Makudam Muhammad v. T.V. Mahommad Sheik Abdul Kadir (1936 Madras 856), a party agreed for decision of the matter in the light of the report to be submitted by the Commission, subsequently when the report was submitted, the party wanted to resile but the Court relying on an earlier judgment of Privy Council Burgess v. Morton (1896) A.C. 136, held as follows:--

"When a party invites the Court to adopt a procedure which is not contemplated by the Civil P.C., and is in fact a procedure extra cursum curiae, he cannot turn around and say that the Court is to blame for adopting the very procedure which he invited the Court to follow. There is such a thing as estoppel apart from the question of adjustment and the doctrine of estoppel would apply to a party who attempts to blow hot and cold in this fashion. As was held in (1896) AC 136(1), where with the acquiescence of the parties the Judge departed from the ordinary course of procedure and decided upon a question of fact, it was incompetent for the parties afterwards to contend that they have an alternative mode of proceeding with the trial as if it had been heard in due course. Lord Watson observed in that case that there were several decisions of the House of Lords which affirmed that the judgment of the Court below pronounced extra cursum curiae, is in the nature of an arbiter's award and that as a general rule at least no appeal from it will lie."

46. The maxim extra cursum curiae which underpins the afore-referred judgment was reiterated by this Court in Mst. Sharif Bibi v. Muhammad Nawaz Shah (2008 SCMR 1702) wherein the judgment of the learned High Court was upheld and appeal dismissed.

47. For afore-referred reasons, it would not be open for the petitioner to challenge Mediation Committee's report, particularly when they have agreed to 95% of the recommendations made by the said Committee.

Issue No. (vi)

Whether the policy making domain in which the Canal Road project falls, is the exclusive preserve of Executive Authority and can this Court, in these proceedings, interfere in the said domain?

48. One of the foundational values enshrined in the Constitution of Islamic Republic of Pakistan is principle of trichotomy of powers i.e. the Legislature would legislate, the Executive would administer law and Judiciary would interpret the law. In Sindh High Court Bar Association v. Federation of Pakistan (PLD 2009 SC 879), this Court highlighted the principle of trichotomy of powers as follows:--

"167. At this stage, it is necessary to elucidate through our own jurisprudence and that of other jurisdictions the principle of trichotomy of powers and the power of judicial review vested in the superior Courts. Case-law from the Indian jurisdiction is particularly instructive on account of common origins of constitutionalism springing from the Government of India Act, 1935 read with the Indian Independence Act, 1947. The Supreme Court of India, in the case of Minerva Mills Ltd v. Union of India (AIR 1980 SC 1789) held that, the judiciary was the interpreter of the Constitution and was assigned the delicate task of determining the extent of the power conferred on each branch of the government, its limits and whether any action of that branch transgressed such limits."

49. By according an expanded meaning to the Fundamental Rights provisions of the Constitution, the Courts under Articles 199 and 184(3) of the Constitution have taken notice of public interest issues which has led to the development of public interest litigation. The public interest litigation was given new dimension by successive Chief Justices of this country by developing the Human Rights cases jurisprudence whereunder petitions filed by less privileged class of society on issues of public concern have been entertained and decided where contravention of fundamental rights was proved. Mr. Suleman Butt, ASC placed on record an article by Dr. Parvez Hassan titled as "Role of Commissions in Public

Interest Environmental Litigation in Pakistan" wherein he referred to a judgment (2000 CLC 471 Lahore) authored by one of us (Tassaduq Hussain Jilani, J.) where the genesis of public interest litigation in the developing world has been commented upon. It was observed:--

"The rationale behind public interest litigation in developing countries like Pakistan and India is the social and educational backwardness of its people, the dwarfed development of law of tort, lack of developed institutions to attend to the matters of public concern, the general inefficacy and corruption at various levels. In such a socioeconomic and political milieu, the non-intervention by Court in complaints of matters of public concern will amount to abdication of judicial authority."

50. This Court does not interfere in every issue of public concern under Article 184(3) of the Constitution but only where the action/order of the executive authority raises the question of enforcement of a Fundamental Right. In Pakistan Tobacco Company Ltd. v. Federation of Pakistan (1999 SCMR 382), this Court candidly held as follows:--

"maintainability of a petition under Article 184(3) of the Constitution is to be examined not on the basis as to who has filed the same but if the controversy involves question of public importance with reference to enforcement of any of the fundamental right, petition will be sustainable."

51. Again in Javed Ibrahim Paracha v. Federation of Pakistan (PLD 2004 SC 482), this view was reiterated as follows:--

"a person can invoke the Constitutional jurisdiction of the superior Courts as pro bono publico but while exercising this jurisdiction, he has to show that he is litigating, firstly, in the public interest and, secondly, for the public good or for the welfare of the general public. The word 'pro bono publico' as defined in Black Law Dictionary, Chambers Dictionary and Oxford Dictionary generally means 'for the public good' or 'for welfare of the whole' being or involving uncompensated legal services performed especially for the public good. 'Public interest' in the Black Law Dictionary, has been defined as the general welfare of the public that warrants recognition and protection. Something in which the public as a whole has a stake; esp., an interest that

justifies governmental regulation. It thus signifies that in case of public interest litigation, one can agitate the relief on his own behalf and also on behalf of the general public against various public functionaries, where they have failed to perform their duties relating to the welfare of public at large which they are bound to provide under the relevant laws. Viewing the bona fide of petitioner in the above contest, we are of the opinion that the petitioner has not been able to show that he was aggrieved person within the meaning of Article 199 of the Constitution and can agitate his grievance as pro bono publico."

52. Explaining the ambit of Article 199 of the Constitution, this Court in Muhammad Bashir v. Abdul Karim (PLD 2004 SC 271), laid down as follows:--

"This power is conferred on the High Court under the Constitution and is to be exercised subject to Constitutional limitations. The Article is intended to enable the High Court to control executive action so as to bring it in conformity with the law. Whenever the executive acts in violation of the law, an appropriate order can be granted which will relieve the citizen of the effects of illegal action. It is an omnibus Article under which relief can be granted to the citizens of the country against infringement of any provision of law or of the Constitution. If the citizens of this country are deprived of the guarantee given to them under the Constitution, illegally or, not in accordance with law, then Article 199 can always be invoked for redress". (Ghulam Mustafa Khar v. Pakistan and others PLD 1988 Lah. 49, Muhammad Hussain Khan v. Federation of Pakistan PLD 1956 Kar. 538(FB), S.M. Yousuf v. Collector of Customs PLD 1968 Kar. 599 (FB). It is to be noted that "paramount consideration in exercise of Constitutional jurisdiction is to foster justice and right a wrong". (Rehmatullah v. Hameeda Begum 1986 SCMR 1561, Raunaq Ali v. Chief Settlement Commissioner PLD 1973 SC 236). There is no cavil with the proposition that "so long as statutory bodies and executive authorities act without fraud and bona fide within the powers conferred on them by the Statute the judiciary cannot interfere with them. There is ample power vested in the High Court to issue directions to an executive authority when such an authority is not exercising its power bona fide for the purpose contemplated by the law or is influenced by extraneous and irrelevant considerations. Where a statutory functionary acts mala fide or in a partial, unjust and oppressive manner, the High Court in the exercise of its writ

jurisdiction has ample power to grant relief to the aggrieved party". (East and West Steamship Co. v. Pakistan PLD 1958 SC (Pak.) 41). In our considered view, technicalities cannot prevent High Court from exercising its Constitutional jurisdiction and affording relief which otherwise respondent is found entitled to receive."

53. Many a time, policies/actions of executive authorities are challenged and issues are brought before the Court which have socio-political or economic dimensions; issues of lopsided policies being pursued, issues which have polarized the nation, issues which have bled and divided the nation and issues which reflect immoral or unwise use of public funds. Judges are humans. It is painful to sit back and watch the successive marches of folly. However, the Constitutional constraint reflected in the trichotomy of powers obliges the Court to observe judicial restraint. It intervenes only when the policy/action of the State authority reflects violation of any law or a Constitutional provision or when it relates to the enforcement of a Fundamental Right which inter alia includes Environmental Human Rights. The people/Constitution makers did not vest this Court to sit over judgment on a purely policy decision taken by the competent executive authority unless of course it violates the law of the land. In the U.S. Constitution as well, the principle of separation of powers is one of the foundational values. In deference to the Constitutional Scheme, the U.S. Supreme Court observes self-restraint in such matters. In Trop v. Dulles (356 U.S. 86, 120 (1958)), this approach is candidly reflected where the Court held as follows:--

"It is not easy to stand aloof and allow want of wisdom to prevail, to disregard one's own strongly held view of what is wise in the conduct of affairs. But it is not the business of this Court to pronounce policy. It must observe a fastidious regard for limitations on its own power, and this precludes the Court's giving effect to its own notions of what is wise or politic. That self-restraint is of the essence in the observance of the judicial oath, for the Constitution has not authorized the judges to sit in judgment on the wisdom of what Congress and the Executive Branch do."

54. When an order of governmental authority is challenged before the Court raising an environmental issue, the Court would examine as to whether the authority which passed the order was conscious of the relevant considerations; whether it deliberated over those and whether it took the decision after having the

expert opinion and complying with the mandate of law? The issues which underpin the project under challenge related to traffic congestion, the widening of the Canal Road and the apprehended damage to ecology and environment. The Court would have intervened if the issues of rising traffic flow and congestion had not necessitated remedial measures; if feasibility of other alternative proposals had not been examined by the concerned department; if it had not got conducted Environmental Impact Assessment from a consultant and if the Environmental Protection Authority had not given environmental clearance after taking into consideration the relevant factors; if the doctrine of Public Trust or of Precautionary Principle for environmental protection was being violated or if the respondent-Provincial Government had not whole heartedly accepted the Mediation Committee's report which inter alia recommend declaring the greenbelt on both sides of the Canal as Heritage Park and had recommended only a partial widening of the road in question. These concerns, in our view, have been adequately addressed by the competent bodies under the law. It is for the concerned department of the government to examine how best to meet traffic congestion and in this exercise it can solicit consultation from another agency or a body of experts to study the feasibility which in the instant case was initially carried out by NESPAK and thereafter the matter was placed before the EPA-Punjab which again having solicited the opinion of experts granted approval with certain conditions. In such cases the Court may not have the requisite expertise to adjudicate. This is why the Court seeks the assistance of experts or experts' committee. The advantage of the experts' committees is that it enables the Court to receive technical expertise while the Judges are left to decide questions of law. Such committees reduce the chances of judicial arbitrariness and adds legitimacy to the judgments. The only aspect the Court would examine is whether the policy/act under challenge is violative of any provision of the law or the Constitution or any of the Fundamental Rights guaranteed under the Constitution and as interpreted by the Courts from time to time. In Narmada Bachao Andolan v. Union of India (AIR 2000 SC 3751), the Indian Supreme Court came to a similar conclusion when it observed as follows:--

“Whether to have an infrastructural project or not and what is the type of project to be undertaken and how it has to be executed, are part of policy making process and the Courts are ill equipped to adjudicate on a policy decision so undertaken. The Court, no doubt, has a duty to see that in the undertaking of a decision, no law is violated and people's fundamental rights are not transgressed upon except to the extent permissible under the Constitution. Even then any challenge to such a policy decision must

be before the execution of the project is undertaken. Any delay in the execution of the project means over run in costs and the decision to undertake a project, if challenged after its execution has commenced, should be thrown out at the very threshold on the ground of laches if the petitioner had the knowledge of such a decision and could have approached the Court at that time. Just because a petition is termed as a PIL does not mean that ordinary principles applicable to litigation will not apply. Laches is one of them. Public Interest Litigation (PIL) was an innovation essentially to safeguard and protect the human rights of those people who were unable to protect themselves. With the passage of time, the PIL jurisdiction has been ballooning so as to encompass within its ambit subjects such as probity in public life, granting of largess in the form of licences, protecting environment and the like. But the balloon should not be inflated so much that it bursts. Public Interest Litigation should not be allowed to degenerate to becoming Publicity Interest Litigation or 'Private Inquisitiveness Litigation'."

55. Respectfully reiterating the earlier view taken by this court in the precedent case-law to which reference has been made above and in view of the report of the Mediation Committee which has been accepted in entirety by the Provincial Government, we are of the view that no intervention is called for.

56. In passing the court may add that it is conscious of the historic and emotional appeal of the Canal which was built initially by the last Muslim Ruling Dynasty, the Mughals and extended in 1861 by the British. It is indeed an environmental asset. The greenery around it adds beauty and romance to the city. In times gone by there must have been flourishing fields, meadows and green valleys. Much later when the road on both sides of the Canal was metalled, there would hardly have been a few residential colonies. But slowly and gradually, as the population increased, residential colonies were built to cater to the needs of the populace. The mushroom growth of residential colonies is a post independence phenomenon. It assumed a greater momentum in the last 3/4 decades. This caused massive damage to the flourishing fields, the orchards and to the habitats. The ill-conceived commercialization of residential areas had its toll as well. Industrialization on the outskirts of the city further confounded the situation and this resulted in traffic flow to multiply manifolds. The loss of those green valleys evokes a natural lament and nostalgia. But this is what happens to environment and ecology when human needs increase and the cities expand bringing in their

wake pains, issues and Thomas Hardy's "Madding Crowd". The famous German Philosopher Frederick Engels (1820-1895) who belonged to the same period when the canal was built, was alluding to this paradox when he said:--

"Let us not, however, flatter ourselves overmuch on account of our human victories over nature. For each such victory nature takes its revenge on us. Each victory, it is true, in the first place brings about the results we expected, but in the second and third places it has quite different, unforeseen effects which only too often cancel the first. The people who, in Mesopotamia, Greece, Asia Minor and elsewhere, destroyed the forests to obtain cultivable land, never dreamed that by removing along with the forests the collecting centres and reservoirs of moisture they were laying the basis for the present forlorn state of those countries. When the Italians of the Alps used up the pine forests on the southern slopes, so carefully cherished on the northern slopes, they had no inkling that by doing so they were cutting at the roots of the dairy industry in their region; they had still less inkling that they were thereby depriving their mountain springs of water for the greater part of the year, and making it possible for them to pour still more furious torrents on the plains during the rainy seasons. Those who spread the potato in Europe were not aware that with these farinaceous tubers they were at the same time spreading scrofula."

*(The Part Played by Labour in the
Transition From Ape to Man)*

57. This however, is the flip side of human saga. It has a positive dimension too. If humans had shunned reason and the civilizational impact or had taken their love of nature too far, they would still have been living in caves, eating insects and raw meat and mating like animals. The discovery and development of the bounties and beauties of nature are partly attributable to human perception, ingenuity, struggle and its harnessing. John Keats, the poet of nature and beauty was referring to these human virtues, when he said:--

Who, of men, can tell

That flowers would bloom, or that green fruit would swell

To melting pulp, that fish would have bright mail,

The earth its dower of river, wood, and vale,

The meadows runnels, runnels pebble-stones,

The seed its harvest, or the lute its tones,

Tones ravishment, or ravishment its sweet

If human souls did never kiss and greet?

Endymion, bk.i, I. 835

58. The beauty of the canal and of the greenbelt on both sides of the Canal Road lie partly in beholder's eye i.e. human aesthetics, imagination, design and engineering. It is the human needs which require widening of the road.

59. Before parting with this judgment, we would like to acknowledge the admirable spirit demonstrated by petitioners' organization, by those individuals, architects, urban planners, academics and students for protection of city's ecological and environmental horizons. During hearing of this case, the Court was touched by the rainbow of idealism, of intellect, of architectural ability, of urban development and mental health expertise of graces and youthful exuberance. This was a living testimony to a vibrant civil society. This vibrance, vigilance and zeal must have acted as a watchdog for those entrusted with design and planning of the Canal Road Project and those who accorded environmental clearance. The widening of the road which is now confined to only a part of the Canal Road and the conditional approval granted by EPA, Punjab attaching stringent conditions to allay the environmental concerns is a vindication of the object for which the petitioners brought this issue before this Court. As long as this spirit is alive, we are sanguine, the authorities and the leadership would continue to be guided by the values of sustainable human and urban development. We would also place on record our deep appreciation for the Mediation Committee in general and for Dr. Parvez Hassan in particular for developing a broad

consensus reflected in the report of the Mediation Committee. For Mr. Babar Ali (who has the distinction of succeeding the Duke of Edinburgh as President of World Wide Fund for Nature) one of the eminent city fathers, who responding to the ecological and environmental concerns, made his valuable contribution as Member of the Mediation Committee. The able assistance rendered by Mr. Salman Butt also deserves a word of commendation.

60. In view of what has been discussed above and keeping in view the stance of the Government of Punjab that they have accepted the report of the Mediation Committee in entirety, we hold and direct as under:-- *

- (i) The Bambawali-Ravi-Bedian (BRB) Canal and the green belt on both sides of the Canal Road (from Jallo Park till Thokar Niaz Beg) is a Public Trust. It shall be treated as Heritage Urban Park forthwith and declared so by an Act to be passed by the Assembly as undertaken by the respondent-Provincial Government;
- (ii) Widening of the road on both sides of the Canal Bank shall be in accord with the report submitted by the Mediation Committee;
- (iii) Necessary corrections/modification of some of the underpasses on the Canal Road shall be carried out as suggested in the report of the Mediation Committee;
- (iv) Proper Traffic Management Program shall be made and given effect to;
- (v) Further improvement in public transport system shall be ensured;
- (vi) Where needed and as recommended by the Committee, re-engineering of the junctions along the Canal Bank would be undertaken;
- (vii) The service roads along certain parts of the Canal Road shall be constructed/improved;
- (viii) Report of the Mediation Committee shall be implemented as agreed by the

* These followed, generally, the recommendations of the committee made in G. Recommendations of its Report in Section B. of this Chapter.

respondent-Provincial Government in letter and spirit;

- (ix) Respondent-Provincial Government and TEPA shall ensure that minimum damage is caused to green belt and every tree cut would be replaced by four trees of the height of 6/7 feet and this replacement when commenced and completed shall be notified through press releases for information of general public, copies of which would be sent to the Registrar of this Court for our perusal; and
- (ix) Elaborate measures/steps be taken to ensure that the Canal is kept clean and free of pollution. The steps should inter alia include throwing of litter and discharge of any pollutant in the Canal a penal offence. The Chief Secretary, Government of Punjab shall ensure that a comprehensive action plan is prepared in this regard by the concerned department and report is submitted to the Registrar of this Court within six weeks of the receipt of this judgment.

61. For what has been discussed above, since most of the prayers and concerns have been taken care of in the Mediation Committee Report, the petition to the extent of those prayers is disposed of as having fructified and the petition is allowed in terms of the Report of the Mediation Committee which stands accepted even by the respondent Provincial Government. The petition in so far as it challenged the Project of widening of road is dismissed.

M.A.K./S-51/SC

Order accordingly.

D. Judgment of the Court dated 5 August 2015

2015 SCMR 1520

[Supreme Court of Pakistan]

Present: Mian Saqib Nisar,
Mushir Alam and Maqbool Baqar, JJ

LAHORE BACHAO TEHRIK---Petitioner

Versus

**Dr. IQBAL MUHAMMAD CHAUHAN
and others---Respondents**

C.M.A. No. 3221 of 2012 in S.M.C. No. 25 of 2009 and Criminal Original Petition No. 96 of 2014, decided on 5th August, 2015.

(Suo Motu action regarding cutting of trees for canal widening project Lahore)

Aitzaz Ahsan, Senior Advocate Supreme Court and M.S. Khattak, Advocate-on-Record for Petitioner (in Crl. O. P. 96 of 2014).

Kh. Haris Ahmed, Senior Advocate Supreme Court, Israr Saeed, Chief Engineer, M. Rashid, Director (Legal) and Raza Hassan Rana, Assistant Director for L.D.A.

Ms. Imrana Tiwana for Lahore Bachao Tehrik.

Ch. Munir Sadiq, Advocate Supreme Court for Appellants (in C.M.A. 615 of 2015).

Nawaz Manik, Director (Law) for Environmental Department.

Date of hearing: 14th May, 2015.

JUDGMENT

MIAN SAQIB NISAR, J.--- These two matters have genesis and direct nexus with 14 km widening of the Lahore Canal Bank Road (Canal Road) on both the sides thereof. The Government of Punjab initiated a project for the above purpose and in the process had already widened a part of the road when Lahore Bachao Tehrik (LBT) submitted an application to the Hon'ble Chief Justice of Pakistan primarily asserting therein that the said widening would entail the cutting of trees on both the sides of the canal and the greenbelt area around the canal would be encroached which would result in environmental hazard. This project, thus, is violative of the fundamental rights set forth in the Constitution of the Islamic Republic of Pakistan, 1973, particularly the right to life. This application was treated as S.M.C. No.25/2009 and vide judgment dated 15.9.2011 (*Judgment*) reported as Cutting of trees for canal widening project, Lahore (2011 SCMR 1743) it was disposed of with certain directions, which shall be mentioned in due course of this opinion.

2. We may like to mention at this juncture that for the purposes of ascertaining the effect of widening upon environment and other related issues raised by LBT, a Mediation Committee comprising of certain nobles of the city and experts was constituted (Mediation Committee). Such Committee had given its report which was accepted by the Government of Punjab, the applicant in toto while some objections were expressed by LBT thereto but only to the extent of permitting the Government to widen a part of the Canal Road. These objections seemingly were not endorsed by the Court and thus the afore-mentioned decision on the basis of the Mediation Committee report primarily is in the nature of a consent order. In this context this Court made certain directions in the said Judgment (paragraph 60) which reads as under:-

- (i) *“The Bambawali-Ravi-Bedian (BRB) Canal and the green belt on both sides of the Canal Road (from Jallo Park till Thokar Niaz Beg) is a Public Trust. It shall be treated as Heritage Urban Park forthwith and declared so by an Act to be passed by the Assembly as undertaken by the respondent Provincial Government;*
- (ii) *Widening of the road on both sides of the Canal Bank shall be in accord with the report submitted by the Mediation Committee;*

- (iii) *Necessary corrections/modification of some of the underpasses on the Canal Road shall be carried out as suggested in the report of the Mediation Committee;*
- (iv) *Proper Traffic Management Program shall be made and given effect to;*
- (v) *Further improvement in public transport system shall be ensured;*
- (vi) *Where needed and as recommended by the Committee, re-engineering of the junctions along the Canal Bank would be undertaken;*
- (vii) *The service roads along certain part of the Canal Road shall be constructed/improved;*
- (viii) *Report of the Mediation Committee shall be implemented as agreed by the respondent Provincial Government in letter and spirit;*
- (ix) *Respondent-Provincial Government and TEPA shall ensure that minimum damage is caused to green belt and every tree cut would be replaced by four trees of the height of 6/7 feet and this replacement when commenced and completed shall be notified through press releases for information of general public, copies of which would be sent to the Registrar of this Court for our perusal; and*
- (x) *Elaborate measures/steps be taken to ensure that the Canal is kept clear and free of pollution. The steps should inter alia include throwing of litter and discharge of any pollutant in the Canal a penal offence. The Chief Secretary, Government of Punjab shall ensure that a comprehensive action plan is prepared in this regard by the concerned department and report is submitted to the Registrar of this Court within six weeks of the receipt of this judgment."*

Through the instant CMA No.3221/2012 the Province of Punjab has sought a permission from this Court to allow further widening of the road, by utilizing some greenbelt and cutting of trees, whereas the CrI.O.P.No.96/2014 seeks an action against certain officials of the Province of Punjab who statedly have violated the above Judgment.

3. It may be pertinent to mention here that for the purposes of the factual backdrop and for the points which were raised, dilated upon, discussed and resolved by

this Court in the said Judgment, we do not intend either to reiterate the factual background or in any manner revisit the said Judgment on the basic points which were settled therein, particularly that the canal area (*in dispute*) is a public trust and that it cannot be used for any purpose other than public purpose. Besides that the area around the canal should be declared as a heritage park. These basically are the two salutary legal and factual aspects which were settled and resolved in this matter.

4. Anyhow, now through the present application, the Government of Punjab claiming it to be a precautionary measure (*because the case of the Government of Punjab is that it has the requisite permission to widen the Canal Road even within the letter and spirit of the Judgment*) has sought permission from this Court for widening the Canal Road at certain points. The reason for the purposes of seeking permission is given in CMA No.3221/2012 and also has been supplemented by various documents submitted by the Government of Punjab in the course of the proceedings which have been taken into account by this Court.

5. Learned counsel for the applicants, Khawaja Haris Ahmed, Sr. ASC, has stated that the Project for the widening of the Canal Road pertains to two sectors. One includes widening of road and construction of a 1.3 km long underpass at Chaubucha Interchange in the sector falling between Dharampura and Harbanspura to bring it in alignment with the rest of the Canal Road and for easy merger of traffic coming out from the underpass. Whereas, the second limb of the project is addition of a third lane in the sector falling between Doctor's Hospital and Thokar Niaz Beg because of the acute difficulty faced in the merging of traffic from an already widened three-lane sector up to Doctor's Hospital onto a narrower two-lane sector from there onwards. In both the cases, it is submitted, the need for widening/construction stems from the inevitable slowing down and congestion of traffic flow in these sectors and consequent emission of pollutants dangerous to the environment on either side of the canal, and to minimize noise pollution because of prolonged traffic jams or slowing down of traffic.

With respect to the first half of the project, it has been argued that the same is in line with the recommendations of the Mediation Committee and the Judgment in light of Recommendations No.18(1) and 18(2) reproduced at pages 1771 and 1772 of the Judgment respectively. It is contended that review/re-visiting of the scope of the Judgment is not sought, rather a clarification to this effect is being asked for.

With respect to the second segment of the project i.e. addition of a third lane on the Canal Bank Road in the sector from Doctor's Hospital to Thokar Niaz Beg, it is submitted by the learned counsel for the applicant that though the same was 'not recommended' by the Mediation Committee, it was also not categorically prohibited. Per the report of the Mediation Committee, there was no need for addition of a third lane because in its view, the traffic congestion problem could be resolved through construction of service roads, improvement of earthen shoulder and development of alternate routes. It is the case of the applicant that consequent to the report of the Mediation Committee and the Judgment, steps had been taken to implement the aforementioned recommendations, however, none of these helped in easing the traffic congestion in this sector necessitating addition of a third lane to counter the grave bottlenecks and traffic congestions faced by the commuters on account of sudden transition from three-lane traffic to two-lane traffic from Doctor's Hospital onwards. It is submitted that since the rationale behind not recommending a third lane in this sector was to ease the traffic issues through alternate means, which (*means*) had proved futile, the addition of a third lane was in essence in consonance with the purport of the recommendations made by the Mediation Committee and the letter and spirit of the Judgment of this Court.

Learned Counsel for the appellant has further submitted that the proposed project is neither violative of the provisions of the Lahore Canal Heritage Park Act, 2013 (*Act*) nor the Doctrine of Public Trust. Sub-sections (5) and (8) of section 3 of the Act imply that there may be certain contingencies necessitating use of some portion of the Heritage Park for construction or any other infrastructure development work which may be undertaken, subject however, to prior written permission from Parks and Horticulture Authority (PHA) which is to take into consideration the environment impact assessment of the proposed activity and in the instant case a go-ahead has been given to the project by the PHA as also the Environmental Protection Agency (*EPA*). With respect to the Doctrine of Public Trust, it is contended that as was declared in the Judgment of this Court, though the greenbelt on both sides of the Canal is a public trust, the same may be used for a public purpose and in the instant case easing traffic congestion for the benefit of the public serves such a purpose.

Lastly, it is contended that since public interest litigation proceedings under Article 184(3) are inquisitorial, rather than adversarial in nature (*PLD 2013 SC 1; PLD 2013 SC 501; PLD 2012 SC 664; PLD 2011 SC 997*) and the purport of exercise of powers under said Article is to protect fundamental rights of the citizens, such a power is

not limited by any technicalities. Reliance has been placed on judgment reported as PLD 2015 SC 50 to submit that a judgment that impacts the fundamental rights of the citizens or public good may be re-visited under Article 184(3) and it is therefore prayed that the widening/construction as envisaged in the Project may be allowed specifically when it also falls within the scheme of the report of the Mediation Committee and the purport of the Judgment of this Court.

6. The respondent, Lahore Bachao Tehrik, which was party to the earlier matter has vehemently opposed the application. It is submitted that the report of the Committee, referred to above, was conclusive and was accepted by the Government of Punjab. Since the Judgment in fact is a compromise judgment which has attained finality, the applicant cannot withdraw such consent and is estopped by its own conduct.

It is also argued that the canal area throughout has been declared as Heritage Park and pursuant to the above, The Act came into force. Accordingly *per* the force of law, it is now impermissible for the applicant to, in any way, widen the road, to encroach upon the greenbelt or cut any trees, as there is/are a strict prohibition to that effect in the said law. It is also argued that the extension/widening of the road is no solution of the traffic problem as has been highlighted in various documents produced before us rather the applicant should come up with alternate means to overcome the traffic congestion in the area.

It is further submitted that there is no justification for widening of the road. There is no need or requirement to revisit the said Judgment. The applicant in the garb of the present application intends to undo the said judgment and is in fact seeking review of the said judgment, but no case in this regard (*for review*) at all has been made out. Besides, the review power of this Court has but a limited scope and no appeal (*review*) is available against a consent order. In making this submission the judgments reported as Muhammad Tufail v. Abdul Ghafoor (PLD 1958 SC 201), Syed Arif Shah v. Abdul Hakeen Qureshi (PLD 1991 SC 905), Amin Badshah v. Nargis Saleem (2000 SCMR 1641), Rashida v. Aziz Begum (1998 SCMR 1340) and Sajjad Hussain v. Musrat Hussain (1989 SCMR 1826) have been relied upon by the learned counsel.

It is also stated that the Canal Park is a Public Trust and cannot be encroached upon only for the benefit of 8% of the population of Lahore which has vehicle ownership and fundamental right to life of the public at large cannot be compromised by cutting of

age old trees (*that are now part of the heritage park*) as the same will have serious ecological impact.

Lahore Bachao Tehrik has also submitted through Criminal Original Petition No.96/2014 that as the respondents in disobedience/breach of the judgment of this Court *ibid* have already cut certain trees, they are guilty of violating the Judgment, therefore, criminal action be initiated against them.

7. On account of the pleadings and hearing of both the parties, the main propositions which emerged for our consideration are:-

- i) Whether *per* the judgment of this Court reported as Cutting of trees for canal widening project, Lahore (2011 SCMR 1743) and the Act, the widening of the road, the cutting of the trees and destruction of the greenbelt is not permissible and whether the permission being sought by the applicant is violative of the aforesaid Judgment and the Act;
- ii) Whether there is such acute need for widening of the road as has been propounded by the applicant and whether the canal road having been declared heritage park is protected by the doctrine of public trust;
- iii) Whether the judgment in question being in the nature of a consent order precludes the applicant from seeking permission of this Court for carrying out the proposed project including widening of the Canal Road by utilizing some part of the green belt deemed as the Heritage Park and whether the application filed by the applicant is one requiring review of the Judgment and Court while exercising its jurisdiction in terms of Article 184(3), by itself can permit the inclusion of the greenbelt for widening of the road and cutting of trees upon some conditions;
- iv) Whether on account of the allegations leveled in Crl.O.P.No.96/2014, the applicants have committed disobedience/violation of the judgment of this Court calling for contempt proceedings against them.

PROPOSITION NO.1:

8. In order to cater to this proposition, we will follow a two pronged process. Our first step will be to assess whether either limb of the project infringes upon any of the recommendations of the Mediation Committee as embodied in the Judgment of this Court and whether the same prohibit construction/widening of the Canal Bank Road in its totality. We will then proceed on to see whether any part of the project is violative of the Act and whether there is room for implementation of the project and if so, whether there are any conditions/prerequisites.

COMPLIANCE OF THE PROJECT WITH THE RECOMMENDATIONS OF THE MEDIATION COMMITTEE AND THE DIRECTIONS GIVEN IN THE JUDGMENT OF THIS COURT

9. For the purposes of resolving this contention, we find it expedient to reproduce the relevant features of the consensus Recommendations of the Mediation Committee (*Recommendations*), which read as follows:-

“.....

2. Correct the "Incorrect Underpasses" on the Canal Road During the proceedings of the Committee, it became clear that the design of the underpasses at Jail Road and Ferozepur Road (the "Incorrect Underpasses"),were not in accordance with appropriate traffic engineering solutions and that these Incorrect Underpasses constitute a serious traffic safety hazard.

The Incorrect Underpasses are incorrectly situated in the slower/left lanes. International design standards and conventions stipulate that underpasses are to be located in the fast lane. Due to this flaw, the through traffic movement towards the Incorrect Underpasses is suddenly diverted to the left lane instead of flowing straight in the right lane as is the case with all the other underpasses later correctly constructed along the Lahore Canal Road....

(.....) the fast-moving traffic going through and coming out of the Incorrect Underpasses crisscrosses with slow moving traffic and creates direct conflict points (red circles) instead of smooth weaving and merging. This raises serious road/traffic safety issues and destructs the smooth flow of traffic....

(....) The Incorrect Underpasses, therefore, need to be realigned and reconstructed in accordance with internationally accepted design standards and parameters.

Similarly, the Committee noted that the bypasses at the Jinnah and Doctor's Hospital intersections required geometric improvements as the fast and slow-moving traffic do not smoothly weave and merge. This causes traffic conflict points and creates traffic safety hazards. A representation of the problem is given below:

3. Re-engineer the Junctions along the Canal Road

There are, broadly, two (2) categories of intersections along the Canal. These are:

(1) Roads traversing through the Canal Road

With respect to these types of intersections, the Committee noted the fact that, in all, there were twelve (12) such intersections over the Lahore Canal and that several of these intersections carried significantly higher traffic volumes across the Canal Road than the traffic that flowed on the Canal Road.

The straight and turning traffic movement along the Canal Road that does not go through the underpasses also uses these intersections. It was observed by the Committee that the designed capacity of these intersections is not sufficient to accommodate the large traffic volumes and that as a result, there are bottlenecks on these intersections. It is recommended that these intersections are re-modelled after a traffic capacity analysis and designed in accordance with standard geometric design. This will help to have a smooth flow of traffic at these intersections and will reduce congestion. In addition, signals along the corridor and at intersections over the Canal Road should be gully actuated and traffic signage should be of international standard.

(2) Roads and streets connecting to the Canal Road

These roads and streets connect the Canal Road and predominantly emanate from housing schemes and individual houses. The Committee noted that these were unplanned access routes built for a variety of reasons, which provide connectivity to the housing schemes or private residences along the Canal Road.

The traffic entering and exiting from these intersections slows traffic movement along the Canal Road. This leads to undue stoppages and causes congestion.

The Committee is of the opinion that there should not be direct connections of the Canal Road to housing schemes and private residences. Traffic generated and attracted by these housing schemes and residences requires the construction of a network of service roads, preferably in a one-way loop system, with proper geometries to enable smooth weaving and merging of traffic from and onto the Canal Road.

Also, bus bays constructed along the length of the Canal Road require redesigning in order to facilitate the smooth entry and exit of vehicles and to minimize traffic turbulence.

(4) Construct Service Roads along Certain Parts of the Canal Road

(...) The Committee is of the opinion that there is an immediate requirement to provide a one-way loop service road system along the entire length of the Canal Road (except the Punjab University premises between the Campus underpass and the Jinnah Hospital underpass) with appropriately designed smooth entry and exit points to avoid traffic turbulence and congestion....

(12) Cleaning and Improving Water Quality of Canal

The sources of effluent, sewage and waste into the Lahore Canal should be identified. Civil society as well as government agencies should team up to clean the Lahore Canal so that exposure to its water is not harmful or dangerous to health and with an aim of bringing the quality of the water of the Lahore Canal to the minimum guidelines determined by the World Health Organization for recreational water use...

(13) People-Centric Planning

.... The Committee would like to recommend a change in the urban agenda to include a more people friendly and people-centric development. Pedestrians and cyclists are routinely ignored in road planning. This orientation needs to be balanced.

(16) Ambulance/Medical Emergencies

The officials of Rescue 1122 emergency services repeatedly stressed the importance of removing encroachments along the Canal Road and ensuring a smooth flow of traffic at all times for the purpose of facilitating emergency vehicles taking patients to hospitals. The officials were of the view that while it was acceptable that alternative routes to hospital and healthcare facilities should be identified and developed in the long term, there was a strong need for a short term solution to the congestion along the Canal Road such as selected widening of the Road.

(17) Limited Widening of Road

The total distance on one side of the Canal Road from Dharampura to Thokar Niaz Beg is 14.5 km. Out of these different sections, 6.59 km road has already been widened before the reference of this matter to mediation.

The congestion on the remaining about 8 km is particularly acute in certain locations, leading not only to prolonged delays but also causing safety hazards because ambulances and rescue vehicles are caught up in traffic and unable to move swiftly.

The Committee, after a detailed site visit to these stretches of the Canal Road and discussion with the concerned officials, recommends that this short-term congestion can be relieved to some extent if the third lane is allowed to be added at the following locations on both sides of the Canal:

- | | | |
|-----------------------------|---------|-----------|
| • Mall Road to Jail Road... | 525 M | (Eastern) |
| | 460 M | (Western) |
| • Jail Road to F.C. | 550 M | (Eastern) |
| College... | 550 M | (Western) |
| • University Campus to | 1,700 M | (Eastern) |
| Jinnah Hospital... | 1,700 M | (Western) |
| • Jinnah Hospital to | 700 M | (Eastern) |
| Doctors Hospital... | 750 M | (Western) |

These stretches totaling a maximum of 3.525 km on each side, as shown in Annexure J/1 to J/4, have 642 trees. And 60% (about 385) of these trees are of eucalyptus specie. Every effort should be made to build the third lane in these stretches on the edges of the existing road to reduce to a minimum the area taken from the green belt on both sides of the Canal Road. The last stretch from Doctors Hospital to Thokar Niaz Beg (2.6 KM) is getting increasingly congested because of the volume of traffic generated from housing colonies like M.A. Johar Town and a large number of other colonies beyond Thokar Niaz Beg and areas on and around Raiwind Road. However, with the construction of service roads, as per Recommendation No. 4, the flow on the Canal Road can be reduced. In addition, some improvement can be achieved without encroaching on the green belt, if the trees on the edges of the road causing bottlenecks (about 460 trees including about 310 eucalyptus) (Annexure K), are removed to improve earthen shoulders and bus bays are provided at suitable points. The Committee does not recommend the widening of the Canal Road through a third lane in this stretch.

For each tree felled in any sector of the Lahore Canal Road, the Punjab Government will plant at least a hundred (100) mature trees in replacement.

(18) Sector-Specific Recommendations

Although the mandate of the Committee from the Supreme Court was only for the Canal Bank Road from Dharampura to Thokar Niaz Beg, our recommendations cover, because of the interdependence of urban planning issues, the area upstream of Dharampura as well as downstream from Thokar Niaz Beg in the following, sector-specific recommendations:

(1) Jallo Mor to Dharampura Underpass

The Committee recommends a moratorium on all new commercial activity and draws attention to the ongoing unplanned development and encroachment (of green belt) activity in this sector. Service roads in this sector deserve special attention. The Punjab Government has no proposal for the Canal Bank Road or an underpass in this sector but its future planning should be guided by the Recommendations of the Committee.

(2) Dharampura Underpass to Mall Road Underpass

The Committee is of the opinion that this sector is working well but indicates that the encroachments and restrictions along the service road should be removed in order to facilitate a smooth flow of traffic.

The Punjab Government has no proposal for the Canal Bank Road or an underpass in this sector but its future planning should be guided by the Recommendations of the Committee.

(3) Mall Road Underpass to Jail Road Underpass

The Committee is of the opinion that entry and exit points along this sector may be streamlined to promote smooth entry and exit from the Canal Road and to minimize traffic turbulence.

(4) Jail Road Underpass to F.C. College Underpass

In addition to its Recommendation No. 2 above, the Committee recommends the enforcement of land-use and zoning laws in the areas adjacent to the Lahore Canal in this sector.

(5) Campus Underpass to Jinnah Underpass

As per the recommendation of the Committee, this sector of the Canal will be subject to traffic diversions to Multan Road on the north of the Canal and Usmani Road on the South of Canal. Appropriate signage will also be necessary to announce these diversions. These diversions will also benefit from the signal free corridor being constructed at Kalma Chowk for traffic flowing from Garden Town to Liberty Market.

(6) Jinnah Underpass to Thokar Niaz Beg

The Committee reiterates its Recommendation No. 7 above, namely that traffic to the Old CBD and New CBD should be diverted from the Canal Road and onto the Multan Road and the Southern Bypass respectively. The Committee also recommends the construction of radial/arterial roads along a northwest-southeast axis as proposed by the 1991 JICA Lahore Urban Transport Master

Plan. These radial/arterial roads will also assist in diverting traffic from the Canal Road as envisaged in Recommendation No. 4 above.

The Committee is also of the view that the results of the current Lahore Urban Transport Master Plan study being conducted by the Transport Department of the Government of the Punjab will be instructive in this regard.

(7) Beyond Thokar Niaz Beg

The Committee recommends a moratorium on new commercial development as well a check on unplanned development along this sector of the Lahore Canal just as it recommended in No.(1) above.” (sic)

10. Whereas, the Project (construction of underpass and widening of road in the sector falling between Dharampura Underpass and Harbanspura Interchange and addition of a third lane in the sector falling between Doctor’s Hospital and Thokar Niaz Beg features) for which permission has been sought by the applicant vide CMA No.3221/2014 includes the following construction/widening activities (project features):-

- i. U-turn Bridges and remodeling of underpasses through the entirety of the Canal Road;
- ii. Storm water/draining chutes and walkways along the whole of Canal Road;
- iii. Realignment of Jail Road Underpass;
- iv. Provision of service roads for the stretch between Thokar Niaz Beg to Doctor’s Hospital.
- v. Construction/widening of road by 6 metres for the stretch between Mall Road to Harbanspura Interchange;
- vi. Construction/widening of road by 6 metres by way of adding a third lane on either side of the Canal for the stretch between Thokar Niaz Beg to Doctor’s Hospital;

11. Having perused the basic Project features as also the Recommendations, it is clear to our mind that there can be no doubt that the project features mentioned above are compliant with rather pursuant to the Recommendations and directions issued by this

Court vide the Judgment in question and not in derogation thereto. Our view is based on the analysis provided below.

12. As regards, Project feature (i) (*U-turn bridges and re-modeling of underpasses*, Recommendation No. 3 *supra* clearly stipulates the need for re-engineering of Junctions/intersections along the Canal Road so as to ensure removal of bottlenecks leading to traffic congestion on these intersections whereas directions no. (iii) and (iv) by this Court in the Judgment *supra* require necessary corrections/modifications of underpasses and re-engineering of junctions.

13. Project feature (ii) (*Storm water/draining chutes and walkways*) is pursuant to Recommendations No. 12 and 13 *supra*. Recommendation No. 12 identifies the need to implement a plan for the cleaning up of the Lahore Canal and improving the water quality of the Canal which is also in line with direction No. (ix) *supra* whereas Recommendation No. 13 mandates a people-centric development of the Canal Road which takes into account the needs of pedestrians and cyclists.

14. With regards to Project Feature (iii) (*Jail Road Underpass*), there can be no cavil that it is in furtherance to the agenda laid out in Recommendation No. 2 *supra* which is to correct to the design of the underpass at Jail Road as currently this incorrect underpass poses a serious traffic safety hazard. This project feature is also in line with direction No. (iii) *supra*.

15. Project feature (iv) (*provision of service roads*) is clearly in accordance with Recommendation No. 4, i.e. construction of service roads with appropriately designed smooth entry and exit points to avoid traffic turbulence and congestion. Direction No. (vii), on the other hand, also supports this project feature.

16. Project feature (v) (*Construction/widening of road by 6 metres for the stretch between Mall Road to Harbanspura Interchange*) entails actual widening by adding a third lane from Dharampura to Harbanspura and 1.3 KM underpass that covers the railway crossings at Chabucha Interchange and Griffin Park.

It is the case of the applicants that this widening and construction of underpass is envisaged and tacitly allowed throughout the length of the Canal Road from Mall Road Underpass right up to Jallo More (sic) vide Recommendations No. 18(1) and 18(2). Widening of road and construction of underpass in the sector falling between

Dharampura to Harbanspura falls within the sector considered by the Mediation Committee under Recommendation 18(1) i.e. the heading “Jallo Mor to Dharampura Underpass” which states that a moratorium on all new commercial activity be placed and draws attention to the ongoing unplanned development and encroachment activity in this sector. It also, however, adds that the Punjab Government has no proposal for the Canal Bank Road or an underpass in this sector but its future planning should be guided by the Recommendation of the Committee.

It is submitted that the widening of the Canal Road between “Jallo-Mor to Dharampura Underpass” and “Dharampura Underpass to Mall Road Underpass” was not specifically discussed in the Recommendations as at that time, the Punjab Government did not have any plans for construction or widening in the said sectors. In light of the above and the overall scheme of the Recommendations and Judgment of this Court, we are of the view that, from the wording used in Recommendations No. 18(1) and 18(2), it is clear that the Mediation Committee was fully conscious of the traffic problems along these sectors and envisioned works in these sectors in the future and therefore since this project feature is in line with the overall Recommendations and directions of this Court, it is allowed provided there is minimal environmental intrusion.

17. Coming now to project feature (vi) (*Construction/widening of road by 6 meters by way of adding a third lane on either side of the Canal for the stretch between Thokar Niaz Beg to Doctor’s Hospital*), Recommendation No. 17 *supra* is of importance. Though it is acknowledged by the Mediation Committee in its Recommendations that the stretch from Doctor’s Hospital to Thokar Niaz Beg is getting increasingly congested because of various housing colonies surrounding this stretch, widening of the Canal Road through addition of a third lane in this stretch was not recommended. Instead, this problem was recommended to be tackled through construction of service roads and by removing trees on the edge of the road for improving earthen shoulders and by providing bus bays at suitable points.

It is however clear from the submissions made by the learned counsel for the applicants (*and documents/information brought on the record*) during the course of hearing regarding this last stretch that the alternatives proposed by the Mediation Committee have been tried and tested and it has become clear that these solutions were not sufficient for relieving the traffic congestion problems in this stretch. From a reading of Recommendation No. 17, it is also clear that there in fact persisted a serious traffic issue in this sector and the only reason why addition of a third lane was not allowed was

because at that time, it was the view of the Mediation Committee that alternative solutions for countering this problem could be successfully employed.

Owing to the sudden transition from three-lane traffic to two-lane traffic from Doctor's Hospital onwards, however, the traffic problems have persisted and addition of a third lane at this point is the only solution to the problem at hand as alternative solutions have also proved futile. On account of the above we are of the view that provided there is minimum environmental intrusion and the Heritage Park is duly protected, addition of a third lane will significantly benefit the people of Lahore by enabling smooth flow of traffic in this stretch which is the purport of the Recommendations of the Mediation Committee and the Judgment of this Court.

18. Having said that, leaving apart the prohibitions and permissions granted in the Judgment, we are making it clear that other than the construction/ widening activities for which permission has expressly been granted herein, the applicant shall not in the future engage in any construction/widening activities along the Canal Road without first applying to this Court and seeking its permission. All activities other than those specified in this opinion are prohibited and barred; no activities shall be construed as being tacitly allowed by the applicant which (activities) have not expressly been permitted. The applicant may, however, carry out repair and maintenance works of the Canal Road.

COMPLIANCE OF THE PROJECT WITH THE PROVISIONS OF THE LAHORE CANAL HERITAGE PARK ACT, 2013

19. While making their submissions regarding whether the Project is violative of the Act, learned counsel for the parties have referred to various provisions of the Act. The relevant Sections whereof are as follows:-

2. Definitions.— In this Act—

(d) “canal tree” means a tree in the Heritage Park

3(5) Subject to subsection (8) and except with prior permission in writing from the Authority, the following acts shall be wholly prohibited in the Heritage Park—

(a) construction or any other infrastructure development work, clearing or breaking up any land for cultivation, mining or for any other purpose;

- (b) felling, tapping, burning or in any way damaging or destroying, taking, collecting or removing any plant or canal tree;*
- (c) polluting water flowing in and through the Heritage Park;*
- (d) hunting, shooting, trapping, killing or capturing of any animal or bird;*
- (e) using firearm or doing any other act which may disturb any animal or bird or acting in a manner which is likely to interfere with the breeding places; and*
- (f) such other prohibitions as the Government may notify in the official Gazette.*

3(8) The permission mentioned in subsection (5) shall be subject to such conditions and in such manner as may be prescribed and while granting such permission, the Authority shall, among other things, take into consideration the following:-

- (a) amenity value of the canal tree;*
- (b) character of the area;*
- (c) necessity of the action;*
- (d) possibility of an affordable alternative;*
- (e) mitigation measures to reduce the impact of reducing canal tree cover;*
- (f) expediency of the proposal or work requiring the felling, lopping, trimming or otherwise cutting of the canal tree; and*
- (g) environmental impact assessment of the proposed activity.*

6(2) The Advisory Committee may also advise the Authority on any other matter ancillary to the discharge of its functions under the Act.

6(3) In the performance of its functions under this Act, the Authority shall take into consideration any advice of the Advisory Committee.

7. Action by the Authority.-(1) The Authority shall take appropriate action on the recommendations of the Advisory Committee within reasonable time and shall communicate to the Advisory Committee the reasons for not accepting any of its

recommendations, and the Advisory Committee may, in the prescribed manner, submit a representation to the Government for appropriate orders.

From the sections reproduced above, it may be seen that per Sub-section (5) of Section 3, construction or any other infrastructure development work in the Heritage Park is wholly prohibited. This prohibition, however, is not absolute and definitive, rather the Sub-section itself clarifies that it (Sub-section 3(5)) is applicable only where permission from PHA has not been sought and that further it is subject to the provisions of Sub-section (8) of Section 3 and has to be read in accordance.

Sub-section 3(8) lays down the factors that have to be taken into account by PHA before it grants permission for any construction activity in the Heritage Park. Sub-section 3(8) read with Sub-sections 6(2), 6(3) and 7(1) read together mandate that permission may only be granted under Sub-section 3(8) after Environmental Impact Assessment and requisite approval from EPA and once Advisory Committee constituted under Section 5 has been consulted.

In the instant matter, through the documents/information produced before us and brought on the record, we have been apprised that Environmental Impact Assessment of the proposed project was conducted and the EPA accorded its approval vide Approval Letter dated 15.12.2014 subject to certain conditions.

Consequent to such approval, the matter was raised before the Advisory Committee which too approved the project in principle with the condition that a sub-committee would be constituted to formulate the Master Plan for Canal Trees Management which is evident from the Minutes of the 6th Meeting of Lahore Canal Advisory Committee held on 27.1.2015. Finally, after seeking approval of EPA as also the Advisory Committee, the matter was put before and approved by the Board of Directors of PHA in its 6th Meeting held on 6.2.2015.

In view of the above we find no merit in the proposition that the Project infringes upon the protections accorded to the Heritage Park vide the Act and find that the applicant is fully compliant with the mandate of the Act.

Before parting with this proposition, we would also comment upon another submission made by the learned counsel for the respondent that per Section 2(d) of the Act, canal tree means any tree in the Heritage Park and therefore each and every tree

which falls within the Heritage Park has to be protected and substitutionary approach cannot be taken; trees in the Heritage Park may be felled provided their replacements are planted elsewhere is not the mandate or purport of the law. As regards the above, suffice it to say that Section 2(d) is a definition clause and it cannot be read in isolation and has read (sic) to be read in conjunction with the substantive clauses of the Act; Section 2(d) is subservient to, dependent upon and must be interpreted/construed in line with Sub-sections 3(5) and 3(8) and therefore we do not find any merit in this submission either.

PROPOSITION NO. 2:

20. We have considered the arguments as mentioned earlier and without in any manner, as has been stated, affecting the ratio of the judgment noted above, we find that the extension and widening of the road partly has provided a proper flow to the transport passing by but at the places where the road is narrowed, traffic congestion takes place. This congestion is undoubtedly against the public good as considerable residential localities have been made across Thokar Niaz Baig and also the main connection to the Motorway is also through the canal bank road.

It is, therefore, the canal bank road which has attained considerable importance and most of the time it has been noticed that the traffic congestion has been experienced not only by the people who have to bring their children to the main city for education, rather as the main hospitals are also in the main city, ambulances also cannot pass through when there is a congestion at the places where the road is narrowed.

The concern of the respondents is only that some trees will be cut and on account of the above, the green areas would be reduced and shrunk significantly impacting the ecology of the area and since the Canal Road is a public trust, the same cannot be tampered with.

We have been apprised that for each tree cut, the government is going to plant ten trees. Not only the above, it is a matter of public knowledge that in the city of Lahore, number of trees have been planted in different parts and on account of such, the environment has improved. Therefore, the cutting of trees would in no way be a hazard to the environment but to disallow such widening in fact is causing great trouble and inconvenience to the public at large and on account of congestions it has become in fact hazardous for the movers/commuters on this very important road; their life quality is being affected. Therefore, there is no reason as to why the applicant should not be

allowed to execute the work and to correct the crooked part of the road i.e. skewed which in fact has become a traffic hazard.

Moreover, with regards to the application of the doctrine of public trust, suffice it to say that as had been settled in the earlier Judgment of this court (*see paras 32 to 35 thereof*), a public trust resource cannot be converted into private use or any other use other than a public purpose and in the instant case the widening of the road to ease traffic congestion and facilitate the commuters was/is a public good. Specifically when a limited area is being affected by the proposed widening/construction to ease the greater problem of bottlenecks and traffic blockages and when the applicant has also undertaken to replace trees, as mentioned above, which are felled as a consequence of the proposed widening to ensure that no adverse ecological impacts are faced, we do not find a reason to deny the request of the applicant.

PROPOSITION NO. 3:

21. We now turn to the argument propounded by the learned counsel for the respondents that the noted Judgment is a consent judgment and, therefore, the applicant is estopped from asking for the widening of the road which was not permitted per the report of the Mediation Committee or Judgment and, therefore, the application should be dismissed on this score alone.

We have pondered over the objection/plea but are of the considered view that the present is not an adversarial litigation between the parties, rather it has genesis in a social action litigation initiated by LBT and this Court in exercise of its powers under Article 184(3) accepted the report of the Mediation Committee and made it part of its Judgment with the consent of the parties. But such consent or judgment does not in any way denude this Court of its jurisdiction in social action litigation to subsequently pass appropriate orders where it becomes imperative and expedient and where information has been provided to the Court which necessitates appropriate orders. From the facts which have come on the record and as has been held by us, we find that on account of limited widening of road, further complications have emerged and in order to cater for those, this Court, leaving apart the consent, does have ample and absolute power and jurisdiction to permit widening for appropriate and justified reasons and for the cutting of 1372 number of trees and use of green belt to the extent of 30.85 acres needed for the Project, therefore, this consent part would not come in the way of the court's empowerment.

Moreover, it may be pertinent to mention here that in the facts and circumstances the rules of acquiescence, waiver, estoppel, past and closed transaction or any other rule having nexus to these concept and theory would not at all be relevant when we are exercising jurisdiction under Article 184(3).

With regards to the contention of the learned counsel for the appellant that since the Judgment was a result of consent reached between the parties, it cannot be reviewed, suffice it to say that we in no way are considering the application before us to be one requiring review of the earlier Judgment of this Court. It is at best a case of re-visiting for the purposes of clarification of the Judgment. Even otherwise, in such public interest litigation, we, having been provided with requisite information, have the inherent power to re-visit our orders/decisions. In such a case, therefore, the rigors of review jurisdiction shall *stricto sensu* not be attracted.

PROPOSITION NO.4:

22. In light of what has been discussed above, we do not find that the Judgment of this Court has been violated warranting criminal action against the applicant. Even otherwise permission for widening/construction to the extent aforementioned has been granted vide this judgment and since contempt is a matter between contemnor and Court, we do not find it necessary or expedient to take any action against the respondents of Crl.O.P.No.96 of 2014.

In view of the above, C.M.A.No.3221 of 2012 is allowed, while Crl.O.P.No.96 of 2014 is dismissed.

MWA/L-2/SC

Order according.

CHAPTER 9

THE ISLAMABAD ENVIRONMENTAL COMMISSION

Shiraz Shakeel vs. Capital Development Authority

Writ Petition No. 1276/2011

before the Islamabad High Court

A. Order dated 20 February 2015 of the Appointment of the Commission

B. Report of the Commission dated 19 October 2015 (without Annexures)

C. Implementation of the Recommendations of the Commission

- 1. Order of the Court dated 16 November 2015**
- 2. Extracts from the Order of the Court dated 30 August 2016**
- 3. Notification of the Implementation Committee dated 16 September 2016**
- 4. Extracts from the Order of the Court dated 23 September 2016**
- 5. Extracts from the Order of the Court dated 4 October 2016**

A. Order of the Court dated 20 February 2015 re appointment of the Commission

Form No: HCJD/C-121.

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.1276 of 2011

Shiraz Shakeel

Vs

CDA, etc

Date of order/proceeding: **20-02-2015**

Ms. Shabana Rafique, Advocate for the petitioner.
Ms. Misbah Gulnar Sharif, Advocate for CDA.
Syed Sajjad Ali Shah, Director Environmental (sic), CDA.
Ejaz-ul-Hassan, Dy. Director, CDA.
Mr. Dilawar Khan, Dy. Director (legal), Pak. EPA.
M. Rashid Cheema, AD.

There are numerous petitions in this Court wherein grievances have been raised relating to inaction on part of the *Environmental Protection Agency* (thereinafter referred to as the "**Agency**") and the *Capital Development Authority* (thereafter referred to as "**CDA**") and failure in fulfilling their respective statutory duties. The inaction on their part and as a consequence the threat to the environment would inevitably cause further destruction and degradation of the environment. It has been observed in several orders passed by this Court in various petitions, that in the past three decades the Capital Development Authority as a regulator appears to have played havoc with the Master Plan by its inaction and at times actively contributing towards the degradation. It, prima-facie, appears that as a Regulator CDA has abdicated its role in safeguarding the rights of the general public and thereby violating its statutory obligations. As if this was not enough, the *Environmental Protection Agency*, despite having its head office located in Islamabad

also appears to have failed in taking action under the Pakistan Environmental Protection Agency Act, 1997 (sic) (hereinafter referred to as the "**Act**"). The protection of environment is not merely a statutory duty of the Agency and CDA but simultaneously a constitutional duty as it has a direct nexus with the right to life.

2. Environmental degradation has devastating effects for human life, plants, wildlife and micro organisms by affecting water, air and land. It is the largest threat facing humanity. The numerous petitions and a visible lack of interest on part of both the Agency and CDA is alarming. It appears that protection of environment is hardly a priority. If left unattended, the ultimate damage will be irreparable. It was in this background that the Agency and CDA were directed to nominate their respective officials to appear before this Court.

3. Mr. Dilawar Khan, Director (legal) appeared on behalf of the Agency in person. He has requested for some time to file detailed comments. It was enquired from the official as to what actions have been taken by the Agency so far pursuant to its statutory obligations to remedy and control the adverse environmental effects within the Federal Capital Territory? The learned counsel for the petitioner pointed out that rainwater ravines have been polluted with raw sewerage and toxic material. Such ravines pass through the entire city but neither the Agency nor CDA has taken any action. It was also brought to the notice of the representatives of Agency and CDA that the rainwater ravine passing through the F-9 Park is a classic example of the apathy on part of the public authorities responsible to protect the environment. Catchment areas are being converted into slums, which is threatening the reservoirs. Unregulated urbanization has become a major cause for degradation of environment. Director CDA Environment also appeared. Both the officials were unable to provide a reasonable explanation for the negligence or inaction on part of their respective organizations. This is not the first time that this Court has observed such indifferent and casual attitude of the Agency and CDA. This is quite an alarming situation and this Court cannot turn a blind eye to it. Unless urgent steps are not taken the environment shall continue to be destroyed and thereby threatening the lives of the citizens and depletion of resources. CDA is misconstruing the provisions of the Pakistan Environmental Protection Act, 1997 by failing to comply with its provisions while approving schemes or making changes in the Master Plan Rules/Regulations.

4. This Court, therefore, constitutes a Commission consisting of environmental experts to investigate into this alarming situation and make

recommendations to stall further destruction and degradation of the environment. The Commission shall be as follows;

- i. Dr Pervaiz Hassan, Sr Advocate Supreme Court of Pakistan.
- ii. Mr Babur Yaqub, Secretary, Cabinet, Government of Pakistan.
- iii. Representative of the International Union for Conservation of Nature, Pakistan ("IUCN").
- iv. Representative of the World Wide Fund for Nature-Pakistan ("WWF").
- v. M/S Saima Ameen Khawaja, Advocate High Court.

5. Dr. Pervaiz Hassan shall chair the meetings of the Commission. The proposed TORs for the Commission are as follows;

- i. To investigate and address the issues of implementation and enforcement of CDA and Environmental Laws, Rules and Regulations in general and in particular development projects with reference change in land use.
- ii. To carry out a review of the Rules and Regulations made or issued under Capital Development Authority Ordinance, 1960 and the Pakistan Environment (sic) Protection Act, 1997.
- iii. Law and procedure for land use and master plan changes.
- iv. Role of public participation in land use change.
- v. Assess the enforcement of such Rules and Regulations identifying policy gaps and practice omissions, if any;
- vi. Make recommendations, if necessary, on amendment of any law, rule or regulation or in policy or enforcement.
- vii. Collection of data of illegal projects in prohibited zones.

- viii. Cost effective and practical solutions to deal with the existing illegal constructions;
- ix. Proposals regarding appropriate governance and management systems and
- x. Related institutional changes and financial strategy.
- xi. How to ensure individual or institutional accountability.

6. The Commission shall enjoy the powers under Order 26 of the CPC in order to achieve the objective of the Commission. It shall have the power to co-opt any person/expert, at any stage and suggest any other TOR. The Commission may seek assistance of any other Government/Department/Divisions through the Cabinet Division and the concerned Department/Division shall render full assistance to the Commission in respect of the above Terms of Reference. The quorum of the Commission shall be three which shall include the Chairperson. The Commission shall regulate its own procedure. Secretarial expenses of the Commission shall be borne by the Federal Government. The Commission may approach this court at any stage to seek appropriate orders for facilitation of their work.

7. It is further directed as follows:

- i. The Director General of the Environmental Protection Agency shall file a detailed report regarding measures taken by the Agency relating to the Federal Capital Territory pursuant to its powers under the Act.
- ii. The Capital Development Authority shall also file a detailed report and, inter alia, explain as under what authority of law changes are being made in the Rules/Regulations or in the Master Plan without complying with the provisions of the Pakistan Environment Protection Act, 1997.
- iii. The Secretary, Cabinet Division shall convene the first meeting of the Commission within three weeks from the date of receiving this order. The Cabinet Division shall be the focal Ministry/Department responsible for facilitating the completion of the proceedings of the Commission.

- iv. This Court expects that the Commission shall complete its proceedings and submit its report preferably within 60 days.
- v. The Cabinet Division shall submit a report after three weeks regarding compliance with this order.

8. This Court has already passed an injunctive order restraining the Capital Development Authority, from changing or altering the Master Plan or its Rules/Regulations as it failed to satisfy this Court that such changes are exempt from compliance with the Pakistan Environment (sic) Protection Act, 1997. The said injunctive order shall continue and shall be subject to the recommendations of the Commission.

9. The Environmental Protection Agency and the Capital Development Authority shall jointly inform the general public, through a public notice published in the leading newspapers, regarding the Commission, inter alia, for soliciting proposals or recommendations and the same shall be placed before the Commission for consideration.

10. The office is directed to club all cases pending before this Bench raising grievances relating to Federal Capital Territory. The office is further directed to fix the cases after three weeks.

11. Copies of this order shall be sent to the Secretary, Cabinet Division through a special messenger. The learned Secretary shall inform the members of the Commission and send notices to the concerned departments i.e. the Agency and CDA, intimating the date of the first meeting of the Commission.

(ATHAR MINALLAH)
JUDGE

B. Report of the Commission dated 19 October 2015 (without Annexures)

IN THE ISLAMABAD HIGH COURT

Writ Petition No. 1276/2011

Shiraz Shakeel

versus

Capital Development Authority

Report of the Islamabad Environmental Commission*

19 October 2015

* The Islamabad Environmental Commission was appointed by the Order dated 20 February 2015 of Mr. Justice Athar Minallah and comprises Dr. Parvez Hassan (Chair), Mr. Arif Ahmed Khan (Vice Chair), Mr. Raja Hasan Abbas, Mr. Mahmood Akhtar Cheema, Mr. Hammad Naqi Khan, Ms. Saima Amin Khawaja, Dr. Abid Qaiyum Suleri, Mr. Maroof Afzal, Dr. Muhammad Khurshid, Mr. Asad Umar, Mr. Zulfikar Haider, Syed Talat Hussain, and Dr. M. A. Baig.

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GLOSSARY

1997 Act	Pakistan Environment (sic) Protection Act, 1997
CADD	Capital Administration and Development Division
CDA	Capital Development Authority
Constitution	The Constitution of Pakistan, 1973
EIA	Environmental Impact Assessment
ICT	Islamabad Capital Territory
ICTA	Islamabad Capital Territory Administration
ICTLGA	Islamabad Capital Territory Local Government Act, 2015
ICT Zoning Regulations	Islamabad Capital Territory (Zoning) Regulations, 1992
IEE	Initial Environmental Examination
IPAB	Islamabad Planning Advisory Board
Islamabad Wildlife Ordinance	Islamabad Wildlife (Protection, Preservation, Conservation and Management) Ordinance, 1979
IWMB	Islamabad Wildlife Management Board
Hospital Rules	Hospital Waste Management Rules, 2005
Master Plan	Master Plan of Islamabad
MHNP	Margallah Hills National Park

NEQS	National Environmental Quality Standards
NIH	National Institute of Health
NUST	National University of Sciences and Technology
Order	Order of the Islamabad High Court dated 20 February 2015
Ordinance	Capital Development Authority Ordinance, 1960
PCRWR	Pakistan Council of Research in Water Resources
PEC	Public Engagement Committee
PEPA	Pakistan Environmental (sic) Protection Agency
PEPC	Pakistan Environment Protection Council
PIMS	Pakistan Institute of Medical Sciences
SDPI	Sustainable Development Policy Institute
TOR	Terms of Reference

Report of the Islamabad Environmental Commission

A. Introductory Note

In 2011, several writ petitions (the “Petitions”) were filed before the Islamabad High Court in respect of the environment in Islamabad in which grievances relating to the inaction and non-performance of the statutory duties by the Pakistan Environmental Protection Agency (the “PEPA”) and the Capital Development Authority (the “CDA”) were raised. It was contended in the Petitions that certain actions and omissions of the PEPA and the CDA had adversely affected the environment of Islamabad.

By its order dated 20 February 2015 (the “Order”) (Annexure A) in Shiraz Shakeel vs. CDA, Writ Petition No. 1276/2011, Mr. Justice Athar Minallah constituted a commission (the “Commission”) and appointed Dr. Parvez Hassan as the Chair of the Commission to investigate the grievances raised in the Petitions and make recommendations to prevent the further “destruction” and “degradation” of the environment of Islamabad.

B. The Commission

1. Terms of Reference

The Terms of Reference (the “TOR”) of the Commission as per the Order are:

- (1) To investigate and address the issues of implementation and enforcement of CDA and Environmental Laws, Rules and Regulations in general and in particular development projects with reference to change in land use.
- (2) To carry out a review of the Rules and Regulations made or issued under Capital Development Authority Ordinance, 1960 (the “Ordinance”) and the Pakistan Environment (sic) Protection Act, 1997 (the “1997 Act”).
- (3) Law and procedure for land use and master plan changes.
- (4) Role of public participation in land use change.

- (5) Assess the enforcement of such Rules and Regulations, identify policy gaps and practice omissions, if any.
- (6) Make recommendations, if necessary, on amendment of any law, rule or regulation or in policy or enforcement.
- (7) Collection of data of illegal projects in prohibited zones.
- (8) Cost effective and practical solutions to deal with the existing illegal constructions.
- (9) Proposals regarding appropriate governance and management systems.
- (10) Related institutional changes and financial strategy.
- (11) How to ensure individual or institutional accountability.

2. Membership

The original membership of the Commission as per the Order was Dr. Parvez Hassan, Mr. Raja Hasan Abbas, Mr. Mahmood Akhtar Cheema, Mr. Hammad Naqi Khan and Ms. Saima Amin Khawaja. The Order enabled the Commission to co-opt other members. The Commission did do this to draw from the governmental ministries and agencies dealing with environmental matters, civil society organizations, public representatives, representatives from the media and the academic/scientific community. The complete membership of the Commission, in the order of its appointment, is:

- (1) Dr. Parvez Hassan, Senior Advocate, Supreme Court of Pakistan
- (2) Mr. Raja Hasan Abbas, Secretary, Cabinet
- (3) Mr. Mahmood Akhtar Cheema, Country Representative, IUCN Pakistan
- (4) Mr. Hammad Naqi Khan, Director General/CEO, World Wide Fund for Nature Pakistan
- (5) Ms. Saima Amin Khawaja, Advocate, High Court

(6) Dr. Abid Qaiyum Suleri, Executive Director, Sustainable Development Policy Institute (“SDPI”)

(7) Mr. Arif Ahmed Khan, Secretary, Climate Change

(8) Mr. Maroof Afzal, Chairman, CDA

(9) Dr. Muhammad Khurshid, DG, PEPA*

(10) Mr. Asad Umar, Member, National Assembly

(11) Mr. Zulfikar Haider, Chief Commissioner, Islamabad Capital Territory (“ICT”)

(12) Syed Talat Hussain, Geo News, Islamabad

(13) Dr. M. A. Baig, Chairman, Environmental Sciences, National University of Sciences and Technology (“NUST”), Islamabad

In recommending the co-opted representation of the heads of CDA, Islamabad Capital Territory Administration (the “ICTA”) and PEPA on the Commission, the Chair was seeking an effective implementation by them of the recommendations of the Commission as may be approved by the Islamabad High Court.

Mr. Arif Ahmed Khan was appointed the Vice Chairman of the Commission at its first meeting.

3. Special Invitees

The Commission invited the following as “Special Invitees” to its meetings:

(1) Mr. Arif Hasan, Urban Planner, Karachi

* Following his attendance of three (3) meetings, Dr. Muhammad Khurshid was appointed, in July 2015, as Director General, South Asia Co-operative Environment Programme (SACEP), Sri Lanka. PEPA was subsequently represented by Mr. Zia Ul Islam.

(2) Dr. Javed Akram, Vice Chancellor, Pakistan Institute of Medical Sciences (“PIMS”), Islamabad

(3) Mr. Shafqat Kakakhel, Chairman, SDPI

4. Meetings

The Commission held its first, second, fourth and fifth meetings at the Cabinet Division, Islamabad on 29 April 2015, 18 May 2015, 29 July 2015 and 14 September 2015, respectively. The third meeting of the Commission was held at the offices of SDPI on 17 June 2015. The sixth, and final, meeting of the Commission was held on 19 October 2015 at the offices of the CDA in Islamabad.

The minutes of the meetings of the Commission on 29 April 2015, 18 May 2015, 17 June 2015, 29 July 2015, 14 September 2015, and on 19 October 2015 are attached as Annexures B/1 to B/6. Copies of the presentations and submissions made at these meetings are attached as Annexures C/1 to C/3.

In the very first meeting, the Chair expressed the hope and expectation that the Commission will develop a consensus in its recommendations to the Islamabad High Court and that its work would be solution-oriented and not confrontational or adversarial in any way.

5. Committees

The Commission appointed the following Committees (the “Committees”) to look at the different environmental and regulatory issues specifically:

(1) Air and Water Pollution

- (a) Dr. Abid Q. Suleri
- (b) Mr. Mahmood A. Cheema

(2) Solid Waste Management (including Hospital Waste)

- (a) Dr. M. A. Baig
- (b) Mr. Arif A. Khan

(3) Encroachments (including Margallah Hills and Rawal Dam)

- (a) Ms. Saima A. Khawaja
- (b) Mr. Hammad Naqi Khan

(4) Legal and Regulatory Framework

- (a) Mr. Maroof Afzal
- (b) Dr. Muhammad Khurshid

(5) Enforcement/Implementation and Capacity Building for Enforcement

- (a) Mr. Raja Hasan Abbas
- (b) Mr. Zulfikar Haider

(6) Public Participation and Accountability

- (a) Mr. Asad Umar
- (b) Syed Talat Hussain

The Chair had suggested that each Report, or “Concept Paper”, of the Committee deal briefly (5-10 pages) with the problems, challenges in implementation and compliance, and, most important, recommended solutions. The recommendations could be time-sequenced:

- (1) for immediate implementation, within 3-6 months
- (2) mid-term, implementation within 1-2 years
- (3) long-term, within 3-5 years.

The Chair provided each member with a Compilation that included, for the assistance of each member, the work and Reports of four (4) previous Commissions of which the Chair was the head:

- (1) Report of the Lahore Canal Road (Tree Cutting) Mediation Committee (2011)¹
- (2) Report of the Lahore Clean Air Commission (2005)²
- (3) Report of the Lahore Solid Waste Management Committee (2004)³
- (4) Report of the Commission on Water Quality and Khewra Coal Mines (1996)⁴

These would give a general idea of the end product, the Final Report of the Commission which will incorporate the work of the Committees.

Some of the Committees submitted their Reports to the Commission along with their findings and recommendations. The submitted Reports are attached as Annexures D/1 to D/2. Other Committees made oral or informal presentations to the Commission.

6. Site Visit

The Commission visited certain sites in Islamabad on 1 June 2015 which was arranged by the CDA. The sites visited by the Commission included:

- (1) F/9 Park
- (2) Steel Industry
- (3) Marble Industry wastes/effluents
- (4) Site for dumping of solid wastes in E-12
- (5) Hospital waste - PIMS

¹ Considered and approved in Cutting Of Trees For Canal Widening Project, Lahore, Suo motu Case No. 25 of 2009, 2011 SCMR 1743.

² Considered and approved in Syed Mansoor Ali Shah vs. Government of Punjab, PLD 2007 Lahore 403.

³ Considered and approved by the Lahore High Court in City District Government vs. Muhammad Yousaf, I.C.A. No. 798/2002.

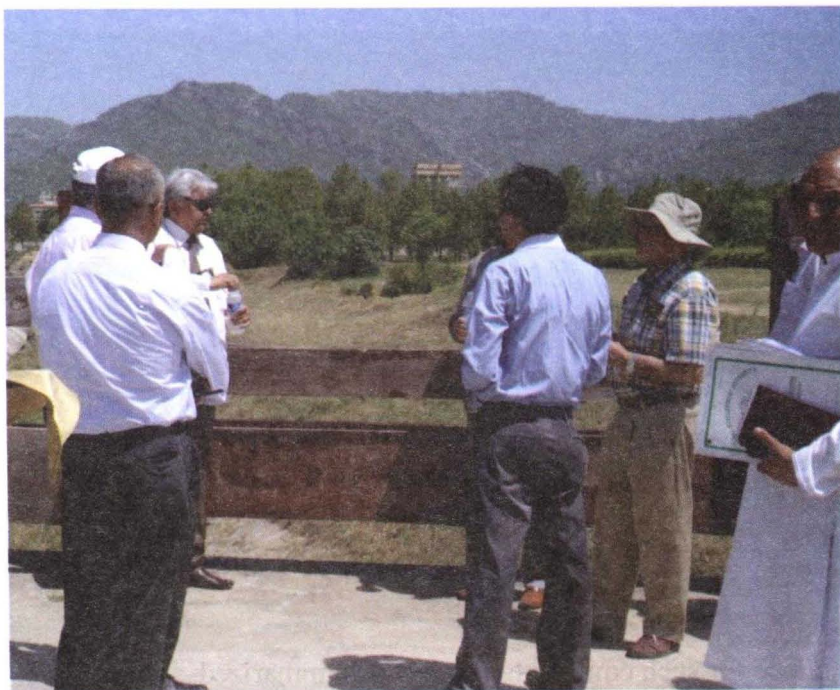
⁴ Considered and approved in the Order of the Supreme Court dated 8 September 2002 in General Secretary, West Pakistan Salt Miners' Labour Union (CBA), Khewra, Jhelum vs. Director, Industries and Mineral Development, Punjab, Lahore (Human Rights Case No. 120 of 1993); see, also, the order of appointment of the Commission in General Secretary, West Pakistan Salt Miners' Labour Union (CBA), Khewra, Jhelum vs. Director, Industries and Mineral Development, Punjab, Lahore (Human Rights Case No. 120 of 1993), 1994 SCMR 2061.



Commission visit to the Industrial Area in Sectors I-9 and I-10



Commission visit to F/9 Park



Commission visit to F/9 Park



Commission visit to dumping site at Sector I-12

7. Public Participation

(1) Public Notice

The Commission requested the comments of the public and announced a public hearing at the Pak-China Cultural Central, Shakarparian, on 17 June 2015. The earlier meeting fixed for 2 June 2015 was rescheduled to 17 June 2015. The notices for the comments of the public and the hearing (and the rescheduling of the meeting) are attached as Annexures E/1 to E/2.

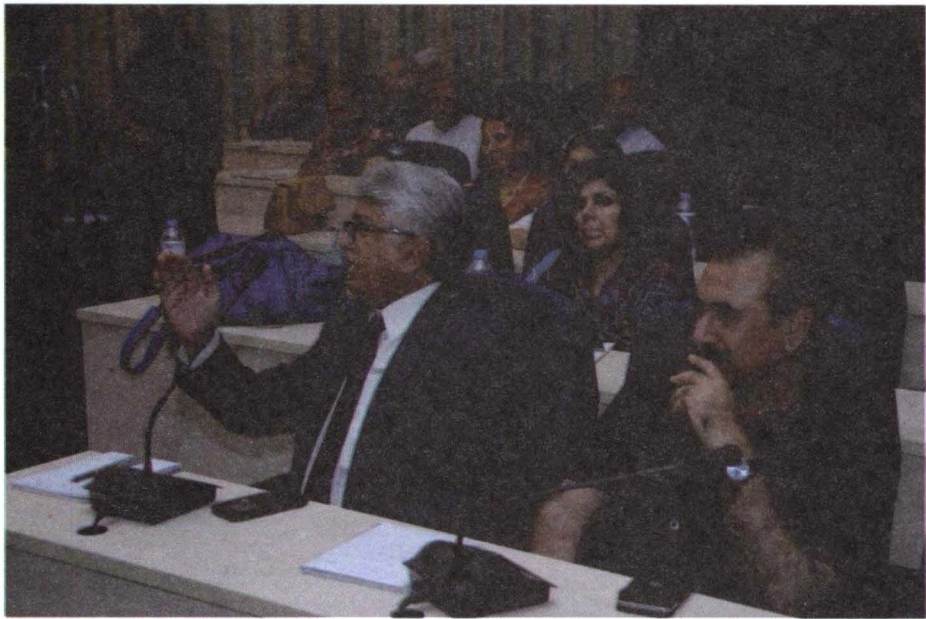
(2) Comments from the Public

The Commission received various comments and suggestions from the public in response to the public notice for such comments. These are summarized, subject wise, in Annexure F/1.

(3) Public Hearing

At the public hearing held at the Pak China Center, Shakarparian, Islamabad, on 17 June 2015 from 4.00 p.m. to 6.30 p.m., attended by over 150 persons, the matters raised included the implementation of laws, encroachments, housing societies, including public participation in decision making and safeguarding the sanctity of the Master Plan. The Commission also received specific recommendations of Green Force through Dr. Dushka H. Saiyid, who attended the public hearing. These recommendations are attached as Annexure F/2. The Commission also received recommendations from Dr. Anis-ur-Rahman, Chairman, Islamabad Wildlife Management Board (the "IWMB"), which are attached as Annexure F/3.





Members of the Commission at the Public Hearing

8. Report of the Commission

(1) The Commission has particularly benefited from two (2) documents pertaining to the environmental challenges in Islamabad:

(a) PEPA (Ministry of Environment), Islamabad, Proposal: Islamabad – The Green City Program (January 2008)

(b) UNHABITAT – Climate Change Vulnerability Assessment of Islamabad (2014)

(2) The maps in this Report were provided by the CDA and the Commission, gratefully, acknowledges this support. The photographs in this Report were provided by the CDA, and Ms. Saima Khawaja and are similarly, gratefully, acknowledged.

(3) An earlier draft of this Report was circulated to all the members. The comments and suggestions, received, and, particularly, the detailed comments of CDA, are reflected in this Report.

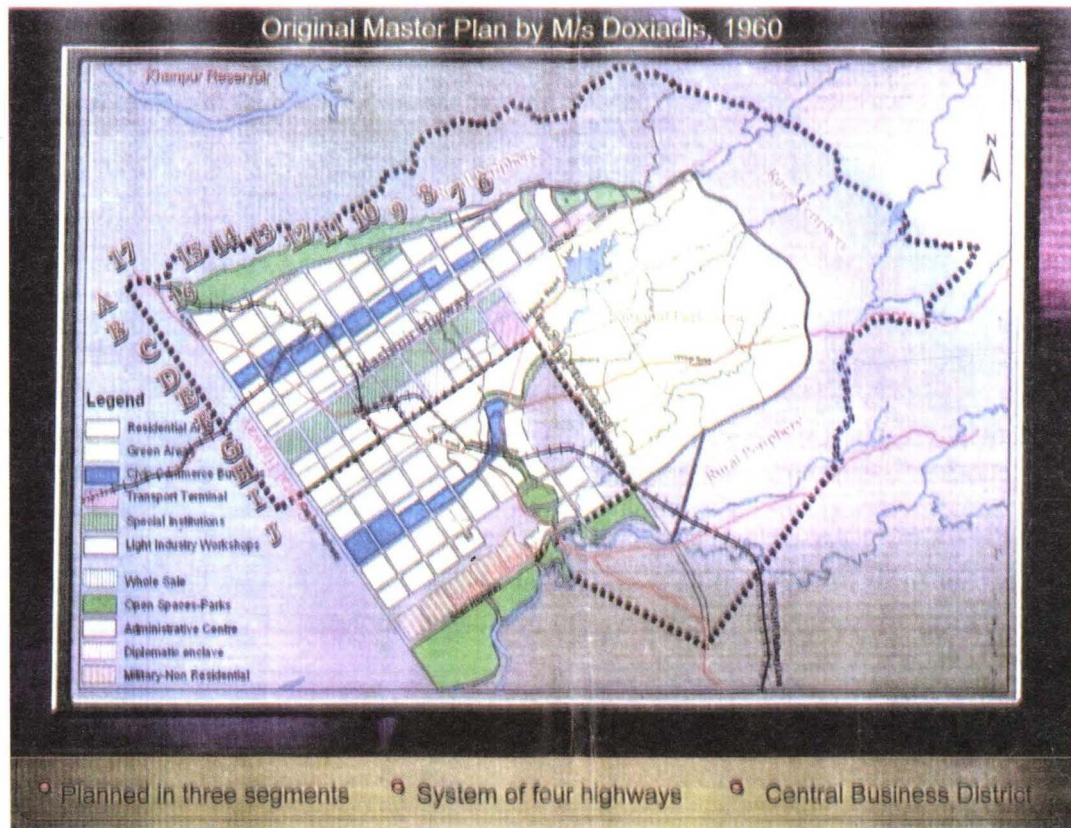
C. Islamabad

1. Founding⁵

Islamabad is the capital city of Pakistan situated within the ICT. It is located in the northeast of the country, on the Potohar Plateau, and ranges of between 457-610 meters above sea level.

Unlike the other cities in Pakistan, Islamabad is a planned city. The site for the city was designated in 1959 and the master plan (the “Master Plan”) of the city was developed by a Greek firm, Doxiadis Associates. This Master Plan divided the metropolitan region into three zones: Islamabad itself (Zone 1); the national park area (Zone 2); and Rawalpindi and its surrounding cantonment (Zone 3).

⁵ This Section and the succeeding Sections on Population and Administrative Handling have drawn, generally, from UNHABITAT – Climate Change Vulnerability Assessment of Islamabad (2014). An Abridged Version of this Report is also available, UNHABITAT, Cities and Climate Change Initiative: Islamabad, Pakistan – Climate Change Vulnerability Assessment (2014).



Original Master Plan of Islamabad

Islamabad is an ethnically diverse metropolis in the country with communities from all of Pakistan's major ethnic groups. The city has the highest literacy rate in Pakistan at 73%.

Moreover, Islamabad has the largest foreign population in the country. The city is also growing as a business and commercial center, attracting highly-skilled workforce from all over the country. Also, all of the country's diplomatic ties are maintained and exercised from Islamabad, as all major embassies, consulates, missions and Pakistan's Foreign Office operate from the city.

2. Population

In 1998, the year of the last census, Islamabad's population was 805,235 with 434,239 men and 370,996 women. The urban population of the city was 529,180 while the rural population was 276,055. The average annual population growth rate from 1981-1989 was 5.2%. In 2011, the population was projected to have reached 1.7 million. This demographic surge has, undoubtedly, overwhelmed the planning and management agencies.

3. Administrative and Regulatory Handling

The administrative boundaries of the city and district are established by the Ordinance. The Ordinance also assigned the management of the capital area, including the nearby city of Rawalpindi, to the CDA. However, subsequent legislation has seen the creation of new managing institutions and as a result of which there are currently three (3) main agencies charged with some aspect of development and administration in Islamabad. Each of these is discussed below. The PEPA is also mandated an important role in the environmental management of Islamabad.

(1) Capital Development Authority

Under the Ordinance, the CDA has the power to perform all functions required to implement the Master Plan. The CDA works under the Cabinet Division of the Federal Government and is mainly tasked with land management, development, control and the provision of municipal services.

(2) Islamabad Capital Territory Administration

The Islamabad Capital Territory Order, 1980, created the ICTA and in 1981 conferred on it all the powers and duties for the administration of the overall ICT areas including Islamabad. The management of rural areas was transferred from CDA to the ICTA. In this way, ICTA manages the majority of the rural areas and CDA continues to manage the urban area. However, there is still substantial jurisdictional overlap and as a result,

policy implementation and zoning enforcements have deteriorated and illegal encroachments and incompatible land-uses proliferated. The ICTA is mandated to administer matters relating to land, revenues, food, law and order, civil defence, co-operatives, transportation, population, housing, women's development, labour, social security and some infrastructure, mainly in rural areas.

(3) Capital Administration and Development Division

The Constitution (Eighteenth Amendment) Act, 2010 (the "2010 Amendment Act") deleted the Concurrent Legislative List. Resultantly, several subjects were transferred to the exclusive competence of the provinces. This led to the abolition of several federal ministries for the transfer of their functions to the provinces. To deal with the functions and activities of the devolved ministries specific to Islamabad, a new division named the Capital Administration and Development Division (the "CADD") was created in March 2011. The CADD was vested with the mandate to execute, within the jurisdiction of ICT, all such functions handled by the abolished ministries and divisions and such other functions as allocated to it from time to time. As such, CADD was conceived to be the sole administrative agency for service delivery in education, health and special education sectors within the ICT. However, the Federal Government subsequently "revived" some old Ministries under a new nomenclature such as the Ministry of Education and Professional Training and Ministry of National Health Services. The Ministry of Climate Change was also a result of this decision of the Federal Government in areas where overall federal co-ordination is required. The Federal Government has recently recommended abolishing CADD as the Ministry of Education and Professional Training as well as the Ministry of National Health Services have been revived and made functional.

(4) Pakistan Environmental Protection Agency

In addition to the above three (3) Ministries/agencies handling the administrative matters in respect of Islamabad, PEPA also has direct responsibilities under the 1997 Act to protect the environment in Islamabad.

4. Zoning Distribution of ICT⁶

Presently, the ICT is divided into five (5) zones as follows:

Zone 1: It covers an area of 22,332 ha (55,162 acres). This zone constitutes the sectors up to the existing alignment of the G. T. Road from the point of intersection of G. T. Road with Shahrah-e-Kashmir to the point of Nicholson Monument near B-17 in the west, inclusive of sector H-14, G-15, G-16, G-17, I-14, I-15, I-16 and I-17. It is the most organized and well-developed part of Islamabad.

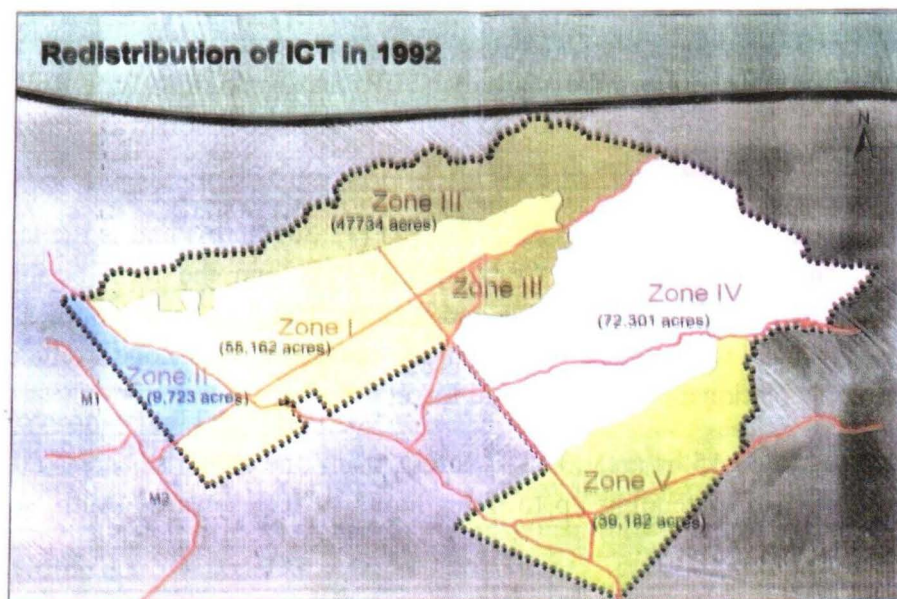
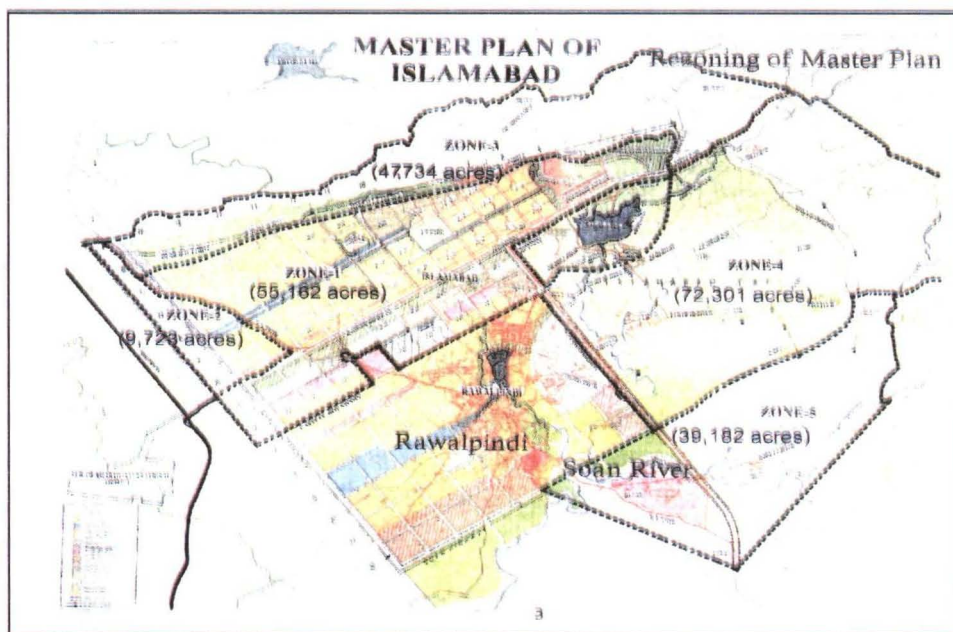
Zone 2: With an area of 3,936.43 ha (9,723 acres), is connected with Zone 1 and enjoys a prime location. This zone consists of area bounded by G-T road in the north and north-east, north of Shahrah-e- Kashmir and capital limits in the west, comprising of residential sectors G-15 (part), G-16, G-17, F-15 (part), F-16, F-17, E-15 (Part), E-16, E-17, D-16, D-17, C-17 and B-17.

Zone 3: It covers an area of 19,325.5 ha (47,734 acres) and is one of the most beautiful areas of Islamabad. Margallah Hills National Park as notified under Section 21 of Islamabad Wildlife (Protection, Preservation, Conservation and Management) Ordinance, 1979 (the "Islamabad Wildlife Ordinance"), other protected ranges, forest areas and un-acquired land falling between the Margallah Hills and north of Murree Road are parts of this zone. Tourist attractions like Daman-e-Koh, Peer Sohawa, Rawal Lake and Shakarparian are located in this Zone.

Zone 4: It spreads over an area of 29,271.65 ha (72,301 acres) and is the largest zone of Islamabad. This Zone comprises of Islamabad Park and the rural periphery wedged between Murree Road towards north and Lehtar Road towards south and extending beyond Simly Road up to the ICT limits in the northeast. This Zone excludes the part of Margallah Hills National Park and Rawal Lake.

Zone 5: With 15,863.15 ha area (39,182 acres), this Zone comprises areas falling south of Islamabad Park and extending up to outer limits of ICT towards south, southwest and southeast.

⁶ Based, generally, on Regulation 3 of the Islamabad Capital Territory (Zoning) Regulation, 1992.



Maps showing the five (5) Zones of Islamabad

D. Legal and Regulatory Framework

1. Legal Framework

The 1997 Act is the basic legislation that dealt with environmental protection in Pakistan. The subject of “environment” is now within the domain of the provinces after the passing of the 2010 Amendment Act. However, the 1997 Act, with its regulatory regime and the institutional framework of PEPA, continues to apply to Islamabad.⁷

The 1997 Act is a comprehensive legislative document and its salient features include:

- (1) establishment of the PEPA (Section 5) and the Pakistan Environmental Protection Council (the “PEPC”) (Section 3);
- (2) prohibition on discharges and/or emissions in excess of the National Environmental Quality Standards (the “NEQS”) established by the PEPC or other standards established by the PEPA (Section 11(1)) and levying a pollution charge by the Federal Government on persons not complying with the NEQS (Section 11(2));
- (3) introducing a two-stage environmental screening process for proposed projects involving the filing of either an Initial Environmental Examination (“IEE”) or, for projects likely to cause an adverse environmental effect, a comprehensive Environmental Impact Assessment (“EIA”) (Section 12);
- (4) prohibition on the import of hazardous waste (Section 13);
- (5) handling of hazardous substances has been prohibited except under license (Section 14);

⁷ Article 142(d) of the Constitution provides that the Parliament shall have exclusive powers to make laws regarding all matters pertaining to those areas that do not fall under any of the provinces. As ICT does not fall in any province, all the federal legislations continue to apply to ICT.

(6) authorizing PEPA to give directions that motor vehicles shall install such pollution control devices or use such fuels or undergo such maintenance or testing as may be prescribed in order to ensure compliance with the NEQS (Section 15);

(7) empowering PEPA to issue an Environmental Protection Order (the “EPO”) to deal with an actual or potential adverse environmental effect in violation of the provisions of the 1997 Act (Section 16);

(8) imposition of penalty on the contravention or failure of complying with the substantive provisions of the 1997 Act (Section 17);

(9) constitution of Environmental Tribunals with exclusive jurisdiction to try serious offences under the 1997 Act (Section 20) while minor offences relating to pollution by motor vehicles, littering and waste disposal and violation of rules and regulations to be tried by Environmental Magistrates (Section 24); and

(10) provision of a comprehensive appeal process (Sections 22, 23 and 25).

Beyond the 1997 Act, the Forest Act, 1927, is another legislation that “protects” the forests. Even though forestry is purely a provincial subject under the Constitution of Pakistan, 1973 (the “Constitution”), the provisions of the Forest Act, 1927, however, continue to apply to Islamabad under Article 142(d) of the Constitution.

2. Regulatory Framework

A regulatory framework has also been developed to complement the legal framework. The regulatory framework evolved under the 1997 Act includes:

(1) the Pakistan Environmental Protection Agency (Review of IEE and EIA) Regulations, 2000, which govern the granting of approval of projects, including the projects in Islamabad;

(2) the Environmental Samples Rules, 2001, which empower PEPA, and the other provincial Environmental Protection Agencies (the “EPAs”), to enter and inspect any place, machinery or equipment, take samples and have them analyzed for ensuring that the limits and procedures set by the 1997 Act are adhered to;

(3) the NEQS, including the National Environmental Quality Standards for Ambient Air (Ministry of Environment’s SRO 1062(I)/2010), which restricts the air emissions and effluents of the industrial facilities, and the National Environmental Quality Standards (Self-Monitoring and Reporting by Industry) Rules, 2001, which require the industrial units to submit self-monitoring reports regarding compliance with the NEQS for liquid effluents and gaseous emissions; and

(4) the Pollution Charge for Industry (Calculation & Collection) Rules, 2001, which empower PEPA to levy a pollution charge as per Section 11 of the 1997 Act.

The regulatory framework also includes the Hospital Waste Management Rules, 2005 (the “Hospital Rules”), which provide that the hospitals shall be responsible for the proper management of the wastes generated by them till the final disposal as per the provisions of the 1997 Act and the Hospital Rules.

3. Islamabad-specific Legislation and Policies

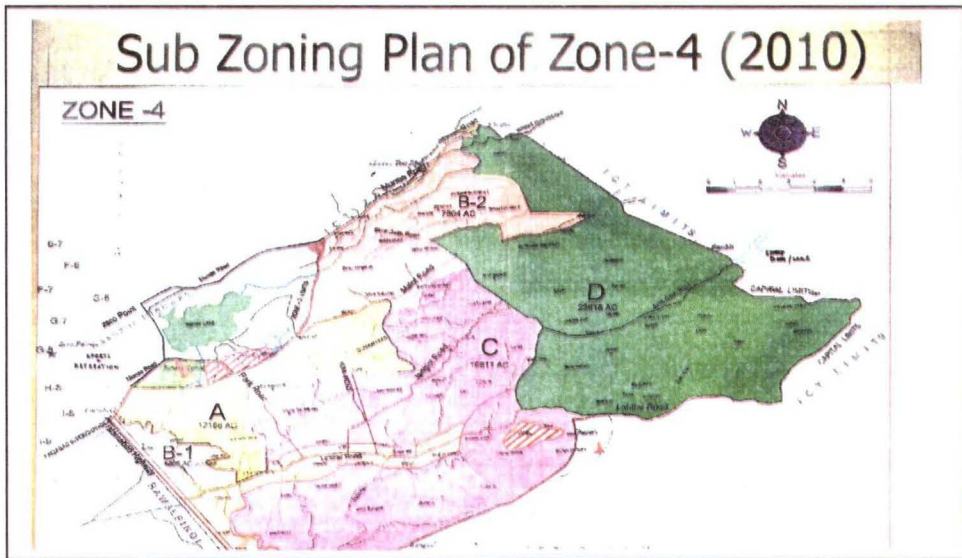
Beyond the comprehensive legal and regulatory framework, there are several Islamabad-specific legislations and policies that seek to protect and promote environmental efforts in Islamabad. These include:

(1) the Islamabad (Preservation of Landscape) Ordinance, 1966, which provides that no act of removal, alteration, damage or destruction shall be done that adversely affects the landscape of Islamabad;

(2) the Islamabad Wildlife Ordinance and the Islamabad Wildlife (Protection, Preservation, Conservation and Management) Rules, 1983, which provide the details of

the lands constituting the Margallah Hills National Park and prohibits the disturbance of wildlife habitat including soil disturbance;

(3) the Islamabad Capital Territory (Zoning) Regulations, 1992 (the “ICT Zoning Regulations”), which provide for the delineation of the different zones in Islamabad and control the development projects in them, and CDA’s SRO 1105(I)/2014 dated 10 December 2014 amending the ICT Zoning Regulations for Zone 4 and sub-dividing it into four (4) sub-zones, namely, A, B, C and D. This notification defines the land use in each sub-zone;



Map showing four (4) sub-zones of Zone 4

(4) the Islamabad Residential Sectors Zoning (Building Control) Regulations, 1993, which govern the construction of buildings and houses in Islamabad; and

(5) the Capital Development Authority (Environmental Protection) Regulation, 2008, which provide for the formation of a CDA Environmental Protection Committee to enforce and implement these regulations for the protection of the environment of Islamabad.

4. Other Islamabad-specific Directives and Notifications

The following directives and notifications have also been issued specifically for the protection of Islamabad's environment:

(1) Prime Minister's Directive on Preservation of the Margallah Hills National Park, Islamabad dated 20 April 1991.

(2) Government of Punjab's notification No. V(I&MD)8-11/91 dated 22 June 2001 declaring an area of one thousand (1,000) yards from ICT boundaries extending into Rawalpindi district of Punjab as buffer zone/prohibited area for mining and crushing of minerals of any kind for preservation of the environment.

(3) PEPA's notification No. 4(16)/2001-Dir (EIA) dated 26 September 2001 highlighting the quarrying and crushing activities in the Margallah Hills National Park.

5. Non-Implementation of Laws and Policies

The Commission found that, generally, a satisfactory legal and regulatory framework exists for the protection of the environment of Islamabad. It presently provides an adequate basis to proceed. The challenge has been that these laws and regulations are not properly implemented or enforced by the Federal Government, CDA, PEPA and ICTA. Other reasons for the ineffective implementation include the lack of public awareness, the non-functioning of some of the Environmental Tribunals and Environmental Magistrate, and a lack of an adequate and well-trained capacity for environmental governance.

The Commission resisted the attempt to propose new legislation(s) and regulations when the existing laws and policies are generally not implemented. It recommends "implementation" as its most important recommendation for the future of Islamabad.

Implementation requires the commitment to developing a capacity and the political will. This will need capacity building and resource allocation. The backbone of an appropriate architecture for environmental protection is the EIA. This basic environmental tool has not been used effectively. Government projects routinely ignore this requirement and when compliance is contested, it turns out that the whole exercise of approval did not comply with the essential requirements of transparency and public participation. Instead, as pointed out in a recent judgment of the Lahore High Court in Imrana Tiwana vs.

Province of Punjab⁸, such approvals are not professionally handled but are an extension of government policy dictated to the approving EPA.

That the Federal Government and the agencies continually disregard the letter and spirit of the laws and policies with respect to Islamabad can be shown by the following examples:

(1) The Master Plan of Islamabad is a solemn document that should have been respected and followed. Although the Master Plan is and should be a living document, the Governments from time to time amended/modified/breached it without providing a transparent process for its changes/modifications. Some of the major violations of the Master Plan are listed in Annexure G.

(2) Major projects are developed and approved in Islamabad without an IEE and EIA. Even the IEE/EIA approvals are tainted by the doctrine of “regulatory capture” as per the decision of the Lahore High Court in Imrana Tiwana vs. Province of Punjab⁹.

(3) Zone 3 comprises the most beautiful “nature” area of Islamabad. Even this Zone has, as shown in Annexure G, been subjected to the following violations:

- (a) Transfer of area for Quaid-e-Azam University from Zone 3 to Zone 1 and is evident at Sector G-2, G-3 & F-1, F-2 & F-3.
- (b) Construction of Monal, Capital view, La’muntana restaurants at Pir Suhawa and Kashmir Wallas restaurant at Daman-e-Koh violated Regulation 4(3)(b) of the ICT Zoning Regulations which states with respect to Zone 3 that “no change in land-use will be permissible except for preservation, afforestation and recreation....”.
- (c) Shifting of Parade Ground from Parade Avenue to Zone 3 with widening of roads and construction of China Friendship Centre in Shakarparian area is also a violation of Regulation 4(3)(b) of the ICT Zoning Regulations.

⁸ PLD 2015 Lahore 522; Although the decision of the Lahore High Court has been reversed, on appeal, by the Supreme Court of Pakistan in Lahore Development Authority vs. Imrana Tiwana, C.A. Nos. 545-550 of 2015, the analytical formulation of “environmental justice” by the Lahore High Court will resonate for a long time in the jurisprudence of Pakistan.

⁹ Id.

- (d) Construction near D-12 within the boundaries of Margallah Hills National Park is violation of Regulation 4(3)(e) of the ICT Zoning Regulations that states “no construction of house shall be allowed”.
- (e) Development of hotels along Murree Road including Best Western, Hotel Embassy lodges, Islamabad Club, Golf Course, Grand Regency, Dreamland and Park Palace.
- (f) Prominent development of Housing schemes in Zone 3 near Rawal Lake, that is Rawal Town, Orchard Scheme and part of Bannigala and new project of Chairlift from Daman-e-Koh to Pir Sohawa (violation of Regulation 4(3)(a-e)) of the ICT Zoning Regulations.
- (g) Expansion of rural settlements in Maragallah Hills National Park is evident and violates Regulation 4(3)(d) of the ICT Zoning Regulations that restricts the expansion of rural settlements.
- (h) Setting up of FECTO Cement plant near Margallah Hills National Park in 1985 is also a violation of the original Master Plan.

(4) Similarly, the ICT Zoning Regulations regarding Zone 4 have also been violated, as highlighted in Annexure G. Even though construction of agro farming and residential housing schemes is allowed in Zone 4 under the provisions of ICT Zoning Regulations, there are many schemes that have been constructed without getting the required approval from the CDA.

(5) The Supreme Court, in Suo motu Case No. 10/2007 (Increased Prices of Daily Commodities)¹⁰, had highlighted the irregular and unplanned construction in Zone 4 and the non-facilitating attitude of the CDA regarding approvals for construction on private land, which led to the irregular construction. Through its order dated 24 January 2008, the Supreme Court gave the following directions to CDA:

- (a) The Gazette of Pakistan Notification SRO 670(I)/2007 shall be implemented in letter and spirit and land owners in Zone 4 Islamabad shall be facilitated in getting

¹⁰ PLD 2008 Supreme Court 673.

necessary approvals for development construction on the private land falling within the purview of notification referred to above.

- (b) The building bye-laws of CDA shall be made applicable to Zone 4 with necessary and suitable amendment as per need of the area and shall be published in the Electronic and Print Media for information of public in general within one month.
- (c) The existing abadies and construction in Zone 4 either residential or commercial, raised in violation of bye-laws and rules referred to above shall be regulated in a proper manner by the CDA with the consultation of Rural Development Department of ICT and representatives of union councils.
- (d) Subject to the bye-laws and building regulations and approved site plan by the CDA, the private land owners in Zone 4 Islamabad shall be allowed to raise residential and commercial construction like other areas and Zones of Islamabad.
- (e) The land which is surrendered by abadies or which cannot be utilized for Farming shall be allowed for the construction of housing colonies and commercial buildings by preparing regular Scheme to avoid irregular construction of houses, plazas and shops in the area.
- (f) The provision in respect of the size of farm houses of 20 kanals shall apply only to the CDA owned land and shall have no application to private land. The private land-owners in Zone 4 shall be entitled to establish Agro Farm of minimum size of 4 kanal and can also utilize/develop their land for any lawful purpose including the construction of houses and commercial buildings subject to the bye-laws and regulations as well as approved site plan from CDA.
- (g) In the light of the above directions, the CDA shall amend the rules accordingly to bring the same in consonance to the purpose of CDA Ordinance and to the spirit of law and Constitution.

The CDA, in light of the order of the Supreme Court in in Suo motu Case No. 10/2007 (Increased Prices of Daily Commodities)¹¹, amended the ICT Zoning Regulations but these amendments were not notified in the official Gazette at that time. This was done in

¹¹ PLD 2008 Supreme Court 673.

2014 by SRO 1105(I)/2014 dated 10 December 2014 to result in the sub-division of Zone 4 into four (4) sub-zones with each sub-zone having defined parameters and land uses. However, many unauthorized housing and agro farming schemes still exist in Zone 4. List of unauthorized housing and agro farming schemes is attached as Annexure H.

(6) Reserved Forests Nos. 31 and 33 have been converted to residential sectors C-13, C-14, Margallah Road has been constructed in Sectors C-13, C-14 and more roads are planned in violation of the Forest Act, 1927.

(7) The ICT Zoning Regulations have been violated by (a) excluding Reserved Forests RF 31 and 33 from Zone 3; (b) large-scale selling/purchasing of land entailing change in land use with construction underway at many sites; and (c) planning of developing housing schemes.

E. Recommendations

The Commission has broad TOR and it would be within its competence to recommend numerous measures in all the fields that impact on the environment and environmental justice. But the Commission has refrained from giving a long wish list. Instead, it has focused on what is doable and must be done immediately if the future environmental harm to Islamabad is to be prevented. If the urgent measures recommended by the Commission are timely implemented, it would provide a good basis to strengthen these measures by a consideration of the several other matters covered and discussed by the Commission.

The Recommendations are time-sequenced as follows: (1) the Priority Recommendations require an immediate implementation, and (2) the Other Recommendations cover a period of 2-3 years. All the TOR are covered by both the Recommendations.

The process of implementing the Recommendations would be as important as the measures to be implemented. There has to be a paradigm shift in the mind-set of the Government and its Ministries and agencies that all measures, policies and actions should be “common-man” centric and should involve, in their undertaking, transparency, access to information, public participation, and good governance grounded on the doctrine of public trust.

The specific recommendations are:

1. Priority Recommendations requiring Immediate Action

(1) Sanctity of the Master Plan of Islamabad: Safeguards against “arbitrary” changes and encroachments

The Master Plan of Islamabad was prepared during the 1960s. Over the years, it has been changed/modified/violated without a due process that respects transparency, public participation and good governance. Annexure G catalogues the violations of the Master Plan, many resulting from “arbitrary” decisions. It is not the purpose of the Commission to criticize the shortcomings and mistakes of the past; instead, we want to focus on how these will be prevented in the future. A Master Plan, of necessity, is a “living document” and must have the resilience to adapt to new emerging needs. But there must be a well-defined and transparent process for such changes. We propose that:

- (a) The Ordinance provisions on the Master Plan should be amended to provide (a) transparent process for its amendments/changes; and (b) the process should highlight access to information, meaningful public participation and good governance grounded on the doctrine of public trust.
- (b) The present process of final approvals by the Federal Cabinet should, by an amendment in the Ordinance, be preceded by the prior approval of the amendments/changes by a Islamabad Planning Advisory Board (“IPAB”) to the CDA comprising relevant governmental representatives, eminent urban planners, engineers, architects, academics, landscape specialists, horticulturists, botanists, zoologists and civil society organizations. Organization such as Pakistan Engineering Council and Pakistan Council of Architects and Town Planners should be considered for ex officio representation. The approval of IPAB should be by two-third ($2/3^{\text{rd}}$) or three-fourth ($3/4^{\text{th}}$) majority to include the support of the private sector representation.
- (c) Although the Commission prefers the proposal in (b) above, an alternative would be to require that the amendments in the Master Plan be approved by the National Assembly and the Senate standing committees dealing with the issues of ICT before recommending the same to the Federal Cabinet.

- (d) The process should include a wide public dissemination and public hearings. The public hearings must be informed about the views of IPAB and any dissent to such views.
- (e) The amendments made by CDA in the ICT Zoning Regulations in 2010, and notified in the official Gazette in 2014, regarding Zone 4 and the unauthorized housing, and agro farming schemes, should be rationalized in accordance with good governance in consultation with IPAB.
- (f) All violations in relation to the Master Plan and the ICT Zoning Regulations should be categorized and assessed by IPAB. The violations, which are hazardous to environment, unsustainable and inconsistent with the public interest and hindrance to future planning of the zone, may be removed to the extent needed. Strict action against the encroachers and illegal development activities should be taken to stop further degradation.

(2) The requirements of Environmental Impact Assessment must be complied as per the law

- (a) The EIA requirements of the 1997 Act for all private and public projects should be complied. The Government has to lead, by example, for its projects.
- (b) The approval of such EIAs by the PEPA should be independent and fully comply with the requirements of access to information, public hearings, due process as laid down in the Lahore High Court Judgment in Imrana Tiwana vs. Province of Punjab¹².
- (c) Immediate steps, including budgetary allocations, need to be made for building the capacity of the PEPA to undertake and approve EIAs. Such capacity building may be considered with the EPA/Agencies of a country such as the U.S. or U.K. that has a well-developed regime of EIA evaluation. Or, the EU may be approached for such technical support.

¹² See supra note 8.

(3) Landfill Site

It is not believable that Islamabad should, in its fifty (50) years, not have a proper landfill. All the solid waste of Islamabad is dumped on an ad hoc site in E-12 visited by the Commission. Disposal is also being done in I-12 on I.J.P. Road by CDA and at various places along Korang River, Swan River, Bara Khau, Tarlai and many more dumping sites of non-Municipal Service residential area (Zones 2, 3, 4 and 5).

For the selection of a proper landfill, the Commission supports the determination by CDA of the following two (2) sites:

- (a) Site 1 measures approximately 200 acres and is located 2-3 km from the G.T. Road on Kallar Rawat Road approximately 3 km short of proposed Rawalpindi dumping site.
- (b) Site 2 is located on Kallar Sydan Road, at approximately 4-5 km.

One (1) of the above may be decided by the CDA after an EIA. The process and the time schedule for such determination must be submitted by the CDA to the Islamabad High Court within three (3) months of this Report.

(4) Complete Ban on Encroachments of Green Belts/Parks

The Islamabad High Court should impose a complete ban on encroachments of the green belts and parks of Islamabad included in the Master Plan. CDA should also be directed to remove all the encroachments from the green belts and parks.¹³

(5) Margallah Hills National Park (“MHNP”)

To protect MHNP and the “nature” of Islamabad, the Commission recommends the following:

- (a) Implement the management plan of MHNP along with a ban on development of housing schemes and other construction works in MHNP, in particular, and Zone 3, in general, and cancel NOCs, if any. However, to the extent of privately-owned

¹³ See comments of CDA on this proposal in Annexure I.

lands, strict building regulations are to be enforced and restrict the land use in the area. The sale/purchase of land should also be regulated to prevent change in land use.

- (b) Re-demarcate Zone 3 (MHNP Buffer Zone) with the inclusion of all forested lands (Government, reserved and private lands). Protection of buffer zone is essential for protection and preservation of the Margallah Hills. The CDA has conducted a study which recommends a five (5) km buffer zone all around the hills.
- (c) No services, that is electricity, gas or water supply, should be provided to those projects/housing schemes that do not obtain a prior approval of the CDA for such projects/housing schemes.
- (d) Include all villages in the MNHP a part of the MHNP through legislation after which the boundaries of the MHNP should be clearly demarcated and such map made public.
- (e) Manage and regulate tourism in MHNP. Uncontrolled traffic through the MHNP is adversely affecting the ecosystem of MHNP. Steps should be taken to control pollution caused by vehicles by charging a heavy toll on private vehicles. Income from the collection of such toll can be used for the better maintenance of the MHNP. Also, a sightseeing bus should be introduced which runs at regular intervals through MHNP to discourage the use of private vehicles.
- (f) Stop construction of new roads and repair existing roads. Efforts should also be made for the recovery of vegetation in the western section of the MHNP.
- (g) The ICT Zoning Regulations should be displayed and publicized widely. Heavy penalties should be imposed on the violations of the ICT Zoning Regulations.¹⁴

¹⁴ For comments of CDA on the proposals re MHNP, see Annexure I.

(6) Building Capacity for Enforcement for Environmental Compliance

The protection of the environment and the promotion of sustainable development require more than writing laws. A provision in the laws about IEEs/EIAs is of no use if we do not have the professional and technical ability to conduct and evaluate such assessments. Setting environmental quality standards for industrial emissions and effluents can make a difference only if the EPAs have the laboratories and equipment and technical administrators to police such standards. There is also an urgent need to particularly build the requisite capacity for the monitoring of the hospital wastes.

In order to ensure effective implementation, there must be present the requisite capacity to undertake such implementation. Therefore, the Commission recommends that immediate steps, including budgetary allocations, should be taken to increase the present capacity of the institutions tasked with ensuring environmental compliance and its monitoring.

Another major recommendation in this Report is about the empowerment/independence/capacity building for environmental compliance, particularly of the PEPA, and the independence of its Director General. In this respect, PEPA needs to be effectively upgraded and be made fully autonomous. Its Director General should be empowered to act independent of the Government; this may be done, among others, by his/her appointment with the concurrence of a body such as IPAB or a Parliamentary Committee (see Recommendations (b) and (c) of (1) Sanctity of the Master Plan of Islamabad: Safeguards against "arbitrary" changes and encroachments under 1. Priority Recommendations requiring Immediate Action) for fixed terms of four (4) or five (5) years.

(7) Effective use of EPO by PEPA

Section 16 of the 1997 Act empowers PEPA to issue an EPO to prohibit an actual or potential adverse environmental effect, to prevent the violation of the rules and regulations or the violation of any of the substantive provisions of the 1997 Act. By issuing an EPO, PEPA has the power to prevent, stop or lessen the harm done to the environment of Islamabad by directing the persons/industries to stop/remove/dispose of the effluent, waste, air pollutant, noise, or hazardous substances and/or restore the environment to the condition prior to such removal or disposal as may be reasonable in the circumstances. PEPA has exercised this power and issued only three (3) EPOs to

polluting industries; however, this power should be used frequently and effectively by PEPA to enforce NEQS and regulate persons/industries to prevent further harm to the environment.

(8) Housing Societies to develop their own waste management system

The housing societies must develop their own waste management regimes and in no case be allowed to dump their wastes on public grounds or public waters. To eliminate the degradation of water quality in the F/9 Park, the housing societies and housing colonies in Sectors E-8 and E-9 should, particularly, be given three (3) months to make satisfactory wastewater treatment and disposal arrangements. Strict action must be taken against the violations after the said three (3) months.

(9) Implementation Committee

The Islamabad High Court may consider the setting up of a small Implementation Committee to oversee the implementations of the recommendations of the Commission. Such a committee was formed in the Lahore Clean Air Commission in Syed Mansoor Ali Shah vs. Government of Punjab, PLD 2007 Lahore 403.

(10) Allocation of Financial Resources

Some or most of these recommendations would be possible only if, amongst others, appropriate financial resources are allocated. Meaningful implementation of any environmental protection plan in any city or country requires political will and the resourcing of the agenda of the environmental protection and development.

Without the supporting resource allocation, the recommendations of the Commission will merely become a wish list. It is, therefore, recommended that the concerned Ministries, like the Ministry of Finance and the Ministry of Planning, Development and Reforms, allocate appropriate budgets for the implementation of the recommendations of the Commission. Particular attention is drawn to:

- (a) Recommendation (6) Building Capacity for Enforcement for Environmental Compliance under 1. Priority Recommendations requiring Immediate Action for the capacity building;

- (b) Recommendation (a) of (1) Clean Drinking Water under 2. Other Recommendations for the approval of the project for sourcing clean drinking water from Rawal Lake; and
- (c) Recommendation (a) of (3) Hospital Waste Management under 2. Other Recommendations for the procurement and installation of incinerator for PIMS Hospital in Islamabad.

It was the expectation of the Chair to invite the Minister of Finance and the Minister of Planning, Development and Reforms to the final meeting of the Commission to sensitize the importance of the proposals made in this Report. If the Islamabad High Court were to appoint an Implementation Committee to monitor the implementations of the recommendations of the Commissions, such Implementation Committee should seek the support of the Ministry of Finance and the Ministry of Planning, Development and Reforms.

2. Other Recommendations

The Commission also recommends the following, which can, preferably, be time bound:

(1) Clean Drinking Water

In the rural areas of ICT, almost sixty (60) water supply schemes are being operated by the Department of Local Government and Rural Development, ICT, through water user committees. To ensure continuous supply of clean drinking water, the chlorinators are required to be timely replaced. However, due to paucity of funds, timely installation and replacement of chlorinators suffers which, in turn, affects the supply of clean drinking water to the rural areas.

Similarly, water supply in the urban areas of ICT is the responsibility of CDA. Even though CDA has set up a number of water filtration plants in the sectoral areas, filtration facility is provided only to some of the areas. Further, no chemical and biological processes/reverse process/osmosis process/ion exchange is being done, which affects the quality of the drinking water.

Further, Rawal Lake, which is a source of drinking water for Rawalpindi, is receiving untreated sewage and other wastes from the irregularly growing population of Barakaho,

Bari Imam, Shadara, Banigala and other adjoining populations making the water highly polluted and toxic. Similarly, Simli Lake, that provides a source of drinking water for Islamabad, is receiving untreated sewage and other waste from Murree and newly developed colonies along the Murree Expressway which are polluting the water and rendering it unfit for human consumption.

To overcome these impediments, the CDA, ICTA and the Cabinet Division have jointly prepared a project envisaging the construction of five (5) decentralized sewerage treatment plants upstream of Rawal Lake at the cost of Rs. 2,258 million in the catchment area of Rawal Lake (the "Project") to ensure the supply of clean drinking water from Rawal Lake. The Project was submitted to the Ministry of Planning, Development and Reforms. However, funding is still awaited. Additional water resourcing from Tarbela may also be considered.

The Commission recommends:

- (a) Urgent approval and the necessary funding of the Project be given by the Ministry of Planning Development and Reforms.
- (b) CDA to immediately implement or outsource the maintenance of the filtration plants and chlorinators and also repair/replace water pipes and sewer drains that are contaminating the drinking water lines. The water quality of such water lines should be checked by the Pakistan Council of Research in Water Resources ("PCRWR") or the National Institute of Health ("NIH").
- (c) Promote rainwater harvesting in buildings, watershed management (through physical and biological measures), recharge wells, and undertaking of water audits.
- (d) Install water meters and fix nominal water use charges.

(2) Solid Waste Management¹⁵

The total amount of solid waste generated within the municipal limits of Islamabad ranges between 500- 550 metric tons per day and for the ICT is approximately 750 tons

¹⁵ These recommendations supplement the Priority Recommendation, (3) Landfill Site under 1. Priority Recommendations requiring Immediate Action, above.

(based on 0.5 kg/c/d). Due to lack of proper landfill site, the solid waste is dumped at open sites. Such unattended and openly dumped waste (particularly organic waste), especially under warm and moist conditions, becomes an ideal breeding place for disease causing organisms. These badly managed heaps of wastes are time bombs, which may not explode, but can cause serious public health hazards.

Moreover, the management of solid waste, including hospital and other hazardous wastes, on scientific grounds is non-existent in both the CDA and ICT jurisdictions resulting in the dumping of waste in the open without any treatment, recycling or proper landfill.

Currently, CDA provides door to door collection service to Zone 1 only while the waste from the remaining Zones is not regulated by it. This results in dumping of the waste by these Zones in the different nallas and rivers.

To prevent any health hazard and ensure the proper disposal of the solid wastes, the Commission proposes:

- (a) Introduce an Integrated Waste Management program for sustainable management and further improvement of waste management.
- (b) Door to door collection service should be provided by the CDA on daily basis to all the Zones of ICT.
- (c) Segregation of solid waste at source (household and street level). Waste to be collected in three (3) bins/bags, that is, food/biodegradable, recyclable and hazardous waste. This collection, monitored and transferred with proper tracking system, should be made mandatory to avoid any theft.
- (d) Remove open waste storage and other un-hygienic street bins placed and replacing them with new bins at all public places.
- (e) Clean up of all nallas and ditches where the garbage has been dumped in the past.
- (f) A system of energy recovery from waste needs to be introduced including conversion of non-recyclable waste materials into useable heat, electricity, or fuel through a variety of processes, including combustion, gasification, pyrolyzation, anaerobic digestion, and landfill gas (LFG) recovery.

Another alternative worth consideration is a public-private partnership to encourage and facilitate a market-based management of solid waste. This can be achieved by the outsourcing of the solid waste management in Islamabad, as has been done in Lahore. The experience of Lahore provides an attractive basis for Islamabad to move on similar lines. This can be replicated by forming a company under Section 42 of the Companies Ordinance, 1984. The company so formed should outsource the solid waste management through an open and competitive bidding by inviting both national and international firms. The winner of the bid should be tasked to develop an integrated system of solid waste management to ensure efficient collection, transportation, recovery, treatment and disposal of the waste generated in Islamabad while the CDA performs a supervisory role.

(3) Hospital Waste Management

The hospitals and other health care facilities generate various kinds of risk and non-risk waste. The non-risk waste is similar to domestic waste and accounts for more than 80% of the hospital waste. The remaining 10-20% is risk waste which, after segregation, needs special treatment. Unfortunately, there are no satisfactory and Hospital Rules-compliant arrangements for hospital waste management in ICT and the waste from hospitals and health care institutions is mixed up with the municipal waste. Some types of such waste, like human placenta, is being used in poultry feed industry.

The Vice Chancellor, PIMS, Dr. Javed Akram, pointed out during his attendance of the third meeting of the Commission as a Special Invitee that there is a long-standing request of PIMS with the Economic Affairs Division for the procurement of an incinerator for PIMS. The French Government had indicated an interest in this. During a meeting on 6 October 2015 at the Ministry of Climate Change requested by the Chair, representatives of several hospitals in Islamabad¹⁶ joined to confirm that if PIMS gets the incinerator,

¹⁶ The meeting was attended by the following representatives of the leading hospitals of Islamabad:

1. Dr. Javed Akram, Vice Chancellor, PIMS.
2. Dr. Ayesha Isani Majeed, Additional Director, PIMS.
3. Dr. S. Ghazanfar Hussain, Deputy Director, KRL Hospital.
4. Dr. Fazal Majeed, Deputy Director, CDA Hospital.
5. Dr. Amin Haider, Medical Superintendent, Sayyed Mohammad Hussain Government T.B. Sanatorium Samli Murree.
6. Dr. Muhammad Ayub, A.D. Poly Clinic Hospital.

over 50% of the hospital waste disposal needs of Islamabad will be met. This can also be sourced through the Global Environment Facility (GEF) by the Secretary, Climate Change.

To ensure the proper disposal of hospital waste, the Commission proposes the following:

- (a) Effective implementation of the Hospital Rules, particularly its Section 26.
- (b) The Islamabad High Court should direct the Government of Pakistan/Secretary, Climate Change, to finalize arrangements for the procurement of the incinerator for PIMS within one (1) year of the date of this Report and to file interim reports with the Islamabad High Court every three (3) months till the procurement of the incinerator.
- (c) Collection/compilation of data on generation and handling of risk waste from all types of hospitals and health care facilities.
- (d) Segregation of hospital waste at source.
- (e) Hospitals should also install autoclaves/incinerators wherever possible. Every hospital should be given a time frame, preferably six (6) months, to install its own autoclaves/incinerators.
- (f) Hospitals and other health facilities under construction in Islamabad must include a Hospital Rules-compliant management infrastructure for their wastes.
- (g) All the hospitals, healthcare facilities and laboratories should treat their sewage and infectious liquid waste before discharging the same to municipal sewage system. This is possible by building retention septic tanks where the liquid wastes are chemically treated before being discharged into the municipal sewage system.

7. Cdr. (Retd) Syed Asim Abbas, Administrator, FMD, Shifa International Hospital.

8. Dr. Mahrukh Siddiqui, Medical Superintendent, Federal Government T.B. Centre, Rawalpindi.

9. Dr. Hassan Bashir Khan, CEO, Ali Medical Centre.

10. Dr. Javed Irfan, Director, Nuclear Oncology & Radiotherapy Institute (NORI).

The meeting was also attended by some members of the Commission including the Chair and the Secretary, Climate Change, members of CDA, and a representative of PEPA.

- (h) Several hospitals in Islamabad are outsourcing their waste disposal with specialist organizations such as the National Cleaner Production Center. This trend should be strengthened and similar outsourcing arrangements must be developed for the extensive hospital wastes generated by the hospitals, healthcare facilities and laboratories in Islamabad.
- (i) The hospitals in Islamabad should organize a Islamabad Hospital Waste Management Committee to co-ordinate centralized incinerator facility(ies) for the use of all the hospitals on a shared-cost basis.
- (j) PEPA and the Ministry of Climate Change are already coordinating installation of an integrated facility for solid and hazardous waste management in Islamabad by the world leading German waste management firm ALBA. If this facility is under implementation, it needs to be coordinated with the other recommendations of the Commission.

(4) Industrial Waste Management

There is no system or mechanism in ICT for handling and disposing the industrial wastes from Sectors I-9 and I-10; therefore, the Commission recommends:

- (a) A detailed waste amount survey of all such facilities needs to be carried out. Based on this survey, a hazardous landfill site and allied facilities could be developed.
- (b) The wastewater from the industries should be treated and reused in green belts, if appropriate.
- (c) Marble waste handling in Khyber Pakhtunkhwa and other provinces may be looked at for any good practices.

(5) Air Pollution Management

Ambient air quality of Islamabad reveals that annual average mass concentration of particulate matter (PM_{2.5}) (45 to 95 $\mu\text{g m}^{-3}$) and nitric oxide (NO) (41 to ~120 $\mu\text{g m}^{-3}$) exceed the standard set by the NEQS. The major contributors of air pollution in

Islamabad are the motor vehicles and the emissions from the industries in Sectors I-9 and I-10.

To control and manage the air pollution, the Commission recommends:

- (a) PEPA should run a city-wide toxic assessment campaign to monitor the total amount of toxins, including mercury, being emitted in the air of Islamabad. Based on this survey, the ambient air quality standards for the city must be revised and compulsory emission limits be set. The present ambient air quality should also be displayed and shared with the public.
- (b) Permanent Monitoring units to be set up.
- (c) Compulsory emission limits must be set and the “self-monitoring and reporting tool” (SMART) must be reintroduced to the industries of Islamabad. This will monitor the emission quality and quantity and help in better reporting under the National Environmental Quality Standards (Self-Monitoring and Reporting by Industry) Rules, 2001. SMART will also enable PEPA to easily detect industries exceeding the threshold set by NEQS and take timely action.
- (d) Strengthen PEPA to enforce test protocols for inspection and maintenance of vehicles and industrial machinery, and “pre-emission cleaning and refining techniques” in the industrial area of Islamabad.
- (e) Introduce combustion efficiency in diesel engines of factories by using cleaner fuels like LNG and promote lead-free gasoline by giving incentives to refineries so that they may invest in sulphur content reduction technologies in diesel.
- (f) Higher taxes on diesel and other fuels containing high levels of lead and sulphur for vehicles and improving the quality of diesel for decreasing per vehicle emission and on spot checking/fine of polluting vehicles by mobile teams.
- (g) Introduce new vehicle standards by adopting Euro-2 norms and aiming for Euro-4 norms gradually.
- (h) A follow up of commitments made in the approval of the EIAs of projects in Islamabad to ensure that vegetation cover removed for construction is replenished.

- (i) Private sector must be involved in plantation efforts, and the subsequent care, along major road works, such as Islamabad Expressway.

(6) Public Participation/Public Engagement Committees

It is, generally, and well perceived that a lack of institutional mechanism for public consultation and public participation has compromised the standards of transparency and accountability, which, resultantly, has led to arbitrary amendments of the Master Plan and the ICT Zoning Regulations, and weakened the process of EIA.

In view of this, the Commission recommends the setting up of an institutionalized permanent public engagement committee (the “PEC”) for each zone of ICT. These PECs may comprise of parliamentarians from Islamabad, representative(s) of the elected local government, urban planners, architects, engineers, media, civil society, academics, and ex officio members from the local administration. The PECs should participate and follow up on EIAs done for different development projects to be carried out in their relevant zones. Also, the PECs will hold public hearings to discuss any proposed changes or amendments in the Master Plan and the ICT Zoning Regulations and convey the recommendations/suggestions to IPAB and CDA.

(7) Climate Change

The continuous degradation of the environment is adversely impacting the already vulnerable climate of Pakistan. For the protection of the environment and the climate, effective steps must be taken to fulfill the objectives of the National Climate Change Policy, 2012, and to implement the strategies in the Framework of Implementation of Climate Change Policy (2014-2030). The Commission draws attention particularly to those items that require priority action. The taking of such steps would protect the environment in the short term while positively affecting the climate of Pakistan in the long term.

(8) Better Co-ordination between Environmental Management Agencies

The different provincial environmental management agencies should co-ordinate between themselves for better and uniform implementation of the provisions of their respective environmental protection acts. The environmental agencies and the governments of the Provinces should also co-ordinate to preserve the Margallah Hills. The province of

Khyber Pakhtunkhwa has already taken a lead by making the Margallah Hills a protected area.

(9) Holistic Mass Transit Plan for Islamabad

A holistic mass transit plan for Islamabad's commuters needs to be developed. The solution to cater the needs of the ever-increasing number of commuters does not lie in expanding the roads at the cost of the green belts and parks, as is being done in making the signal free Islamabad Expressway, but lies in coming up with the best mass transit solutions.

(10) Restructuring CDA

The professional staff of CDA comprising urban planners, architects, landscape specialists, horticulturists, botanists, zoologists, environment experts, and scientists needs to be strengthened. It is popularly believed that CDA presently consists primarily of bureaucrats, with little or no expertise in urban development and the environment. Member and DG Environment, along with other key technical positions, should be manned by qualified and experienced environmentalists.

(11) Toll-Free Telephone Numbers

There should be toll free telephone numbers to an ENVIRONMENTAL HELPLINE so that the public can contact the officials/agencies concerned and inform of any violation of the 1997 Act and its rules and regulations then and there for remedial action.

(12) Public Education

Mass environmental awareness campaigns are critical to the support of the recommendations of the Commission. For this, the role of media is important in educating the citizens and achieving the objectives of protecting the environment. As per the laws and policies applicable to the Pakistan Electronic Media Regulatory Authority, all TV stations are supposed to use ten percent (10%) of their airtime for public education, therefore, awareness of the environment and its protection should be promoted through this. With respect to solid waste management, for example, the sanitary

inspectors, along with the media, can educate the citizens on the sorting and disposal of garbage at home.

(13) ICTLGA and the Commission's recommendations

Under the Islamabad Capital Territory Local Government Act, 2015 (the "ICTLGA"), a local government is to be formed to administer and govern ICT locally. Some of the functions of the local government include the maintenance of the rural water supply schemes and public sources of drinking water, executing development works, approving development schemes for beautification of urban areas, and developing integrated system of water reservoirs, water sources, treatment plants, drainage, liquid and solid waste disposal, sanitation and other municipal services.

As many of the functions of the local government overlap with the functions of CDA and ICTA, the Commission recommends that the Islamabad local government be fully involved in the implementation of the recommendations of the Commission. The Islamabad High Court may consider sending a copy to the Mayor (Metropolitan Corporation) and/or Chairman (Union Council) of such recommendations of the Commission as may be approved or supported by it.

F. Acknowledgements

The Chair expresses his gratitude to the members of the Commission and to, particularly, Mr. Arif Ahmed Khan (Vice Chair), Raja Hasan Abbas (Cabinet Secretary), CDA, PEPA, SDPI, Mr. Abdul Saboor Nizamani (Joint Secretary), and Mr. Shujaat Umar Pirzada (Associate, Hassan & Hassan (Advocates)), for their support to the Commission.

G. Note on Signatories to this Report

This Report was unanimously adopted by the Commission. All the members have signed the Report. Dr. Muhammad Khurshid, DG, PEPA, took an active part in the work of the Commission till his appointment, in July 2015, as the Director General of South Asia Co-operative Environment Programme (SACEP), in Sri Lanka. He continued to guide the Commission with his valuable comments to an earlier draft of this Report.

Mr. Raja Hasan Abbas
Secretary, Cabinet

Mr. Mahmood Akhtar Cheema
Country Representative, IUCN Pakistan

Mr. Hammad Naqi Khan
Director General/CEO, World Wide Fund
for Nature Pakistan

Ms. Saima Amin Khawaja
Advocate, High Court

Dr. Abid Qaiyum Suleri
Executive Director, Sustainable
Development Policy Institute (SDPI)

Mr. Maroof Afzal
Chairman, CDA

Dr. Muhammad Khurshid
DG, Pakistan Environmental Protection
Agency

Mr. Asad Umar
Member, National Assembly

Mr. Zulfikar Haider
Chief Commissioner, ICT

Mr. Talat Hussain
Geo News, Islamabad

Dr. M. A. Baig
Chairman, Environmental Sciences, NUST

Mr. Arif Ahmed Khan
Secretary, Climate Change
(Vice Chair)

Dr. Parvez Hassan
(Chair)

Islamabad, 7-19 October 2015

C. Implementation of the Recommendations of the Commission

1. Order of the Court dated 16 November 2015

Form No: HCJD/C-121.

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD **JUDICIAL DEPARTMENT**

W.P. No. 4245 of 2014

Prof. Zahid Baig Mirza

Vs

CDA, etc.

Date of Order/ Proceedings: 16-11-2015

Mr. Ghulam Mehboob Kohokhar, Advocate for the petitioners.

Mr. Afnan Karim Kundi, Addl. Attorney General.

Raja Adnan Aslam, Advocate for CDA.

Mr. Dilawar Khan Azad, Deputy Director.

The report of the Commission, inter-alia, recommends the appointment of Implementation Committee vide its recommendation-9. The report of the Commission has been signed by all the stakeholders particularly Secretary Cabinet Division, Secretary Ministry of Environment, Climate Change and the Chairman, Capital Development Authority.

2. The learned Additional Attorney General has appeared on notice. He may seek instructions regarding appointment of Members of proposed Implementation Committee. It has been proposed that the Committee may consist of the Secretary Cabinet Division, the Secretary Ministry of Environment, Climate Change and Dr. Pervaz Hassan, Senior ASC.

3. Notices may be issued to the Capital Development Authority for filing a report. Though the Chairman, CDA has signed the report, yet before passing an order it would be appropriate to afford an opportunity of hearing. Capital Development Authority may, therefore, submit a report before the next date hearing.

4. Relist on 27-11-2015.

(ATHAR MINALLAH)
JUDGE

2. Extracts from the Order of the Court dated 30 August 2016

Form No: HCJD/C-121.

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No. 4245 of 2014

Prof. Zahid Baig Mirza

Vs

Capital Development Authority, etc.

Date of Order/ Proceedings: 30-08-2016

....

4. A Commission was constituted by this Court vide order dated 20.02.2015 passed in W. P. No. 1276/2011. It is noted that Dr. Parvez Hassan, Senior Advocate Supreme Court an eminent professional and internationally acclaimed expert on environmental issues and other relevant stake holders were nominated as members of the Commission. The Commission also co-opted Parliamentarians. The Commission submitted its report on 26.10.2015.

5. The report submitted by the Commission and the recommendations made therein were approved and signed by all the stake holders, including the representative of the Federal Government and the Capital Development Authority. The report of the Commission is indeed comprehensive and a commendable effort by all those who were involved in the proceedings, particularly its members. The Commission members, inter-alia, recommended that an Implementation Committee be constituted to give effect to the recommendations.

13. It is noted that the private Members of the Commission, particularly the Chair i.e. Dr. Parvez Hassan A.S.C. had rendered their services gratuitously in public interest.

Likewise the Members of the Implementation Committee are also expected to contribute their time and expertise without being a burden on the exchequer.

14. However, in order to afford an opportunity to the Federal Government to place before this Court any reservations or objections regarding constituting the Implementation Committee, these petitions are adjourned to 19.09.2016.

(ATHAR MINALLAH)
JUDGE

3. Notification of the Implementation Committee dated 16 September 2016

TO BE PUBLISHED IN THE NEXT ISSUE
OF THE GAZETTE OF PAKISTAN PART-I

Government of Pakistan
(Cabinet Secretariat)
Capital Administration & Development Division

Islamabad the 16th September, 2016

NOTIFICATION

F.No. 6-9/2015-CDA-II: The competent authority has been pleased to constitute an "Implementation Committee" to oversee the implementation of the recommendations of the Islamabad Environmental Commission, comprising of the following:

- | | |
|--|----------|
| 1. Secretary, Cabinet Division, | Chairman |
| 2. Secretary, Capital Administration
& Development Division | Member |
| 3. Secretary, Ministry of Climate Change | Member |
| 4. Chairman, Capital Development Authority | Member |
- (R. Habib Ullah Shahid)
Deputy Secretary

The Manager,
Printing Corporation of Pakistan Press,
University Road,
Karachi.

Copy to:-

1. The Secretary to the President, President's Secretariat (Public), Islamabad.
2. The Secretary to the Prime Minister, Prime Minister's Office, Islamabad.
3. The Secretary, Cabinet Division, Islamabad.

4. The Secretary, Ministry of Interior, Islamabad.
5. The Secretary, Capital Administration & Development Division, Islamabad.
6. The Secretary, Ministry of Climate Change, Islamabad.
7. The Additional Secretary, CADD, Islamabad.
8. The Chairman, Capital Development Authority, Islamabad.
9. The Mayor, Metropolitan Corporation, Islamabad.
10. The Registrar, Islamabad High Court, Islamabad.
11. The Joint Secretary (CDA), CADD, Islamabad.

(Faqir Muhammad)
Section Officer

4. Extracts from the Order of the Court dated 23 September 2016

Form No: HCJD/C-121.

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.4245 of 2014

Prof. Zahid Baig Mirza

Vs

CDA, etc.

Date of Order/ Proceedings: 23-09-2016

...

2. It is however, noted that the Federal Government is hesitant in nominating Dr. Parvez Hassan, Senior ASC to chair the Committee. The latter is an internationally reputed person in the field of environment issues. He has rendered his services as the Chairman of the Commission in public interest without remuneration/fee or being a burden on the exchequer. He has agreed to render his service without being a burden on the exchequer. The hesitation on part of the Federal Government does not appear to be reasonable.

3. The Cabinet Secretary shall nominate an officer not below the rank of an Additional Secretary to appear in the Court on the next date fixed to explain as to why this Court may not direct the Federal Government to appoint Dr. Parvez Hassan, senior ASC to Chair the Implementation Committee. The officer nominated by the Secretary shall appear in person on 04.10.2016 at 10:00 a.m. ...

(ATHAR MINALLAH)
JUDGE

5. Extracts from the Order of the Court dated 4 October 2016

HCJD/C-121.
ORDER SHEET

ISLAMABAD HIGH COURT
ISLAMABAD

W.P. No. 4245 of 2014

Prof. Zahid Baig Mirza
Vs
CDA, etc

Date of hearing: **04-10-2016**

....

2. The Federal Government has notified the Implementation Committee vide notification dated 16-09-2016. The cases are therefore, ripe for final arguments. ...

(ATHAR MINALLAH)
JUDGE

CHAPTER 10

CLIMATE CHANGE COMMISSION

Asghar Leghari vs. Federation of Pakistan

Writ Petition No. 25501/2015

before the Lahore High Court

- A. Order of the Court dated 14 September 2015 re appointment of the Commission**
- B. Report of the Commission dated 16 January 2016 (without Annexures)**
- C. Order of the Court dated 18 January 2016**
- D. Supplemental Report of the Commission dated 24 February 2017 (without Annexures)**
- E. Order of the Court dated 28 February 2017**
- F. Recommendations of the Chair of the Commission in a meeting, on 17 April 2017, with the Chairman, Planning and Development, Government of Punjab**
- G. Organization of Capacity Building Training Session of Officers of the Planning and Development Department, Government of Punjab, on Climate Compatible Projects by the Commission**

A. Order of the Court dated 14 September 2015 re appointment of the Commission

Form No: HCJDI C-121

ORDER SHEET

**IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT**

Case No: W.P. No. 25501/ 2015

Ashgar Leghari

Federation of Pakistan, etc.

Date of order/ Proceedings: 14.09.2015

Mr. Mansoor Usman Awan, Advocate for the petitioner.

Mr. Nasar Ahmad, Deputy Attorney General for Pakistan.

Ms. Hina Hafeezullah Ishaq, Standing Counsel for Pakistan.

Mr. Imiaz Ahmad Kaifi, Additional Advocate General, Punjab.

Sajjad Ahmad, Joint Secretary (IC), Ministry of Climate Change, Islamabad.

Irfan Tariq, D.G. (Environment), Ministry of Climate Change, Islamabad.

Dr. Masood Arshad Makhdoom, Director Climate, Energy & Water, WWF, Lahore.

Muhammad Qasim Manzoor, Planning Officer (Environment), Planning & Development Department, Government of the Punjab, Lahore.

Waseem Ahsan Cheema, Director (Monitoring, Labs, Implementation), Environmental Protection Agency, Punjab.

Anjam Sardar, Deputy Secretary, Food Department.

Shahid Rasheed Awan, Additional Secretary (T), Dr. Khawaja Muhammad Umar, Deputy Secretary (P), Dr. Basir, Conservator, Mumtaz Babar, DFO (Forest), Agha Ejaz, Director (Wildlife), Dr. Imtiaz, Director (Fisheries), Forest, Wildlife & Fisheries Department. Nisar Ahmad Sani, Assistant Director, PDMA, Punjab.

Dr. Muhammad Javed, Director Social and Environment Management Unit (Focal Person), Irrigation Department, Muhammad Naeem Ghaus, Additional Secretary (Admn.), Haroon Ahmad Khan, Project Director/SE, Small Dams Organization, Irrigation Department, Punjab.

Hussain Sardar, Additional Secretary Agriculture, Punjab.

Muhammad Riaz, Chief Metrologist, Pakistan MET Department.

Dr. Muhammad Afzaal, Deputy Director, Pakistan MET Department.

Ch. Muhammad Ashraf, Director General, Water Development, Agriculture Department, Punjab.

Waqar-ud-Din Siddiqui, Director (Policy & International Cooperation), National Disaster Management Authority, (NDMA).

Hafiz Shahzad Masood, Section Officer, Cabinet Division.

Saad Ahmad Warraich, Director (UN-II), Ministry of Foreign Affairs.

Rizwan Bashir Khan, Additional Secretary, Planning & Development Division.

Arshad Ahmad, Senior Joint Secretary, Finance Department.

Hasan Nasir Jami, Additional Secretary, WAPDA.

Shoaib, Additional Secretary, Ministry of Inter Provincial Coordination.

Raza Bashir Adu, Standing Counsel WAPDA.

Muhammad Nawaz Manik, Director (Law), Environment Protection Department, Punjab.

Dr. Aqeel M. Khaleel, Section Officer, Health Department, Govt. of the Punjab.

Amir Muhammad Khan Niazi, Deputy Secretary, Ministry of IPC, Islamabad.

Rashid Ahmad, Section Officer, Ministry of IPC, Islamabad.

Syed Naseer Ahmad Gillani, Chief Environment, Ministry of Planning Development & Reform.

Arshad Ahmad, Senior Joint Secretary/Financial Advisor, Ministry of Climate Change.

Danial Hashmi, Project Director Glacier, Monitoring Research Centre, GMRC, WAPDA, Lahore.

Javed Iqbal Bukhari, Engineering Advisor (Civil), CEA/CFFC Office, Islamabad.

Muhammad Khalid Rana, Director (O), RSA.

Alamgir Khan, Chief Engineer (Floods) on behalf of Federal Flood Commission & Ministry of Water and Power Islamabad.

Riaz Ahmad, Deputy Commissioner for Indus Waters (PCIW), Lahore.

Yousaf Naseem, Additional Secretary, Finance Division.

Muhammad Saleem, Legal Advisor, Ministry of Foreign Affairs.

CLIMATE CHANGE ORDER

The petitioner has approached this Court as a citizen of Pakistan for the enforcement of his fundamental rights. He submits that overwhelming majority of scientists, experts, and professional scientific organizations related to earth

sciences agree that evidences are sufficient that climate change is real. He submits that no one can deny the devastating impact of increase in frequency and intensity of climate extremes. Further, most of the experts agree that the major cause is human activities, which include a complex interaction with the natural environment coupled with social and economic changes that are increasing the heat trapping CO₂ and other greenhouse gases (GHG) in the atmosphere, which are increasing global temperature and in turn causing climate change.

2. The climate system is a highly complex system consisting of the atmosphere, the hydrosphere, the Cryosphere, the land surface and the biosphere, and the interactions between them.

3. For Pakistan, climate change is no longer a distant threat-we are already feeling and experiencing its impacts across the country and the region. The country experienced devastating floods during the last three years. These changes come with far reaching consequences and real economic costs.

4. The petitioner submits that in order to address the threat of climate change the National Climate Change Policy, 2012 (“NCCP”) and the Framework for Implementation of Climate Change Policy (2014-2030) [“**Framework**”] has been announced by the Ministry of Climate Change, Government of Pakistan, however, no implementation on the ground has taken place. He submits that inaction on the part of Ministry of Climate Change and other Ministries and Departments in not implementing the Framework, offends his fundamental rights in particular Articles 9 and 14 of the Constitution besides the constitutional principles of social and economic justice. He submits that international environmental principles like the doctrine of public trust, sustainable development, precautionary principle and intergenerational equity form part of the fundamental rights. Reliance is placed on *Imrana Tiwana’s Case* (PLD 2015 Lahore 522) and *Shehla Zia’s Case* (PLD 1994 SC 693).

5. In pursuance to last order dated 04.09.2015 the following Ministries/Divisions/ Departments alongwith their representatives are present before this Court today.

Federal Government

- i. Cabinet Division, Government of Pakistan.
- ii. Ministry of Finance, Revenue and Planning and Development.
- iii. Ministry of Foreign Affairs
- iv. Ministry of Inter-Provincial Coordination.
- v. Ministry of Climate Change.
- vi. Ministry of Water and Power
- vii. National Disaster Management Authority (NDMA).

Provincial Government

- i. Agricultural Department.
- ii. Environment Protection Department/EPA.
- iii. Food Department.
- iv. Forestry, Wildlife and Fisheries Department.
- v. Health Department.
- vi. Housing, Urban Development and Public Health Engineering Department.
- vii. Planning and Development Department.
- viii. Irrigation Department.
- ix. Law and Parliamentary Affairs Department.
- x. Disaster Management Department (DMD).
- xi. PDMA.

6. In pursuance to last order dated 04.09.2015 the above Ministries/Divisions/ Departments have nominated the following “**Focal Persons**”:-

<u>Sr. No.</u>	<u>Name of Focal Person</u>	<u>Ministry/ Division, Department.</u>
<u>Federal Focal Persons</u>		
1.	Arshad Ahmad, Senior Joint Secretary/Financial Advisor	Ministry of Climate Change
2.	Syed Naseer Ahmad Gillani, Chief Environment	Ministry of Planning Development & Reform
3.	Danial Hashmi, Project Director Glacier, Monitoring Research Centre, GMRC	WAPDA, Lahore
4.	Hasan Nasir Jami, Additional Secretary, WAPDA.	WAPDA/ Ministry of Water and Power.
5.	Javed Iqbal Bukhari, Engineering Advisor (Civil), CEA/CFFC Office, Islamabad	
6.	M. Khalid Idrees Rana Director (Operation), IRSA Islamabad.	IRSA
7.	Riaz Ahmad, Deputy Commissioner for Indus Waters (PCIW), Lahore.	PCIW
8.	Waqar-ud-Din Siddiqui, Director (Policy & International Cooperation),	National Disaster Management Authority, (NDMA).
9.	Dr. Muhammad Hanif, Director, National Weather Forecasting Centre (NWFC), Islamabad.	Pakistan Metrologist Department.
10.	Waqar-ud-Din Siddiqui, Director (Policy & International Cooperation), National Disaster Management Authority, (NDMA).	National Disaster Management Authority.

<u>Provincial Focal Persons</u>		
11.	Ch. Muhammad Ashraf, Director General, Water Development, Agriculture Department, Punjab.	Agriculture Department
12.	Dr. Muhammad Javed, Director Social and Environment Management Unit, Irrigation Department	Irrigation Department
13.	Dr. Khawaja Muhammad Forest, Umar, Deputy Secretary (Planning), Forest, Wildlife. & Fisheries Department.	Wildlife & Fisheries Department
14.	Arshad Ahmad, Senior Joint Secretary, Finance Department	Finance Department
15.	Waseem Ahsan Cheema, Director (Monitoring, Labs, Implementation), Environmental Protection Agency, Punjab.	Environmental Protection Agency
16.	Nisar Ahmad Sani, Assistant Director, PDMA, Punjab	PDMA

7. Learned DAG alongwith learned Law Officer will place on record the notifications whereby the said Focal Persons have been nominated.

8. The National Climate Policy, as well as, the Framework shows that in view of Pakistan's high vulnerability to the adverse impacts of climate change, in particular extreme events, like NCCP adaptation effort is the focus of the Framework. The vulnerabilities of various sectors to climate change have been highlighted and appropriate adaptation actions spelled out. These cover actions to address issues in various sectors such as water, agriculture, forestry, coastal areas, biodiversity, health and other vulnerable ecosystems. Notwithstanding the fact

that Pakistan's contribution to global greenhouse gas emissions is very small, its role as a responsible member of the global community in combating climate change has been highlighted by giving due importance to mitigation efforts in sectors such as energy, forestry, transport, industries, urban planning, agriculture and livestock.

9. The Framework for Implementation of NCCP has been developed not as an end in itself, but rather a catalyst for mainstreaming climate change concerns into decision making that will create enabling conditions for integrated climate compatible development processes. It is, therefore, not a stand-alone document, but rather an integral and synergistic complement to future planning in the country. The Framework is a "living document". This is because we are still uncertain about the timing and exact magnitude of many of the likely impacts of climate change. We will continue to deepen our understanding of the phenomenon, as we continue to implement our adaptation and mitigation programmes. The goal of NCCP is to ensure that climate change is mainstreamed in economically and socially vulnerable sectors of the economy and to steer Pakistan towards climate resilient development.

10. The Framework provides adaptation actions for various sector in the following manner:-

Water Sector: Adaptation Actions:

Pakistan is an agricultural country. Therefore water is an essential resource for sustained economic growth as well as human survival. Water, which is one of the most important national resource is increasingly becoming a scarce natural resource. Presently agriculture sector is using 93% domestic sector 5% and industrial sector 2% of water resources. Our Indus Basin Irrigation System (IBIS) is the world's largest contiguous irrigation system.

Water resources are inextricably linked with climate; hence, the projected climate change has serious implications for monsoon rains, both being highly sensitive to climate change. Pakistan has moved from a water affluent country to water stressed country. In 1947, per capita water availability was 5000 cubic meter, which has currently decreased to around 1000 cubic meter, and projected to decrease to 800 cubic meter per capita by the year 2025.

The country-specific climate projections strongly suggest the following future trends in Pakistan: decrease in the glacier volume and snow cover leading to alterations in the seasonal flow pattern of IRS; increase in the formation and burst of glacial lakes; higher frequency and intensity of extreme climate events coupled with irregular monsoon rains causing frequent floods and droughts; greater demand of water due to increased evapotranspiration rates at elevated temperatures.

Agriculture and Livestock: Adaptation Actions:

Agriculture sector is the life line and the single largest sector of Pakistan's economy. It contributes 21% to the GDP, employs 45% of the labour force and contributes about 70% to the export earnings. Agriculture in Pakistan is greatly affected by short term climate variability and could be harmed significantly by long-term change.

The country is broadly divided into the following 10 agro-ecological zones based on physiographic, climate, soil type and agricultural land use.

I. Indus delta; II. Southern Irrigated plain; III. Sandy desert; IV. Northern irrigated plain V. Barani (Rain feed areas); VI. Wet Mountains; VII. Northern dry mountains; VIII. Western dry mountains; IX. Dry western Plateau; X. Sulaiman Piedmont.

Shortening length of growing period:

The duration of crop growth cycle is related to temperature; an increase in temperature will speed up crop growth and shorten the duration between sowing and harvesting. The shortening could have an adverse effect on productivity of crops and fodder for livestock.

Changes in river flows:

The Indus River System gets about 80% water from the Hindu-Kush-Himalaya glaciers. Increasing atmospheric temperatures are expected to increase glacier melt. IPCC (2007) projected that glacier melt in Himalayas would cause increased rivers flows during the next few decades and then followed by decreased river flows, as the glaciers recede.

Increased crop evapotranspiration:

Increased atmospheric temperature would cause higher water evaporation from soil and from plant leaves. These higher evapotranspiration losses

would mean that plants would need more water to maintain optimum growth.

Land Degradation:

The deterioration of productive agricultural land areas due to water logging and salinity is causing major threat to food security in the country. Soil erosion due to water and wind is universally recognized as a serious threat to productive agriculture land areas. Water and wind erosion is the direct consequence of climatic parameters of high intensity rainfall, wind-velocity and higher temperatures. The northern mountainous region suffers from unfavourable soil and moisture regime, thereby causing soil erosion. Similarly arid regions of Punjab (Cholistan), Sindh (Tharparker) and Balochistan (Chaghi Desert and sandy coastal areas) are affected by wind-erosion.

Extreme Weather Events:

According to IPCC (2007), the frequency and intensity of extreme weather events, such as floods, heavy precipitation events, droughts, cyclones etc are expected to increase in future. Such extreme events can also affect food security.

Livestock Sector:

Since the agriculture & livestock sector are heavily dependent on the vagaries of nature, it is highly vulnerable to climate change phenomena. Climate change will impact food security of the country mainly through reduced crop productivity, adverse impact on livestock health and increased agricultural production losses because of extreme weather events. This will necessitate the agriculture and livestock sectors, particularly in rain-fed areas, to adapt to these climatic changes.

Forestry Sector:

Generally most of the forests in Pakistan are prone to the threats of changing climate in the form of changes in species composition, disease and insect attacks, more frequent forest fires, and shifting habitats due to unfavourable climatic conditions. Further research is required to investigate the real and specific climate change threats to each forest type so as to undertake realistic adaptation measures.

11. I have heard the representatives of the Ministries and the respective Provincial Departments. It is quite clear to me that no material exercise has been done on the ground to implement the Framework. In order to expedite the matter and to effectively implement the fundamental rights of the people of Punjab, **Climate Change Commission** (“CCC”) is constituted by this Court in the following manner:-

I. CONSTITUTION OF CLIMATE CHANGE COMMISSION

“Climate Change Commission” is hereby constituted under Order 26 CPC, comprising the following members:-

1.	Dr. Pervaiz Hasan, Advocate, Hasan & Hasan Advocate, PAAF Building, second floor, 7-D, Kashmir Egerton Road, Lahore (042-36360800).	Chairman
2.	Secretary, Ministry of Climate Change.	Member
3.	Secretary, Ministry of Water and Power,	Member
4.	Secretary, Ministry of Finance, Revenue and Planning and Development.	Member
5.	Director General, National Disaster Management Authority.	Member
6.	Director General, International Organization/Climate Change at the Ministry of Foreign Affairs (nominated by the Foreign Secretary)	Member
7.	Secretary, Irrigation Department, Government of Punjab.	Member
8.	Secretary, Agricultural Department, Government of Punjab.	Member

9.	Secretary, Food Department, Government of Punjab.	Member
10.	Secretary, Forest Department, Government of Punjab.	Member
11.	Secretary, Health Department, Government of Punjab.	Member
12.	Director, Provincial Disaster Management Authority.	Member
13.	Secretary, Environment Protection Department, Govt. of Punjab.	Member
14.	Mr. Ali Tauqeer Sheikh, CEO & National Program Director, LEAD, Pakistan, LEAD House, F-7, Markaz, Islamabad (051-2651511), 0300-8554559.	Member
15.	Mr. Hamad Naqi, Director General, WWF, Lahore (042-111993725, 0300-8466690).	Member
16.	Mr. Mehmood Akhtar Cheema, Manager, Islamabad Program Office, IUCN (051-2271027-34, 0345-2004242).	Member
17.	Mr. Abid Solehri, CEO, SDPI.	Member
18.	Ms. Saima Amin Khawaja, Advocate, 78-B, Mazang Road, Lahore (0300-8414843) (042-36315469-70)	Member
19.	Mr. Anwaar Hussain, Assistant Advocate General, Punjab (0333-4199511)	Member
20.	Mr. Mansoor Usman Awan, Advocate, counsel for the petitioner (0333-3139999).	Member
21.	Irfan Tariq, D.G. (Environment), Ministry of Climate Change, Islamabad.	Secretary

II. TERMS OF REFERENCE OF CLIMATE CHANGE COMMISSION:-

Objective/Terms of Reference:

- a) Effective implementation of National Climate Change Policy, 2012 (“NCCP”) and the framework for Implementation of Climate Change Policy (2014-2030) [“**Framework**”]

III. POWER OF THE COMMISSION

- a) The above Commission shall enjoy the powers under Order 26 of the CPC in order to achieve the objective of the Commission..
- b) The Commission shall have the power to co-opt any person/expert, at any stage.
- c) The Commission can seek assistance of any Federal or Provincial Government Ministries/Department by approaching the concerned Ministries/Departments in writing and the concerned Ministries/Departments are hereby directed to render full assistance to the Commission in respect of the above Terms of Reference.

IV. QUORUM OF THE COMMISSION

The quorum of the Commission shall be **five** which shall include the Chairman.

V. SECRETARIAT OF THE COMMISSION:

The secretariat of the Commission shall be housed at the Ministry of Climate Change, Islamabad, however, venue of the meeting will be decided by the Chairman.

VI. EXPENSES OF THE COMMISSION:

- (a) Secretarial expenses of the Commission shall be borne by the Ministry of Climate Change.

- (b) The Commission may approach this court at any stage to seek *appropriate* orders for facilitation of their work.

VII. INTERIM REPORT

The Commission shall file interim reports as and when directed by this Court.

12. No one has tendered appearance on behalf of Ministry of National Food Security and Research and Ministry of Law and Justice. Let the Additional Secretaries of the said Ministries appear before this Court on the next date of hearing and furnish explanations for their absence. Learned DAG will ensure that Additional Secretaries of the said Ministries alongwith Focal Person are present before this Court on the next date of hearing.

13. The representative of the Cabinet Division submits that Focal Person has not been appointed by the Division. The Additional Secretary of the Division has not tendered appearance and the Division is represented by the Section Officer. Learned DAG will ensure that Additional Secretary of the Cabinet Division, Government of Pakistan is present before this Court on the next date of hearing alongwith nominated Focal Person to make submissions.

14. The Additional Secretary, Forest, Wildlife & Fisheries Department submitted that training of Forest Officers is most important aspect and in this regard no support is being rendered to the Forest Department. Joint Secretary, Ministry of Climate Change submitted that there is IG Forest, Ministry of Climate Change, who can provide the said training on its own cost. Joint Secretary is, therefore, directed to ensure that by the next date of hearing the training arrangement is worked out between the Ministry of Climate Change and Forest Department in Punjab.

15. To come up for hearing on 05.10.2015, while the Commission shall hold its meeting on 01.10.2015.

(Syed Mansoor Ali Shah)
Judge

B. Report of the Commission dated 16 January 2016 (without Annexures)

IN THE LAHORE HIGH COURT, LAHORE

Writ Petition No. 25501/2015

Asghar Leghari

versus

Federation of Pakistan

Final Report of the Climate Change Commission*

16 January 2016

* The Climate Change Commission was appointed by the Order dated 14 September 2015 of Mr. Justice Syed Mansoor Ali Shah and comprises Dr. Parvez Hassan (Chair), Mr. Arif Ahmed Khan (Vice Chair), Mr. Mohammad Younus Dagha, Dr. Waqar Masood Khan, Mr. Yousaf Naseem Khokhar, Maj. Gen. Asghar Nawaz, Mr. Asim Iftikhar Ahmed, Capt. (Retd) Saif Anjum, Mr. Muhammad Sheheryar Sultan, Dr. Pervez Ahmed Khan, Capt. (Retd) Jahanzeb Khan, Mr. Jawwad Rafique Malik, Mr. Ali Anan Qamar, Mr. Iqbal Muhammad Chauhan, Mr. Ali Tauqeer Sheikh, Mr. Hammad Naqi Khan, Mr. Mahmood Akhtar Cheema, Dr. Abid Qaiyum Suleri, Ms. Saima Amin Khawaja, Mr. Anwar Hussain, Mr. Mansoor Usman Awan, Mr. Muhammad Irfan Tariq, Mr. Muhammad Irfan Elahi, Mr. Iftikhar Ahmad, Mr. Malik Amin Aslam, Ms. Khawar Mumtaz, Mr. Seerat Asghar, Barrister Azra Perveen Qureshi, Dr. Ghulam Rasul, and Mr. Absar Alam.

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Resource Management

Annexure D – Final Report of the Implementation Committee on Agriculture

Annexure E – Final Report of the Implementation Committee on
Forestry, Biodiversity, and Wildlife

Annexure F – Final Report of the Implementation Committee on Coastal and
Marine Areas

Annexure G – Final Report of the Implementation Committee on
Disaster Risk Management

Annexure H – Final Report of the Implementation Committee on Energy

Annexure I – Synthesis Reports

GLOSSARY

AEDB	Alternative Energy Development Board
A/R CDM	Afforestation and Reforestation Clean Development Mechanism
Commission	Climate Change Commission
Committees	Implementation Committees
CO ₂	Carbon dioxide
COP 21	21 st Conference of the Parties to the United Nations Framework Convention on Climate Change
CSO	Civil Society Organization
DoA	Department of Agriculture, Punjab
DoI	Department of Irrigation, Punjab
DG	Director General
ENERCON	Energy Conservation Centre
EPA	Environmental Protection Agency
FAO	Food and Agriculture Organization of the United Nations
FFC	Federal Flood Commission

FO	Farmers' Organization
Framework	Framework of Implementation of Climate Change Policy (2014-2030)
GCISC	Global Climate Impact Studies Centre
GDP	Gross Domestic Product
GMRC	Glacier Monitoring Research Centre
HD	Health Department
ICC	Integrated Gasification Combined Cycle
INDC	Intended Nationally Determined Contributions
IRSA	Indus River System Authority
IUCN - Pakistan	International Union for Conservation of Nature (Pakistan)
IWRM	Integrated Water Resource Management
KP	Khal Panchayat
LEAD Pakistan	Leadership for Environment And Development (Pakistan)
LUMS	Lahore University of Management Sciences
MFF	Mangroves for the Future
MoWP	Ministry of Water and Power
NARC	National Agriculture and Research Centre

NDMA	National Disaster Management Authority
NFPP-IV	National Flood Protection Plan-IV
NGO	Non-Governmental Organization
NIO	National Institute of Oceanography
NUST	National University of Sciences and Technology
NWP	National Water Policy
Order	Order of the Lahore High Court dated 14 September 2015
PARC	Pakistan Agriculture Research Council
PEMRA	Pakistan Electronic Media Regulatory Authority
Petition	Asghar Leghari vs. Federation of Pakistan (W.P. No. 25501/2015)
PDMA	Provincial Disaster Management Authority
PID	Punjab Irrigation Department
PIDA	Punjab Irrigation & Drainage Authority
PMD	Pakistan Meteorological Department
PMSA	Pakistan Maritime Security Agency
Policy	National Climate Change Policy, 2012
QMS	Quality Management System

REDD	Reducing Emissions from Deforestation and Forest Degradation
SDPI	Sustainable Development Policy Institute
TOR	Terms of Reference
VFM	Value for Money
WAPDA	Water and Power Development Authority
WCAP	Water Sector Capacity Building and Advisory Services Project
WWF- Pakistan	World Wide Fund for Nature-Pakistan

Final Report of the Climate Change Commission

A. Introductory Note

In Asghar Leghari vs. Federation of Pakistan (Writ Petition No. 25501/2015) (the “Petition”), the Lahore High Court, Lahore, was approached by the petitioner for the enforcement of his fundamental rights under Articles 9 and 14 of the Constitution of Pakistan, 1973. The Petition contended that the increased heat trapping of carbon dioxide (CO₂) and other greenhouse gases in the atmosphere is increasing the global temperature which, in turn, is adversely affecting the climate of Pakistan. The Petition further submitted that to combat the threat of climate change in Pakistan, the Government of Pakistan, through the Ministry of Climate Change, had introduced the National Climate Change Policy, 2012 (the “Policy”) and the Framework for Implementation of Climate Change Policy (2014-2030) (the “Framework”), but that no implementation of the Policy and the Framework has taken place.

By its order dated 14 September 2015 (the “Order”) (Annexure A) in the Petition, Mr. Justice Syed Mansoor Ali Shah constituted a Climate Change Commission (the “Commission”) and appointed Dr. Parvez Hassan as the Chair of the Commission to facilitate the effective implementation of the Policy and Framework.

B. The Commission

1. Terms of Reference

The Terms of Reference (the “TOR”) of the Commission as per the Order are:

Effective implementation of National Climate Change Policy, 2012 and the Framework for Implementation of Climate Change Policy (2014-2030).

2. Membership

The original membership of the Commission as per the Order was Dr. Parvez Hassan, Secretary, Ministry of Climate Change, Secretary, Ministry of Water and Power, Secretary, Ministry of Finance, Revenue, Planning, Development and Reform, Chairman, National Disaster Management Authority, Director General, International

Organization/Climate Change at the Ministry of Foreign Affairs, Secretary, Irrigation Department, Government of Punjab, Secretary, Agricultural Department, Government of Punjab, Secretary, Food Department, Government of Punjab, Secretary, Forest Department, Government of Punjab, Secretary, Health Department, Government of Punjab, Director, Provincial Disaster Management Authority, Secretary, Environment Protection Department, Government of Punjab, Mr. Ali Tauqeer Sheikh, Mr. Hammad Naqi Khan, Mr. Mahmood Akhtar Cheema, Dr. Abid Qaiyum Suleri, Ms. Saima Amin Khawaja, Mr. Anwar Hussain, Mr. Mansoor Usman Awan and Mr. Muhammad Irfan Tariq.

The Order enabled the Commission to co-opt other members. The Commission did do this to draw from other governmental Ministries, Departments and Agencies, civil society organizations, representatives from the media and the academic/scientific community. The complete membership of the Commission, in the order of its appointment, is:

- (1) Dr. Parvez Hassan, Senior Advocate, Supreme Court of Pakistan
- (2) Mr. Arif Ahmed Khan, Secretary, Climate Change
- (3) Mr. Mohammad Younus Dagha, Secretary, Ministry of Water and Power
- (4) Dr. Waqar Masood Khan, Secretary, Ministry of Finance
- (5) Mr. Yousaf Naseem Khokhar, Secretary, Ministry of Planning, Development and Reform
- (6) Maj. Gen. Asghar Nawaz, Chairman, National Disaster Management Authority ("NDMA")
- (7) Mr. Asim Iftikhar Ahmed, Director General (UN), Ministry of Foreign Affairs
- (8) Capt. (Retd) Saif Anjum, Secretary, Irrigation Department, Government of Punjab
- (9) Mr. Muhammad Sheheryar Sultan, Secretary, Agricultural Department, Government of Punjab

- (10) Dr. Pervez Ahmed Khan, Secretary, Food Department, Government of Punjab
- (11) Capt. (Retd) Jahanzeb Khan, Secretary, Forest Department, Government of Punjab
- (12) Mr. Jawwad Rafique Malik, Secretary, Health Department, Government of Punjab
- (13) Mr. Ali Anan Qamar, Director, Provincial Disaster Management Authority
- (14) Mr. Iqbal Muhammad Chauhan, Secretary, Environment Protection Department, Government of Punjab
- (15) Mr. Ali Tauqeer Sheikh, CEO and National Program Director, LEAD, Pakistan,
- (16) Mr. Hammad Naqi Khan, Director General, WWF-Pakistan
- (17) Mr. Mahmood Akhtar Cheema, Country Representative, IUCN Pakistan
- (18) Dr. Abid Qaiyum Suleri, Executive Director, Sustainable Development Policy Institute (“SDPI”)
- (19) Ms. Saima Amin Khawaja, Advocate, High Court
- (20) Mr. Anwar Hussain, Assistant Advocate General, Punjab
- (21) Mr. Mansoor Usman Awan, Advocate, High Court
- (22) Mr. Muhammad Irfan Tariq, DG, Climate Change
- (23) Mr. Mohammad Irfan Elahi, Chairman, Planning & Development Department, Punjab
- (24) Mr. Iftikhar Ahmad, Dunya News
- (25) Mr. Malik Amin Aslam, former Minister of State for Environment, Pakistan

(26) Ms. Khawar Mumtaz, Chairperson, National Commission on Status of Women

(27) Mr. Seerat Asghar, Secretary, Ministry of National Food & Research

(28) Barrister Azra Perveen Qureshi, Joint Secretary, Ministry of Law, Justice and Human Rights, Islamabad

(29) Dr. Ghulam Rasul, Director General, Pakistan Meteorological Department

(30) Mr. Absar Alam, Chairman, Pakistan Electronic Media Regulatory Authority (“PEMRA”)

Mr. Uzair J. Kayani, Assistant Professor, Shaikh Ahmad Hassan School of Law, Lahore University of Management Sciences (LUMS), was invited to the meetings to support the work of the Commission.

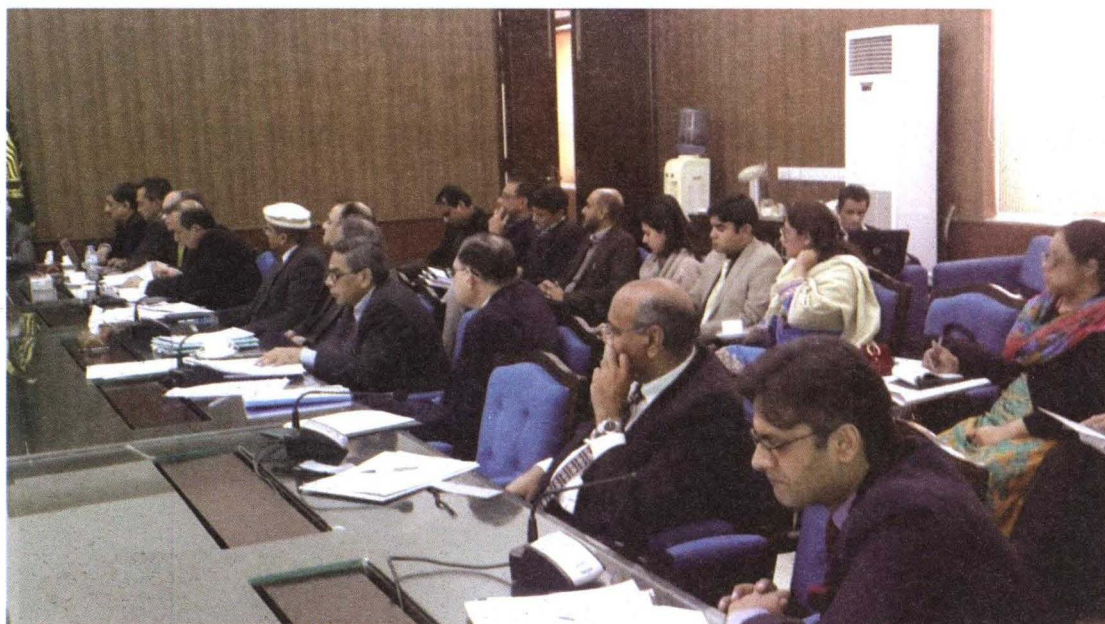
3. Meetings

The Commission held five (5) meetings at the Committee Room, 4th Floor, Planning & Development Department, Lahore, on 1 October 2015, 17 October 2015, 2 November 2015, 21 November 2015, and 9 January 2016.

The Commission adopted the Procedure of Meetings in its first meeting and appointed Mr. Arif Ahmed Khan as the Vice Chair of the Commission. Mr. Muhammad Irfan Tariq was noted as the Secretary of the Commission. The Commission, enabled under the Procedure of Meetings, appointed the Implementation Committees in its second meeting to review the status of implementation of the Priority Actions given under the Framework.



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Members of the Commission at the meetings*

* Photographs, courtesy Mr. Shujaat Umar Pirzada and Syed Muhammad Bilal Khalid.

During the first meeting, the Chair also expressed the hope and expectation that the Commission will develop a consensus in its recommendations to the Lahore High Court, Lahore, and that its work would be solution-oriented and not confrontational or adversarial in any way. The Chair pointed out that the Framework specifies implementation strategies which are time-bound as follows:

- (1) Priority Actions (within 2 years);
- (2) Short term (within 5 years);
- (3) Medium term (within 10 years); and
- (4) Long term (within 20 years).

The Chair proposed, to acceptance, that the best course of action for the Commission would be to focus on the Priority Actions because if these are implemented in their entirety, a substantial part of the Framework would have been implemented and will form the foundation of the other Short Term/Medium Term/Long Term Actions. In this respect, the Chair had circulated, on 21 September 2015, the relevant extract of Priority Actions from the Framework along with a note containing the proposal.

The approved minutes of the meetings of the Commission on 1 October 2015, 17 October 2015, 2 November 2015, 21 November 2015 and the minutes of the meeting on 9 January 2016 are attached as Annexures B/1 to B/5.

4. Implementation Committees

In its second meeting on 17 October 2015, the Commission appointed the following Implementation Committees (the “Committees”) to review the implementation of the Priority Actions under the Framework:

(1) Water Resources Management

- (a) Mr. Ali Tauqeer Sheikh, LEAD Pakistan (Chair)
- (b) Secretary, Ministry of Water and Power
- (c) Secretary, Irrigation, Punjab
- (d) Representative of IRSA

- (e) Water Management, Punjab
- (f) Planning Commission, Islamabad
- (g) Planning & Development Department, Punjab

(2) Agriculture

- (a) Dr. Abid Suleri, SDPI (Chair)
- (b) Secretary, Agriculture & Livestock and Food Department
- (c) Food and Agriculture Organization of the United Nations (FAO)
- (d) National Agriculture and Research Centre (NARC)
- (e) Secretary, Irrigation, Punjab
- (f) Representative of Ministry of National Food Security & Research

(3) Forestry, Biodiversity, and Wildlife

- (a) Mr. Hammad Naqi Khan, WWF-Pakistan (Chair)
- (b) Inspector General (Forests)
- (c) Ministry of Climate Change
- (d) Secretary, Forest and Wildlife
- (e) Ministry of Foreign Affairs
- (f) Mr. Mahmood Akhtar Cheema, IUCN

(4) Coastal and Marine Areas

- (a) Mr. Mahmood Akhtar Cheema, IUCN (Chair)
- (b) Secretary, Ministry of Ports and Shipping
- (c) National Institute of Oceanography (NIO)
- (d) Pakistan Maritime Security Agency (PMSA)
- (e) Ministry of Defense
- (f) Mangroves for the Future (MFF)
- (g) Ministry of Climate Change
- (h) Representative from WWF-Pakistan

(5) Disaster Risk Management

- (a) Ms. Saima Amin Khawaja (Chair)
- (b) Chairman, NDMA
- (c) DG, PDMA
- (d) Pakistan Meteorological Department
- (e) Global Climate Impact Studies Centre (GCISC)
- (f) Punjab Meteorological Office
- (g) Federal Flood Commission
- (h) Punjab Irrigation Department
- (i) Child Protection Cell
- (j) Ministry of Information

(6) Energy

- (a) Secretary, Ministry of Water and Power (Chair)
- (b) Mr. Mansoor Usman Awan
- (c) Energy Conservation Centre (ENERCON)
- (d) Alternative Energy Development Board (AEDB)
- (e) Punjab Energy Department

The Chair recommended that most of the Committees will be headed by the representatives of the private sector as the reporting of the progress is by the Government and its Ministries, Departments and Agencies. The working of these Committees will be facilitated by the particular Ministry/Department in terms of providing resources, secretariat, information and data.

It was also suggested by the Chair that the Committees will have the power to co-opt other persons from within and outside the Commission. The TORs of the Committees will be within the over-arching TOR of the Commission and their focus should assess the implementation of the Priority Actions provided in the Framework till 31 December 2015 and any other steps taken on the Priority Actions, which are in process. In addition, the Committees can pick up two (2) or three (3) Priority Actions, as per the order of the

Lahore High Court, Lahore, dated 5 October 2015, that can be achieved by the end of December 2015 and focus on them.

5. First Preliminary Report of the Commission

The Chair submitted the First Preliminary Report of the Commission to the Lahore High Court, Lahore, as per its directions, on 10 November 2015. The First Preliminary Report provided the status of the implementation of the Priority Actions and highlighted those Priority Actions which would be implemented by the end of December 2015.

6. Reports of the Committees

The Reports of the six (6) Committees are:

- (1) Report on Water Resource Management (Annexure C)
- (2) Report on Agriculture (Annexure D)
- (3) Report on Forestry, Biodiversity, and Wildlife (Annexure E)
- (4) Report on Coastal and Marine Areas (Annexure F)
- (5) Report on Disaster Risk Management (Annexure G)
- (6) Report on Energy (Annexure H)

7. Presentations on the COP 21 Paris Conference, December 2015

At the fourth meeting of the Commission held prior to the COP 21 Meeting in Paris, the Vice Chair gave a presentation of the major issues before the upcoming Climate Change Summit in Paris, COP 21, and Pakistan's brief on the Intended Nationally Determined Contributions ("INDC").

At the concluding/fifth meeting of the Commission held on 9 January 2016 after COP 21, Mr. Malik Amin Aslam Khan gave a report on COP 21 and Pakistan's representation at the Paris Summit.

C. An Analysis of the Policy and the Framework

1. Overview

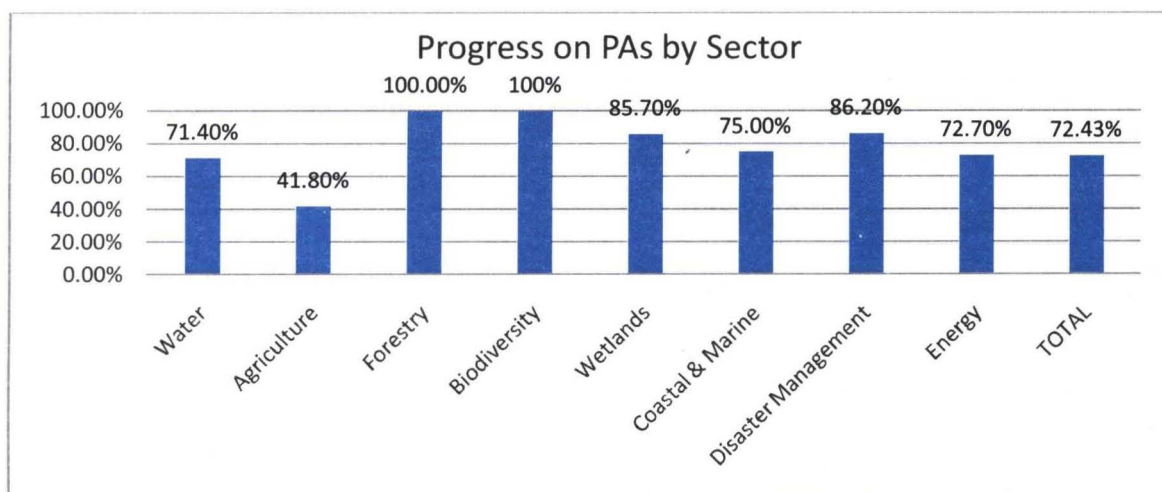
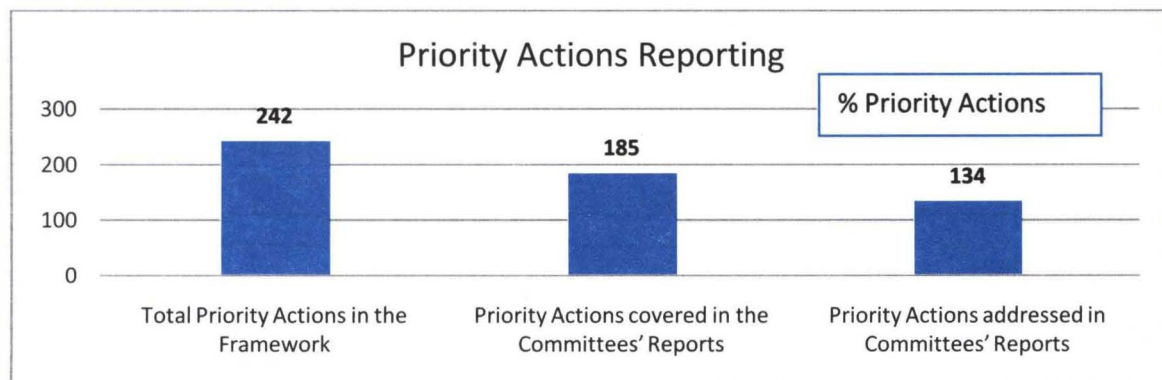
The Policy was approved in 2012 and the Framework was formulated in 2013 for implementation from 2014 to 2030. There are a total of 735 actions suggested in the Framework, out of which 242 are Priority Actions, 380 Short Term, 108 Medium Term and only 5 are Long Term Actions.

2. Key Progress Statistics

Total Priority Actions in the Framework	Priority Actions covered in the Committees' Reports	Priority Actions addressed in Committees' Reports	% Priority Actions addressed
242	185	134	55.37%

No.	SECTORS	Priority Actions in the Policy	Progress reported by the Committees	% Priority Actions addressed by the Committees
1	Water	42	30	71.4%
2	Agriculture	43	18	41.8%
3	Forestry	30	30	100%
4	Biodiversity	4	4	100%
5	Wetlands	7	6	85.7%
6	Coastal and Marine Areas	8	6	62.5%
7	Disaster Management	29	24	82.75%
8	Energy	22	16	72.7%
TOTAL		185	134	72.43%

The following figures graphically represent the above statistics:



3. Breakdown of Priority Actions

From each of the Reports of the six (6) Committees:

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(1) Water Resource Management

No.	Categories	Priority Actions
1	Policy/law making and implementation	13
2	Enabling Environment	4
3	Institutional Strengthening and Capacity Building	4
4	Awareness	4
5	Assessment/Research	29
6	Infrastructure/Technology Implementation	26
	Total	80

(2) Agriculture

No.	Categories	Priority Actions
1	Policy/law making and implementation	5
2	Enabling Environment	3
3	Institutional Strengthening and Capacity Building	6
4	Awareness	8
5	Assessment/Research	11
6	Infrastructure/Technology Implementation	10
	Total	43

(3) Forest, Biodiversity, and Wildlife

No.	Categories	Priority Actions
1	Policy/law making and implementation	10
2	Enabling Environment	7
3	Institutional strengthening and capacity building	9
4	Awareness	5
5	Assessment/Research	3
6	Infrastructure/Technology Implementation	7
	Total	41

(4) Coastal and Marine Areas

No.	Categories	Priority Actions
1	Policy/law making and implementation	0
2	Enabling Environment	1
3	Institutional Strengthening and Capacity Building	2
4	Awareness	0
5	Assessment/Research	4
6	Infrastructure/Technology Implementation	1
	Total	8

(5) Disaster Risk Management

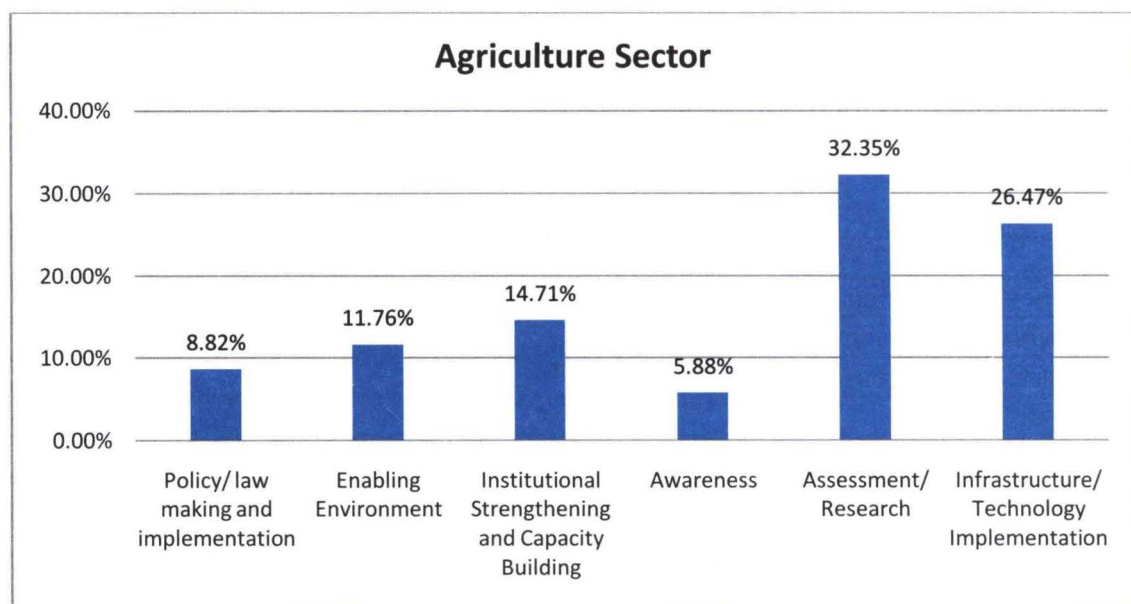
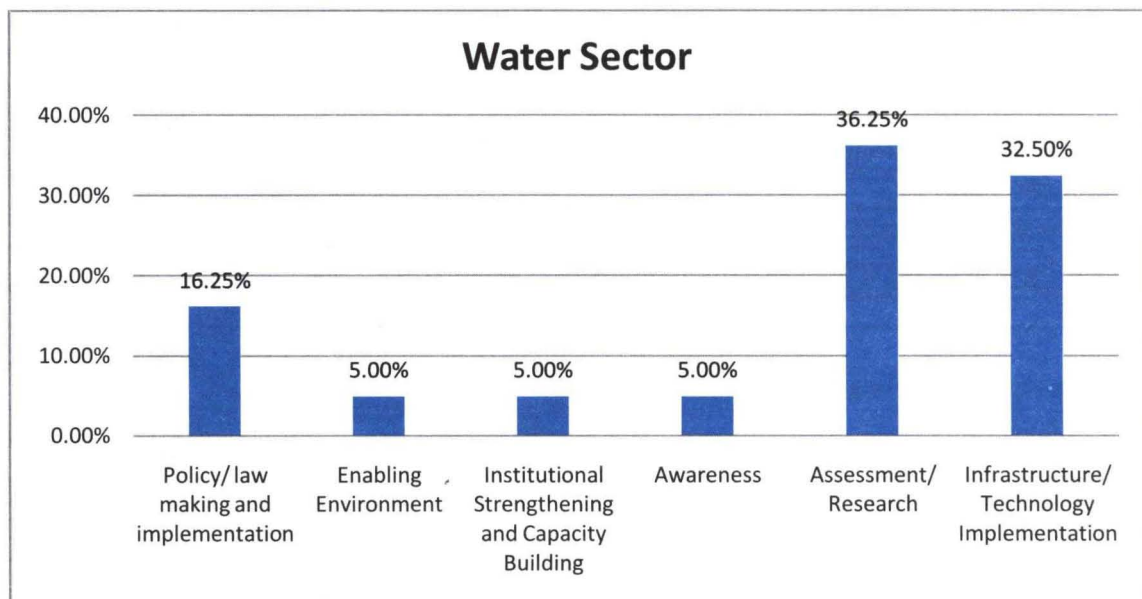
No.	Categories	Priority Actions
1	Policy/law making and implementation	3
2	Enabling Environment	3
3	Institutional strengthening and capacity building	7
4	Awareness	3
5	Assessment/Research	8
6	Infrastructure/Technology Implementation	5
	Total	29

(6) Energy

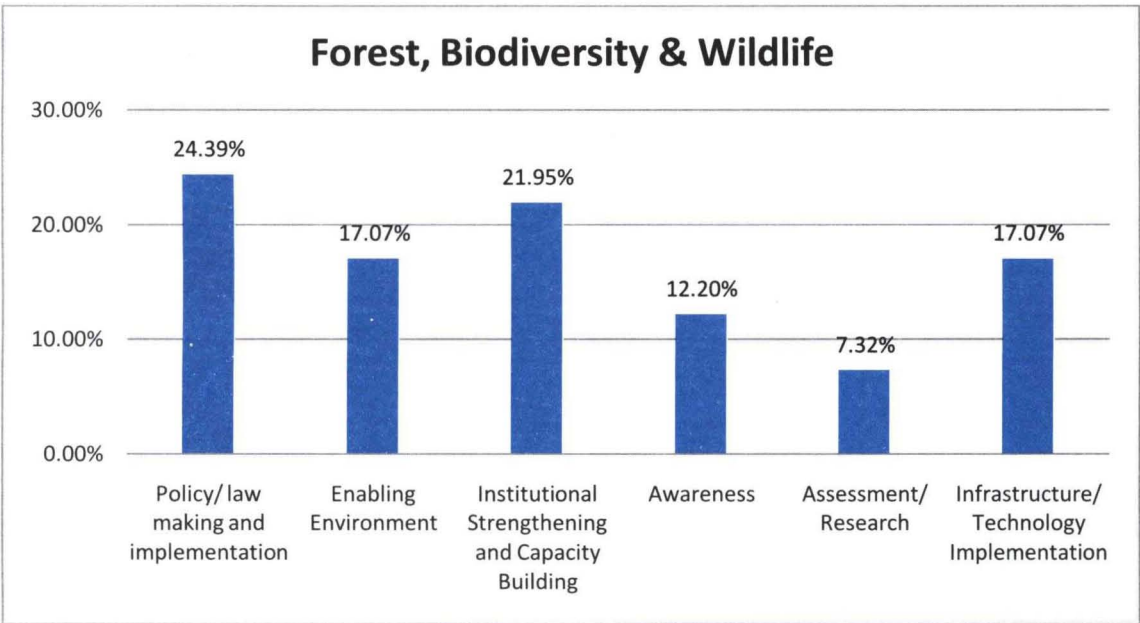
No.	Categories	Priority Actions
1	Policy/law making and implementation	5
2	Enabling Environment	6
3	Institutional Strengthening and Capacity Building	4
4	Awareness	3
5	Assessment/Research	2
6	Infrastructure/Technology Implementation	2
	Total	22

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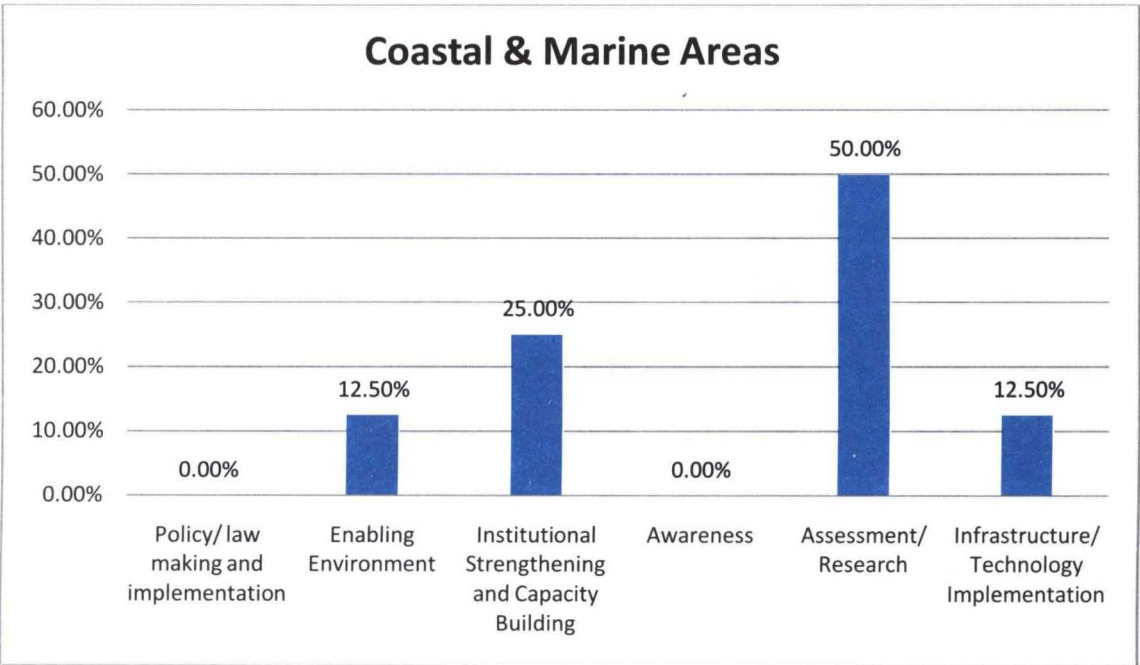
The above statistics are presented graphically below:

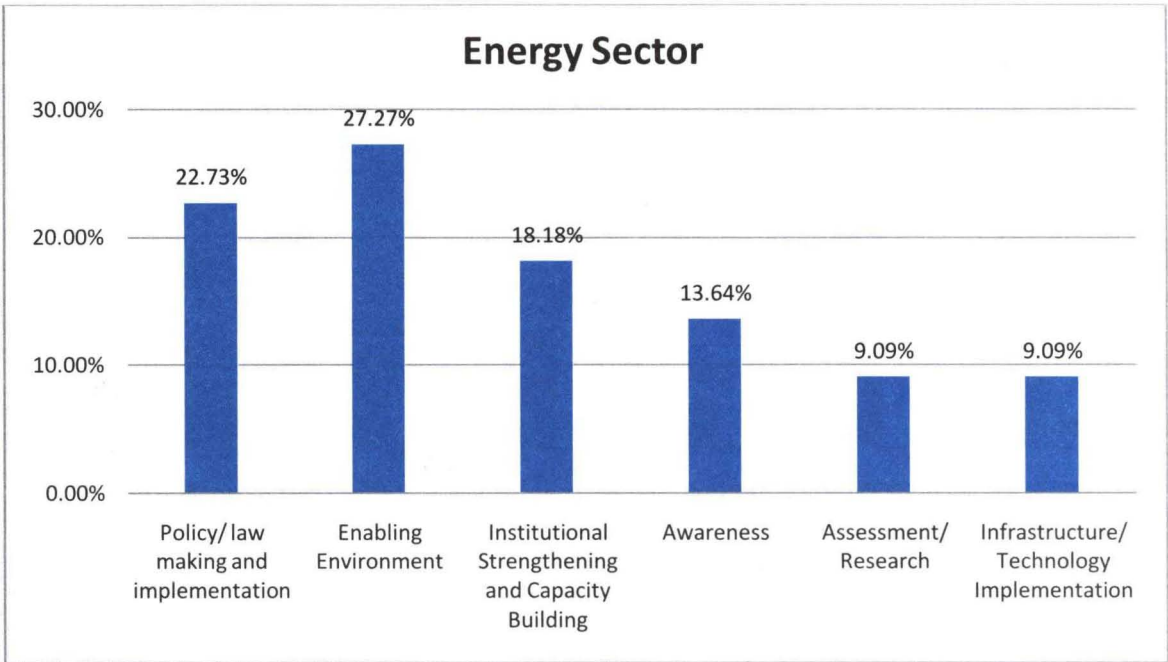
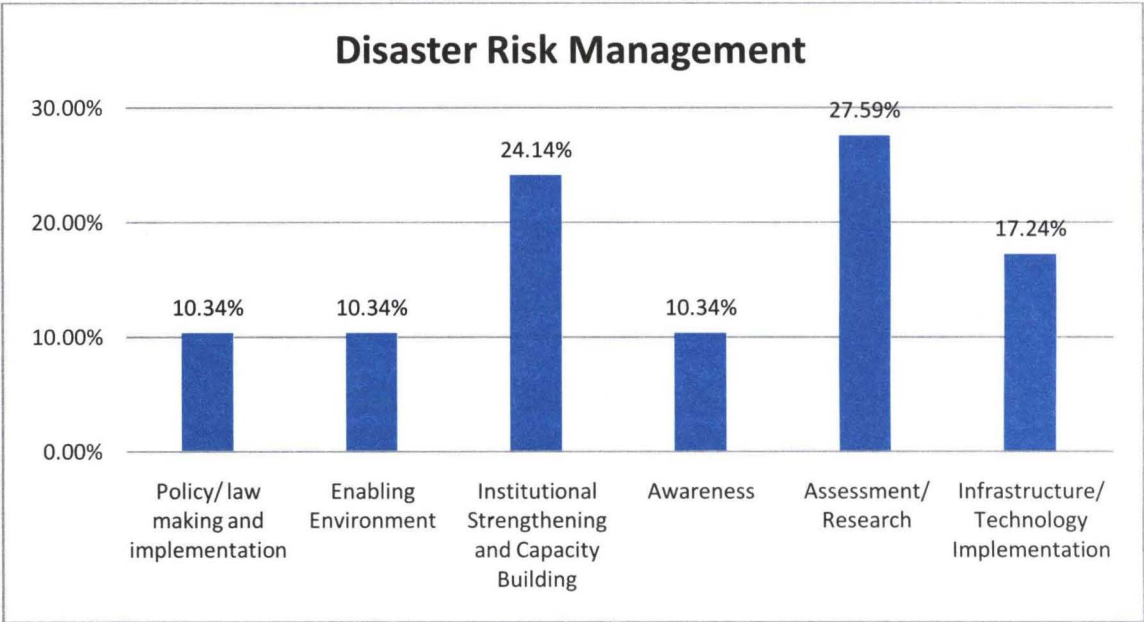


Forest, Biodiversity & Wildlife



Coastal & Marine Areas



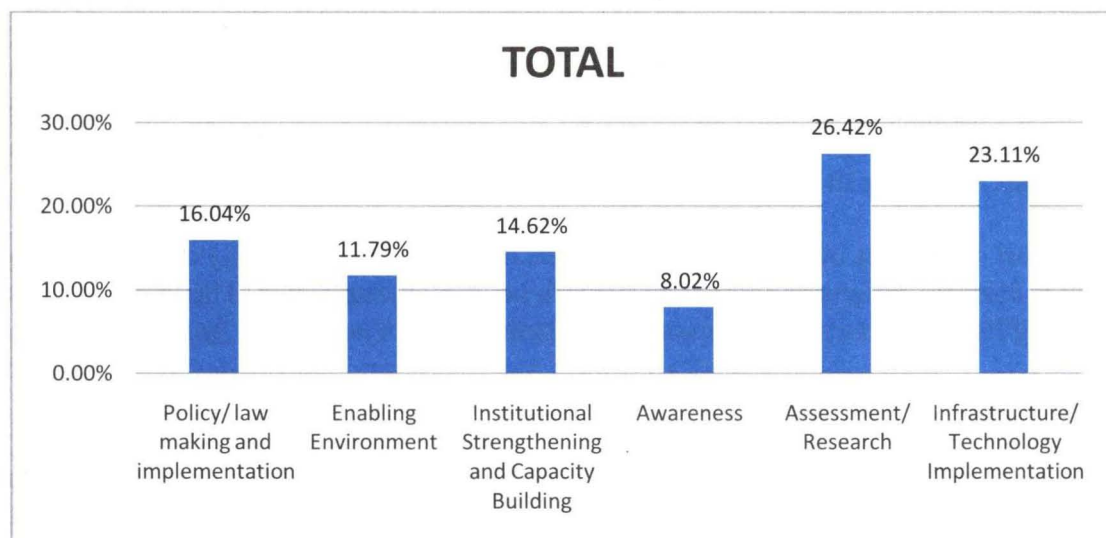


4. Overview of the Priority Actions

Cumulatively, the Priority Actions for each Committee were:

No	Categories	Water Resource Management	Agriculture	Forest, Biodiversity, and Wildlife	Coastal and Marine Areas	Disaster Risk Management	Energy	Total
1	Policy/law making and implementation	13	3	10	0	3	5	34
2	Enabling Environment	4	4	7	1	3	6	25
3	Institutional Strengthening and Capacity Building	4	5	9	2	7	4	31
4	Awareness	4	2	5	0	3	3	17
5	Assessment/Research	29	11	3	4	8	2	57
6	Infrastructure/Technology Implementation	26	9	7	1	5	2	50
		80	34	41	8	29	22	214

The above statistics are presented graphically below:



D. Summary of the Reports of the Committees

At the commencement of the work of the Commission, the general perception that existed was that there was no substantial progress regarding the implementation of the Framework in the country. During the course of the meetings of the Commission, however, it appeared that this perception was misplaced. The glass of the implementation of the Framework, and the Priority Actions in particular, appears half-full as evidenced by the Reports of the Committees. However, it is important to note that the Priority Actions under the Framework do not set any qualitative or quantitative standard. Hence, it is very difficult to assess with accuracy the performance under the Priority Actions. Further, successful completion of any of these projects may not necessarily mean that the problem has been fully resolved as these projects, because of their 'pilot' nature, have limitations of time and space. With this caveat, the progress as per the Reports of the Committees is as follows:

1. Water Resource Management

Under the Framework, forty-two (42) Priority Actions pertain to the water sector while thirty-eight (38) are spread over different Sectors, Ministries and Departments. These Priority Actions cover different areas including capacity building and institutional strengthening, creating awareness, policy making, and infrastructure development.

The Report highlighted that the Ministry of Water and Power and the Departments of Irrigation and Agriculture, Government of Punjab, had conceived or initiated many projects before the Policy was approved or the Framework was developed. Resultantly, the respective Ministry and Departments have done work on more than one-third of all the Priority Actions relating to the water sector.

The Report stated that by the end of December 2015, eleven (11) (26%) out of the forty-two (42) Priority Actions under the Framework have been completed. The majority of the remaining Priority Actions will be completed between 2016 and 2018 (Annexure C).

2. Agriculture

Under the Framework, forty-three (43) Priority Actions deal with agriculture in the country. These Priority Actions are spread over different areas which include capacity building, land use planning, best management practices, surveillance and assessment of

different areas, and policy making. The Report noted that work on many of these Priority Actions is an ongoing process which the Department of Agriculture is continuously undertaking. The Report also highlighted that water level in Pakistan was continuously dropping. Cultivation of high delta crops, namely sugar cane and rice, needed to be checked as their cultivation would further deplete the water levels.

The Report provided that by the end of December 2015, six (6) (14%) of the Priority Actions under the Framework have been completed. The remaining Priority Actions will be completed between 2016 and 2020 ([Annexure D](#)).

3. Forestry, Biodiversity, and Wildlife

The Report highlighted that forty-one (41) Priority Actions deal with Forest, Wildlife and Biodiversity in the country, out of which thirty (30) pertain to Forests, four (4) pertain to Biodiversity while seven (7) are related to wetlands. It was also reported that there are no Priority Actions regarding wildlife under the Framework. The Report raised the issue of funding and stated that many of the Priority Actions require continuous actions for which finances are required. Further, there were capacity building issues which needed to be resolved. The Report also highlighted that there were violations of the laws and policies by the state itself, especially regarding the hunting of migratory birds. These issues/violations needed to be taken care of to provide a safe sanctuary to the migratory birds and to improve biodiversity.

The Report stated that by the end of December 2015, twenty-two (22) (54%) of the Priority Actions under the Framework have been completed. The majority of the remaining Priority Actions will be completed between 2017 and 2018 ([Annexure E](#)).

4. Coastal and Marine Areas

The Report provided that eight (8) Priority Actions pertain to coastal and marine areas. It was highlighted in the Report that by the end of December 2015, two (2) (25%) of the Priority Actions under the Framework have been completed ([Annexure F](#)).

5. Disaster Risk Management

The Report highlighted that twenty-nine (29) Priority Actions pertain to disaster risk management out of which twenty-four (24) Priority Actions have been addressed to a

certain level; some substantially while others are in the process. However, five (5) Priority Actions have not been addressed at all. The Report also stated that there is a big shortfall at the district levels regarding disaster preparedness. No infrastructure is available and the District Co-ordination Officers are not fully equipped with the required equipment. The Report emphasized that the Federal and Provincial Governments can only plan and, at best, be present at major calamities but on a day-to-day basis, the District Disaster Management Agencies are the ones which need to be functioning effectively. Unfortunately, there is no sustainable structure at that level, which needs to be rectified. It was also highlighted that there should be strong enforcement measures as many rules and regulations, particularly building codes, are not followed. The Report and the Chairman, NDMA, also emphasized that (1) early warning systems should be modernized; (2) response mechanisms at the lower tiers (district levels) should be strengthened; and (3) awareness should be created in the people by making disaster management a part of the curriculum at school level. NDMA has also developed the National Guidelines on Vulnerable Groups in 2014 and is in the process of implementing it. Also, it is gathering desegregated data for highlighting gender related concerns during disasters. This is the only gender sensitive initiative coming out of all the Committees.

The Report provided that by the end of December 2015, eleven (11) (38%) of the Priority Actions under the Framework have been completed. The majority of the remaining Priority Actions will be completed by 2016 (Annexure G).

6. Energy

The Report provided that there are twenty-two (22) Priority Actions that deal with the energy sector in the country. These Priority Actions cover different areas including policy making, capacity building and institutional strengthening, creating awareness, and infrastructure implementation. The Report stated that by the end of December 2015, ten (10) (45%) of the Priority Actions under the Framework have been completed (Annexure H).

On the request of the Chair, Mr. Ali Tauqeer Sheikh and Ms. Saima Amin Khawaja synthesized the six (6) Reports of the Committees into Synthesis Reports (Annexure I).

E. Major Findings of the Commission

The Commission, through the Committees, found:

1. The degree of familiarity with the Policy is not particularly visible, or uniformly high, in the concerned Ministries, Departments, or Agencies at both the national and provincial levels. The Policy appears not to have fully factored the 18th Constitutional Amendment and, hence, several roles and responsibilities have moved to the Provinces but the clarity and consensus remains to be accomplished, recorded and communicated or notified as appropriate. Failing that, we will leave the Policy implementation to chance.
2. The Framework is not fully reflective of the Policy as some sections of the Policy are not covered in the Framework. It did not hamper in any way the Commission's work, but it is pointed out for the purpose of record. The omissions need to be rectified and attached as an addendum to the Framework.
3. Many Ministries, Departments and Agencies had conceived, developed and undertaken projects that had a bearing on the implementation status of the Policy and the Framework well before the Policy and the Framework were approved. The Reports by the Committees have included many such projects or initiatives by the concerned Ministries, Departments and Agencies. Instead of falling prey to false comfort or sense of accomplishment, a concerted effort on climate-proofing of all such projects needs to be planned and initiated by clustering all such projects in categories. For the ongoing projects, and for future portfolio, necessary revisions in the PC-1 are a prerequisite for climate proofing for necessary embedding of climate concerns into the planning and budgetary processes. Otherwise, it will be a missed opportunity and, in some cases, perhaps accentuate climate vulnerabilities.
4. The Ministries, Departments and Agencies have not introduced any tagging to trace official resource/budgetary allocations to cope with the climate challenge. The Commission feels that the Ministry of Climate Change at the national and the Planning & Development Department at the provincial level need to initiate this practice of tabulating national and provincial data on financial allocations on account of climate change adaptation, mitigation and investments in disaster risk reduction. There are no separate budget lines for climate change mitigation/adaptation despite the fact that Pakistan is regarded as one of the most vulnerable countries and has begun to lose a high percentage of its Gross Domestic Product (GDP) to climate induced disasters. It is, therefore,

imperative to develop mechanisms to assess and allocate resources for the implementation of the Policy and the Framework at the Federal, Provincial and local levels for use by the lead Ministries, Departments and Agencies.

5. Several of the projects listed by the Committees were part of Pakistan's development agenda even if these were not perceived or explicitly considered as climate change projects. Some of these projects do not even refer to the climate change, or climate threats to Pakistan, or refer to the country's mitigation and adaptation needs, or the damages caused by factors that could be reasonably attributed to climate change. There is, therefore, an urgency to review existing departmental policies, programs and initiatives for them to be climate compatible. Such a review exercise can help strengthen Pakistan's case to access international climate finance through Green Climate Fund, International Climate Fund, Adaption Fund, and other such financing windows, Multi-Donor Funds and special purpose funds being created to facilitate the INDCs.

6. The Committees had identified a significant number of projects that were categorized in the Policy as Long-Term, Medium-Term, or Short-Term, even if these projects typically were not considered as climate change related projects. The Committees' Reports have focused primarily on Priority Actions. However, the Commission's work has highlighted the dichotomy that needs to be rectified to undertake an exercise on prioritization, sequencing and grouping various projects in strategic clusters. If such an exercise is undertaken, the alignment with and implementation of guiding documents, such as Vision 2025 or the Punjab's Growth Strategy 2015, will become more practical and climate compatible/relevant.

7. Since many of the Long-, Medium-, and Short-Term projects were conceived or initiated before the Policy and the Framework were approved, the capacity of the Ministry of Climate Change needs to be augmented for it to provide leadership on climate change related aspects as the focal point Ministry. In a similar fashion, the Planning & Development Departments in the Provinces need to put in place institutional mechanisms for substantive guidance by measures such as developing the Provincial climate change policy and its implementations, establishing climate change unit at the Planning & Development Department, creating a new Member, Climate Change at Planning & Development Department, and initiating appointment of Climate Change focal points in the concerned Departments and their capacity-building/training.

8. Many Ministries, Departments and Agencies have multiple projects but their targets and outcomes are neither clearly specified nor aligned with the Policy and/or the Framework. Most projects reported by the Committees do not specify what problem (or part/percentage of it) will be addressed by the project, or what additional actions/projects would be needed to address or solve the problem. This does not necessarily reflect the weakness of the individual projects, but a comment on the way the planning of the Government of Pakistan is presently structured in the absence of 5-Year Plans or by the introduction of the 18th Constitutional Amendment. There is no mechanism mentioned in any of the Committees' Reports that the successful implementation of Priority Actions will help meet the objectives of the Policy. The Commission has hazarded a guess but it is not in a realistic position to determine that the glass is more than half full or more than half empty.

9. Most Committees' Reports have not adhered to the template provided by the Ministry of the Climate Change on behalf of the Commission. Those who did use the recommended template to furnish the requested information, failed to fill many important columns for want of readily available information/data or the capacity, factors that the Ministry of the Climate Change had not provisioned for. In order for the Reports of the Committees to have immediate or medium-term utility, the Ministry of the Climate Change should consider redesigning the questionnaires and collecting the data on a 6-monthly or yearly basis for internal and general public use.

10. The data furnished by the Ministries, Departments and Agencies was incomplete and fragmented. It has left the impression that most projects were infrastructure related, requiring huge investments, typically supported by Micro Finance Institutions and bilateral development partners. It is imperative that the Planning & Development Department (or/and the Ministry of the Climate Change) take the lead in identifying areas for soft investment and allocations whereby a fair percentage of resources are also channelized to reach the ultimate beneficiaries, communities and their local infrastructures.

11. The data furnished by many Ministries, Departments and Agencies on funding sources of most projects was incomplete. Yet, based on the available information it appears that most projects are funded by donors and reflect, whenever specific references to climate change were made, their respective priorities. The Commission believes that this impression needs to be dispelled and in this regard an annual report needs to be regularly issued by the Ministry of the Climate Change, the focal point Ministry, on the

climate related allocations and investments by the Government of Pakistan. A similar report needs to be released by the Planning & Development Department to demonstrate the commitment of the Provinces to address the climate vulnerabilities.

12. No mechanisms are in place to factor gender based vulnerabilities and, hence, no gender segregated data is being generated in pursuance of the Policy. Only one (1) initiative from NDMA has been reported in this regard. Gender based vulnerabilities are not only in the wake of disasters but also due to impact of climate change in areas such as cropping patterns, water shortages, fuel availability hence gender disaggregated data needs to be gathered in all climate change affected areas/situations (in order to determine adaptation strategies/interventions for men and women).

13. The Committees' Reports and their periodic meetings have created a reasonable momentum and degree of awareness. The Chairman, Planning & Development Department, Punjab, should continue to host these meetings for another year or so, so that the Province could truly benefit from this process. The other Provinces should also benefit by adopting a similar process in each Province.

14. The lead agency was not always listed with each objective in the Framework. Instead, the Framework often times listed a large number of Ministries, Departments, and Agencies resulting in confusion that can be avoided by undertaking a consultative process led by the Ministry of the Climate Change or, ideally, by the lead Department for each objective.

F. Recommendations of the Commission

The TOR of the Commission was to facilitate the effective implementation of the Policy and the Framework. It is within the Commission's competence to recommend numerous measures that can ensure that the smooth implementation of the Policy and the Framework continues. If the measures recommended by the Commission are timely implemented, it would further strengthen the measures already taken under the Policy and the Framework and provide a stable foundation for the Short Term/Medium Term/Long Term Actions.

The process of implementing the Recommendations would be as important as the actions to be implemented under the Framework. What is required is a paradigm shift in the

mind-set of the Federal and Provincial Governments, its Ministries, Departments and Agencies that climate change is a real threat which needs to be countered effectively to ensure a better future for the country.

The specific recommendations of the Commission, to be handled in full view of the 18th Amendment, are:

1. Climate Change Co-ordination and Monitoring

During the meetings of the Commission, it became apparent that there was a lack of co-ordination between not only the Federal and Provincial Governments but also between the different Ministries and Departments, both at the federal and provincial levels. This lack of co-ordination was remedied at the meetings of the Commission where the different Ministries and the Departments met and engaged in the discussion of the issues regarding climate change. The most valuable contribution of the Commission to the debate in the country is the facility and framework for co-ordination that it provided. This needs to be strengthened and institutionalized.

The Commission endorsed the need to strengthen the co-ordination, the monitoring and the continuation of the momentum created by the work of the Commission. Several proposals were discussed to accomplish this:

(1) The Chair proposed the setting up of a permanent statutory body, the Climate Change Authority, as a forum to the different Ministries and Departments to meet and discuss the issues regarding climate change and its mitigation. The membership of the statutory body should include representatives from the Federal and Provincial Governments, Ministries, Departments, civil society organizations, media and academics. The Authority should be tasked to hold periodic meetings – such as one (1) minimum meeting each quarter – and to submit a Report to the Parliament and the public on the ongoing/continuous implementation of the Policy and the Framework.

(2) While several members recognized the value of a Climate Change Authority, such a commitment would require much time (in view of the 18th Constitutional Amendment) and resources in its establishment. It would be more time and cost efficient if the existing fora already established for such co-ordination are activated and strengthened.

It is, accordingly, recommended that while the proposal for the establishment of a Climate Change Authority, with appropriate legislative cover, should be considered and evaluated by the Government of Pakistan in the long term, the existing fora such as the Prime Minister's Task Force on Climate Change and the National Climate Change Implementation Committees be activated.

The Prime Minister's Task Force on Climate Change and the National Climate Change Implementation Committees can build on the foundational work of the Commission. They will need to take the implementation of the Framework to a new level of urgency, dedication and commitment much needed for meeting the growing challenges of climate change including adaptation and mitigation. The Priority Actions, all of which were to be completed by December 2015 should now be targeted for full implementation by 31 March 2016 or 30 June 2016. Parallel with this, the Prime Minister's Task Force on Climate Change and the National Climate Change Implementation Committees should start a review of the implementation of the Short-Term goals that are scheduled for completion by 2019. They should also, at the earliest, review the targets for completion dates for the entire Framework with the purpose of determination of new time lines that respond well and more favourably to the emerging and emergent challenges of climate change.

Finally, these fora can also look to strengthening the six (6) Reports of the Committees. The quality of the Reports is, admittedly, uneven but the Commission has led the effort to provide a template and basis of co-ordination between the Ministries and the Departments. It succeeded in generating a workable pattern of co-ordination between the relevant Ministries and the Departments, all fully supported by the dedication of the civil society organizations and the potential of Universities and think tanks. This work paradigm needs to be fully encouraged and facilitated in the years ahead.

2. Financial Allocations

In all the Reports of the Committees, budgetary allocation was seen to be the biggest obstacle in the implementation of many projects and plans which could mitigate the climate change. Without the supporting resource allocation, many of the Priority Actions may not be implementable and will merely become a wish list. It is, therefore, recommended that the concerned Ministries, like the Federal Ministry of Finance, the Punjab Ministry of Finance and the Ministry of Planning, Development and Reforms, allocate appropriate budgets for the implementation of the Framework, in particular the

Priority Actions. Further, the 2% of the Public Sector Development Programme proposed for the NDMA is awaiting approval which should be granted to ensure effective disaster preparedness.

It was the expectation of the Chair to invite the Federal Minister of Finance, the Punjab Minister of Finance, and the Chairman, Federal Board of Revenue to the final meeting of the Commission to sensitize the importance of the resource allocation for the mitigation of climate change and the implementation of the Priority Actions. This should, pending the establishment of the Climate Change Authority, mentioned in Recommendation 1, now be addressed by the Prime Minister's Task Force on Climate Change and the National Climate Change Implementation Committees.

3. Capacity Building and Improved Infrastructure

There is a lack of infrastructure and human resources at the district levels for creating awareness and disaster preparedness. The Commission recommends that immediate steps, including budgetary allocations, should be taken to build, or increase, the capacity at the district levels. In particular, the District Disaster Management Agencies should be properly developed and resourced so that in case of a disaster, a timely and effective action may be taken. Representation of women should also be made mandatory in the District Disaster Management Agencies. Similarly, Pakistan Meteorological Department is the sole institute in Pakistan that issues meteorological, hydrological and geological related early warnings to different the stakeholders. It is, therefore, suggested that the capacity of the Early Warning Systems in practice should be properly maintained, upgraded and modernized.

4. Separate Ministry/Commission for Water

The Reports of the Committees highlighted that the water level in the country is continuously dropping. Pakistan, as a lower riparian country, will be challenged by the diminishing quantities of water and unreliable supply lines. Further, the issues regarding water are overshadowed by the energy issues. Pakistan needs a national vision for an integrated system for water resource management and needs to break the sectoral silos and strengthen institutions to meet the challenges. It is, therefore, recommended that a separate ministry/national commission on water is established which solely deals with water resource management and its conservation.

5. Glacial Melt and Storage Capacity

During a hearing before the Lahore High Court, Lahore, on 7 December 2015, the Project Director of the Glacier Monitoring Research Centre (“GMRC”), WAPDA, Lahore, submitted that GMRC has been operationalized and data has been collected regarding the glacial melt. According to the data so far collected, there has been excessive melting of glaciers in the recent past. The Project Director further reported that this excessive glacial melt necessitates that the storage capacity of water should be enhanced on the Indus River. He stated that the total storage capacity required is 32-MAF while the existing storage capacity is only 16-MAF. The construction of the Bhasha Dam, which will take 10-12 years for completion, will only add 6.4-MAF to the existing storage capacity. The focal person of the Ministry of Water and Power reported that besides the Bhasha Dam, there has been no allocation of funds for the development of other dams. The Representative of Finance Department submitted that they have not received any proposal from the Ministry of Water and Power for the development of dams in the future. The Lahore High Court, Lahore, observed that there is a huge disconnect between the different Ministries regarding the planning for climate change.

The lack of storage capacity is a serious concern which must be urgently attended to by the Federal Government. It is recommended that the Federal Government and the relevant Ministries develop plans and allocate the requisite financial allocations for increasing the storage capacity.

6. Agriculture

It was highlighted during the third meeting on 3 November 2015 that Pakistan, despite being an agricultural country, is spending less than Bhutan and Nepal on agriculture. Also, the Committee’s Report on Agriculture stressed that the water level in the country is dropping. Pakistan must realize the seriousness of the situation and adapt to act accordingly. Further, Pakistan needs to rationalize its crop water use based on crop physiology, change the cropping pattern and selection, and adopt crop zoning policies based on climate change vulnerability. Moreover, the cultivation of the high delta crops, such as sugar cane and rice, should be checked as their continuous cultivation is depleting the water level of the country and affecting pest control practices.

Also, the Federal and Provincial Governments should carry out modeling and analytical studies at agro ecological zone level to understand productivity, substitution potential,

constraints and opportunities. Farmers, including women farmers, should be educated about the improved water management technologies and techniques for cropping and encouraged to adopt the same. They should also be geared to be adaptable to increasing temperature, shorter seasons, more erratic rainfall and water supply by changing crop variety, crop species and by changing the planting dates to match season conditions to crop characteristics. The relevant Ministry and Departments should use the media and modern technology to create awareness and provide information to farmers to help them make decisions on what to plant, when and how, and in what quantities to produce and where to market the crops.

7. Food Security and Climate Change

The Committee's Report on Agriculture highlighted that although climate change is affecting the food security situation in Pakistan, the Framework has no mention of food. Thus, there is no Priority Action for the Federal Ministry of National Food Security & Research and the relevant Department in the Framework. To avoid any food security situation in the country, steps should be taken by the relevant Ministry and Department to ensure that adequate food stocks are maintained to cope with any crop failure due to climate change. Further, the Policy and Framework may be amended to include crucial areas like food security.

8. Public Awareness regarding Climate Change

Mass awareness campaigns are critical to create awareness regarding the climate change and its effects. The Ministries and the Departments are undertaking steps to create awareness. However, media should also be involved in such campaigns as the role of media is essential in educating the citizens regarding climate change and achieving the objectives of the Policy and the Framework. As per the laws and policies applicable to the PEMRA, all TV stations are supposed to use 10% of their airtime for public education, therefore, awareness regarding climate change and its mitigation should be promoted through this.

9. Dissemination of the Studies Conducted by the Government

The Reports of the Committees have disclosed the existence of several studies (including research) in Ministries/Departments/Agencies of the Government. The Commission recommends the dissemination of these important studies on the Internet and other

medium so as to be available in the public domain and, particularly, to the Universities and research bodies.

10. Meeting of the Council of Common Interests

The Commission recommends that the Federal Government should hold the meeting of the Council of Common Interests as soon as possible as there are many issues relating to the Framework, and the Priority Actions in particular, which need the approval of all the Provinces, for instance the National Flood Protection Plan-IV.

11. Protection of Ecologically Sensitive Habitats and Species

Pakistan should actively make efforts to protect the forests, biodiversity and wildlife. The notified protected areas of Pakistan should be thoroughly managed as these serve as the cornerstone of the biological diversity in the country and are important indicators of climate change. Sustainable Forest Management initiatives need to be promoted and REDD+ projects need to be implemented in consultation and collaboration with the Ministry of Climate Change. Additionally, projects/initiatives like the Billion Tsunami Tree in Khyber Pakhtunkhwa should be replicated in other Provinces, particularly in Punjab, to increase the number of trees in the country and ensure zero carbon growth.

Moreover, the effective implementation of the National Biodiversity Strategy and Action Plan by the Ministry of Climate Change at the federal level and the Punjab Biodiversity Strategy and Action Plan at the provincial level should be ensured. The Federal and Provincial Governments should also take measures for effective enforcement and compliance of the laws and policies to provide a safe habitat to the wildlife, particularly the migratory birds. The violations of the laws and policies, specially by the state itself, need to be addressed to provide a safe sanctuary to the wildlife and improve biodiversity in the country.

12. Better Co-ordination between the Governmental Departments/Agencies

There is lack of co-ordination between the different provincial Departments/Agencies themselves. The Departments/Agencies should better co-ordinate between themselves to monitor the climate change impacts and the proposed mitigation measures.

13. Coal and the Future Energy Mix

Post-COP 21 Paris 2015, there is a clear international recognition for cleaner and renewable sources of energies and to move away from fossil fuels and coal. The U.S. and China, two (2) of the world's largest greenhouse gas polluters, have made important policy decisions in that regard. The world is steadily shifting to renewable sources of energy for their energy requirements. This shift will gradually pick up pace if the ambitious commitments of Paris 2015 are to be met. Although no binding obligations apply so far, Pakistan must recognize the inevitable that in the future, coal-based economies will not be "sustainable" and may face the same sanctions from consumers as are faced by products involving child or bonded labour. Resultantly, Pakistan should aim to change its energy mix by tapping into and investing in renewable energy resources to meet its energy requirements. Projects like Quaid-e-Azam Solar Park should be promoted. It is also recommended that special fiscal and tax incentives be extended to promote renewable energy in the country.

14. Access to the International Climate Finance

Large volumes of international finance are available for developing countries through national, bilateral, multilateral, sovereign, and specialized regional and global financing instruments to address climate change, including but not limited to the Green Climate Fund (GCF), Climate Investment Funds (CIF), Adaptation Fund (AF) and Global Environment Facility (GEF). The centerpiece of this mechanism is GCF, designed to disburse U.S. \$100 billion per annum from 2020 onwards to help the developing countries combat climate change. Pakistan must make concerted efforts to acquire GCF accreditation in order to have the eligibility to access GCF funds and to strengthen its overall capacity to access international climate finance.

15. Research, Learning and Knowledge Management

Enabling environment should be created for an accessible knowledge generation and synthesis process. Efforts should be made to increase engagement of universities, think tanks and CSOs, some of which have been part of this Commission as well, for the generation of knowledge on climate change. They can respond to the demands of the public and private sectors by undertaking studies at various levels and providing results at par with international standards. Think tanks and research institutes should also play a

role in effective knowledge management to bridge the gap between knowledge and policy.

16. Role of Local Governments

The Commission recognizes the potential of empowering local governments to deal with climate change issues. Some of the functions of the local government include, among other municipal services, the development of integrated system of water reservoirs, water sources, the provision of conservancy services, support relief measures in the event of any fire, flood, hailstorm, earthquake, epidemic or other natural calamity and assisting relevant authorities in relief activities, and the plantation and protection of trees.

The Commission recommends that the local governments be fully involved in the implementation of the Policy and the Framework and the recommendations of the Commission at local levels. This will improve the monitoring and effectiveness of the implementation of the Policy and the Framework.

G. Acknowledgements

The Chair expresses his gratitude to the members and focal persons of the Commission and to, particularly, Mr. Arif Ahmed Khan (Vice Chair), Mr. Muhammad Irfan Tariq (Secretary), Mr. Ali Tauqeer Sheikh, Ms. Saima Amin Khawaja, and Mr. Shujaat Umar Pirzada (Associate, Hassan & Hassan (Advocates)), for their support to the Commission. The Commission also expresses its appreciation for the venue of the meetings and the hospitality provided by the Planning & Development Department, Punjab.

The Commission had invited the Federal Minister of Climate Change, Mr. Zahid Hamid, to attend the fifth meeting of the Commission after his appointment. But he was conflicted because of his other commitments.

Mr. Arif Ahmed Khan
Secretary, Climate Change
(Vice Chair)

Dr. Parvez Hassan
(Chair)

C. Order of the Court dated 18 January 2016

ORDER SHEET

**IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT**

Case No: W.P. No. 25501/2015

Ashgar Leghari

Federation of Pakistan, etc.

S. No. Of order/ Proceedings: 8
Date of order/ Proceedings: 18-01-2016

Mr. Mansoor Usman Awan, Advocate for the petitioner.

Mr. Nasar Ahmad, Deputy Attorney General for Pakistan.

Ms. Hina Hafeezullah Ishaq, Standing Counsel for Pakistan.

Mr. Ahmad Hasan Khan, Assistant Advocate General, Punjab.

Dr. Parvez Hassan, Advocate/Chairman, Climate Change Commission

Irfan Tariq, Director General, (E & CC), Ministry of Climate Change, Islamabad.

Barrister Azra Perveen Qureshi, Joint Secretary, Ministry of Law, Justice & H.R.,
Government of Pakistan, Islamabad.

Arshad Ahmad, Senior Joint Secretary, Ministry of Finance, Islamabad

Imran Ahmad, Joint Secretary, Cabinet Division

Dr. Masood Arshad Makhdoom, Director Climate, Energy & Water, WWF, Lahore.

Ch. Muhammad Ashraf, Focal Person, Agriculture Department, Punjab.

Waqar uddin Siddique, Director NDMA.

Dr. Raja Omer, Deputy Secretary (Planning), Focal Person, Forest, Wildlife and
Fisheries.

Javed Iqbal Bukhari, Engineering Advisor (Civil), office of the Chief Engineer
Adviser/Federal Flood Commission, Ministry of Water and Power, Government of
Pakistan, Islamabad.

CLIMATE CHANGE ORDER-8.

Chairman of the Climate Change Commission (“CCC”) has submitted the Report of the Climate Change Commission dated 16.01.2016. The findings and recommendations of the Commission are as follows:-*

.....

2. Chairman CCC submitted that after the intervention by this Court, the concern and debate on the issue of climate change has gathered momentum. He submitted that earlier there was lack of coordination between the various Ministries and Departments regarding the issue of climate change. It was pointed out that no integrated effort was undertaken under the National Climate Change Policy, 2012 (“**Policy**”) and Framework for Implementation of Climate Change Policy (2014-2030) (“**Framework**”). He, however, added that various Departments and Ministries had done some work independent of the above Policy and Framework and with the help of this Commission, the said effort has been consolidated and brought under the umbrella of the Framework. He remarked that it would be ideal if the Federal Government or the Provincial Government constitute a Climate Change Authority to oversee the progress under the Framework.

3. I have gone through the Findings and Recommendations of the Commission. The Commission has done wonderful work and each member of the Commission has meaningfully contributed under the able leadership of the Chairman. It is clear that the Policy, as well as, the Framework were almost untouched till the Commission was constituted by this Court, resulting in mobilizing the government machinery. Since then there has been modest progress in achieving the objectives and goals laid down under the Policy and the Framework. The Report submitted by the Commission deals with priority actions under the Framework and reveals that the priority actions which were to be achieved by 31st December, 2015, have not yet been fully achieved.

4. The Commission shall ensure that the priority items under the Framework, as far as the Province of Punjab is concerned, are achieved latest by June, 2016. The Commission is additionally tasked to look into the short term

* The Court reproduced (1) Section E. Major Finding of the Commission, and (2) Section F. Recommendations of the Commission from the Report of the Commission (Section B. of this Chapter).

actions under the Framework and come up with a workable and achievable timetable for the same.

5. It is underlined by CCC that without proper funding the question of implementation of the Framework does not arise. Unless and until the Federal Government or the Provincial Government allocate funds for climate change, the implementation of the Framework will remain an illusion. Let the Ministry of Climate Change in consultation with the CCC work out estimate of funds required by various departments to achieve the priority and short term actions under the Framework. The said estimate will be shared with the Secretary Finance and Secretary P&D, Government of the Punjab so that funds for climate change are allocated well in time before the finalization of the budget later this year. The allocation of budget by the Government of the Punjab is integral to the enforcement of fundamental rights of the people of Punjab as climate change can cause serious food and health security issues and unless immediate adaptative steps are taken, people of Punjab may suffer at the hands of severe floods and drought. Therefore, in order to protect and safeguard the fundamental rights of the people, Government of the Punjab is directed to look into the matter with utmost seriousness and allocate budget for climate change in consultation with CCC.

6. The concept of gravity and aftereffects of climate change are still unknown to many people, therefore, on the basis of findings and recommendations made by the CCC, Pakistan Electronic Media Regulatory Authority (PEMRA) will consider granting more prime time for the awareness and sensitization on the issue of climate change.

7. The Commission will also ensure that some of its members namely; LEAD and WWF will initiate smart courses/workshops for the Focal Persons in various Departments and Ministries appointed by the Court and for the Secretaries of various Ministries and Departments so that capacity building on the issue of climate change picks up speed.

8. To come up for further proceedings on 29.02.2016. This order shall be uploaded on the website of the Lahore High Court.

(Syed Mansoor Ali Shah)
Judge

D. Supplemental Report of the Commission dated 24 February 2017 (without Annexures):

IN THE LAHORE HIGH COURT, LAHORE

Writ Petition No. 25501/2015

**Asghar Leghari
versus
Federation of Pakistan**

**Supplemental Report of the Climate Change Commission¹
on Implementation of Priority Actions**

24 February 2017

¹ The Climate Change Commission was appointed by the Order dated 14 September 2015 of Mr. Justice Syed Mansoor Ali Shah and comprises Dr. Parvez Hassan (Chair), Mr. Syed Abu Ahmed Akif (Vice Chair), Mr. Muhammad Abid Javed, Mr. Muhammad Irfan Tariq, Mr. Ali Tauqeer Sheikh, Ms. Saima Amin Khwaja, Mr. Mansoor Usman Awan, Mr. Mohammad Younas Dagha, Dr. Waqar Masood Khan, Mr. Yousaf Naseem Khokhar, Mr. Hammad Naqi Khan, Ms. Khawar Mumtaz, Mr. Mahmood Akhtar Cheema, Maj. Gen. Asghar Nawaz, Mr. Malik Amin Aslam Khan, Dr. Abid Qaiyum Suleri, Mr. Asim Iftikhar Ahmed, Mr. Jawwad Rafique, Dr. Pervez Ahmed Khan, Capt. (Retd.) Saif Anjum, Mr. Mohammad Sheheryar Sultan, Barrister Azra Perveen Qureshi, Mr. Jahanzeb Khan, Mr. Anwer Hussain, Dr. Ghulam Rasul, Mr. Absar Alam, Mr. Ali Anan Qamar, Ms. Laila Kasuri, Mr. Iftikhar Ahmad, Mr. Iqbal Muhammad Chauhan, Mr. Mushtaq Ahmed and Capt. (Retd) Jahanzeb Khan.

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A. Introductory Note

In its Final Report dated 16 January 2016 to the Lahore High Court, the Commission had reported on the progress in the implementation of the Priority Areas (PAs) upto 31 December 2015. On the review of the Final Report, the Lahore High Court ordered, on 18 January 2016, that the “Commission is additionally tasked to look into the short term actions under the Framework and come up with a workable and achievable timetable for the same.”

This Supplemental Report responds to the order of the Lahore High Court dated 18 January 2016. It includes the Reports of six (6) Working Groups, giving an update on their actions on the Priority Actions. Overall, of the 242 Priority Areas given in the Framework for Implementation of Climate Change Policy (FCCPI), the six (6) Working Groups reported progress on 144 PAs and that is about 60 percent of the total Priority Areas. The progress on 144 PAs is uneven and at various stages of progress, and many will need more time and resources for completion.

B. Summary of Supplemental Report

Total Priority Actions (PA) in FCCPI	PA covered in Working Group Reports	PA addressed in Working Group Reports	% Priority Actions addressed
242	188	160	66.11%

No	SECTORS	Priority Actions in FCCPI	Progress Reported by WG	% PAs Addressed by WGs
01	Coastal & Marine Areas	08	07	87.5%
02	Agriculture & Livestock	47	34	72.3%
03	Forestry	30	30	100%
04	Biodiversity	04	04	100%
05	Wetlands	06	06	100%
06	Energy	22	18	81.81%
07	Disaster Management	29	25	86.20%
08	Water	42	36	85.71%
TOTAL		188	160	85%

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Here is the breakdown on PAs from each of the six (6) Working Groups:

Forest, Biodiversity and Wildlife

#	Categories	Priority Actions
1	Policy/law making and implementation	10
2	Enabling Environment	7
3	Institutional strengthening and capacity building	9
4	Awareness	5
5	Assessment/Research	3
6	Infrastructure/Technology Implementation	6
TOTAL		40

Disaster Management Working Group

#	Categories	Priority Actions
1	Policy/law making and implementation	03
2	Enabling Environment	03
3	Institutional strengthening and capacity building	07
4	Awareness	03
5	Assessment/Research	08
6	Infrastructure/Technology Implementation	05
TOTAL		29

Energy

#	Categories	Priority Actions
1	Policy/ law making and implementation	05
2	Enabling Environment	06
3	Institutional Strengthening and Capacity Building	04
4	Awareness	03
5	Assessment/ Research	02
6	Infrastructure/ Technology Implementation	02
TOTAL		22

Coastal and Marine Areas

No	Categories	Priority Actions
1	Policy/ law making and implementation	00
2	Enabling Environment	01
3	Institutional Strengthening and Capacity Building	02
4	Awareness	00
5	Assessment/ Research	03
6	Infrastructure/ Technology Implementation	00
TOTAL		06

Agriculture and Livestock

No	Categories	Priority Actions
1	Policy/ law making and implementation	05
2	Enabling Environment	03
3	Institutional Strengthening and Capacity Building	08
4	Awareness	08
5	Assessment/ Research	11
6	Infrastructure/ Technology Implementation	12
TOTAL		47

Water

No	Categories	PA Actions
1	Policy/ law making and implementation	13
2	Enabling Environment	4
3	Institutional Strengthening and Capacity Building	4
4	Awareness	4
5	Assessment/ Research	29
6	Infrastructure/ Technology Implementation	26

Accumulatively, each category has PA for each Working Group, as shown in the table below.

No	Categories	Water	Agriculture	Coastal & Marine	Energy	Forest, biodiversity & Wildlife	Disaster Mgmt.	Total
1	Policy/ law making and implementation	13	03	0	5	10	3	34
2	Enabling Environment	4	04	1	6	7	3	25
3	Institutional Strengthening and Capacity Building	4	05	2	4	9	7	31
4	Awareness	4	02	0	3	5	3	17
5	Assessment/ Research	29	11	3	2	3	8	56
6	Infrastructure/ Technology Implementation	26	09	0	2	6	5	48
TOTAL		80	34	6	22	40	29	211

C. Meetings of the Commission

The Commission held its meetings at the Committee Room, 4th Floor and 2nd Floor, Planning & Development Department (P&DD), Lahore. The meetings were held on 19 April 2016 (sixth), 30 July 2016 (seventh), 20 September 2016 (eighth), 26 November 2016 (ninth) and 28 January 2017 (tenth).







The minutes of the meetings of the Commission on 19 April 2016, 30 July 2016, 20 September 2016, 26 November 2016 and 28 January 2017 are attached as **Annexures A/1 to A/5.**

D. Reports of the Working Groups

The Reports of the Working Groups are included in the Supplemental Report:

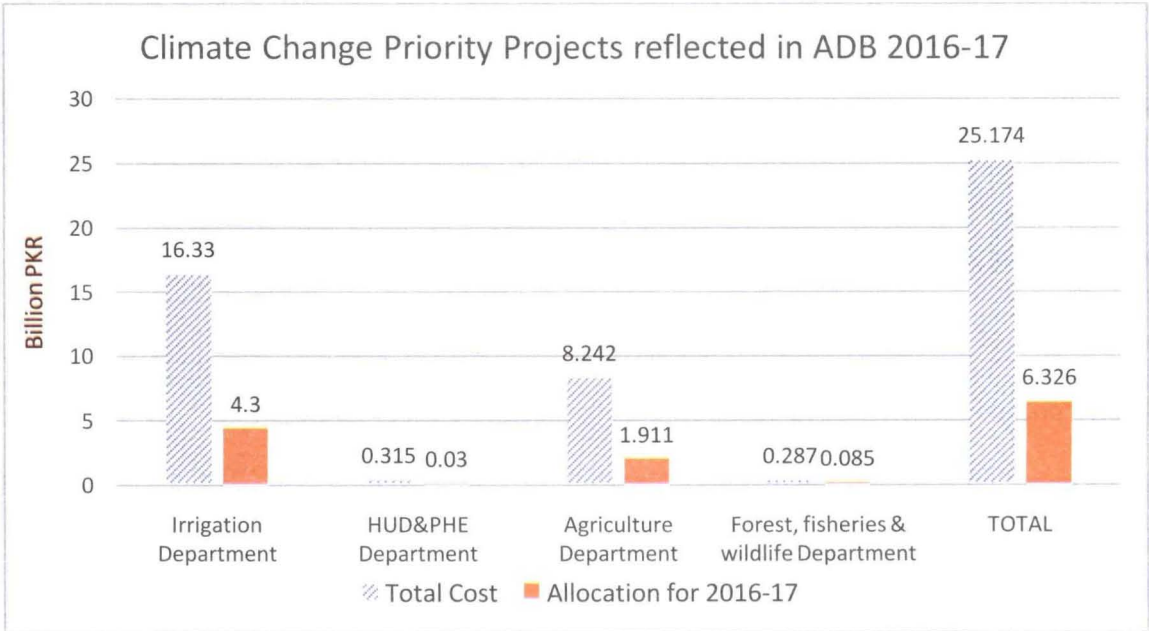
- (1) Report of the Working Group on Water, pages 37-43 (**Annexure B**)
- (2) Report of the Working Group on Energy, pages 44-47 (**Annexure C**)
- (3) Report of the Working Group on Forest, Biodiversity & Wildlife, pages 48-53 (**Annexure D**)
- (4) Report of the Working Group on Disaster Management, pages 54-61 (**Annexure E**)

- (5) Report of the Working Group on Coastal & Marine Areas, pages 62-65 (**Annexure F**)
- (6) Report of the Working Group on Agriculture, pages 66-69 (**Annexure G**)

E. Climate Change Priority Projects in ADP 2016-17

A total of fifteen (15) projects from five (5) Departments were identified by a sub-committee constituted by the Commission, as climate change Priority Area projects for consideration in the Annual Development Plan 2016-17. Out of these fifteen (15) projects, with a total cost of Rs. 30.179 billion, 13 were accepted and are reflected in the ADP 2016-17. The thirteen (13) projects were allocated Rs. 6.326 billion for FY 2016-17. Overall, this allocation for climate change Priority Area projects represented 1.15% (Rs. 6.326 billion) of the total ADP (Rs. 550 billion) for year 2016-17.

The Commission has not reviewed, for it did not have the time and resources, the total development portfolio of the province and therefore it cannot say whether or not climate change aspects are covered in the remaining provincial development budget.



Total CC priority projects reflected in ADP 2016-17	13
Projects linked to hard interventions	10
Projects linked to soft interventions	03
Total cost of hard interventions	Rs. 25.031 Billion
Total cost of soft intervention	Rs. 0.143 Billion
Allocation for 2016-17 for hard interventions	Rs. 6.267 Billion
Allocation for 2016-17 for soft interventions	Rs. 0.059 Billion

The climate change Priority Area projects reflected in the ADP 2016-17 represent important areas and majority of the identified projects have been granted fiscal allocations. However, a more comprehensive list of priority projects is required to move forward in a strategic manner so the ground already covered and yet to be covered is clear to concerned departments, P&DD and development partners. More specifically, a sectoral roadmap needs to be developed to address climate vulnerabilities and bolster resilient economic growth.

Lastly, the quality of the projects needs to be consolidated by integration of soft components such as research, work planning, stakeholder engagement and buy in, and awareness raising. Exclusive focus on hard interventions poses a risk of substantially reducing the value for money of such interventions in terms of impacts achieved per unit cost. Hence, robust elements of research and awareness raising should be weaved into the design of such project to maximize impacts.

F. Assessment Framework For Climate Smart Projects

The climate change priority projects were not the only climate change related projects in ADP 2016-17, in fact they reflected only a fraction of the total projects included in the ADP 2016-17 which could not be screened in its entirety. The fiscal allocation for the screened projects was Rs. 6.326 billion while the total budget outlay for Punjab for FY 2016-17 is about Rs. 1330 billion (both development and non-development). The P&DD of Punjab observed that screening of the entire ADP for climate change priority projects

requires a full scale study involving development or adoption of an assessment framework to quantify climate linkages of projects. LEAD Pakistan was requested by the Commission to propose an assessment framework for this purpose which may also support future designing of climate sensitive projects. This framework presented and approved by the 9th meeting of the Climate Change Commission will guide the development of future projects to ensure that they are climate smart. The framework is attached herewith as **Annexure H**.

The infographics developed to facilitate the work of the Climate Change focal points in departments and other GOPb officers who will design and develop projects for ADP work, are attached as **Annexure I**.

G. Accessing International Climate Finance & Linkages with Nationally Determined Contributions (NDC)

The Government of Pakistan submitted its Nationally Determined Contribution (NDC) document prior to COP22 in November 2016. This document is the backbone of the landmark global climate regime endorsed by all parties during the Paris Climate Summit in 2015. Pakistan's NDC will serve as the blueprint for future mitigation and adaptation actions at national and subnational level. It is therefore important to align ongoing climate related initiatives in the country with the NDC document, particularly since its implementation will hinge on an international support to the tune of USD 40 billion.

The Commission has reviewed the work in progress on tracking the public expenditures on climate change and other initiatives aimed at addressing the financial needs. The 12 Recommendations to Access International Climate Finance are attached herewith as **Annexure J**.

The Commission observes that the NDC implementation plan outlines development of subnational and sectoral adaptation plans for the province. The Commission recommends that the Ministry of Climate Change, which is the custodian of NDC document, in its capacity as the Secretariat for the Commission provides guidance for alignment of the activities of the Commission with Pakistan NDC document.

H. Recommendations

The Commission recommends that the Secretary P&DD should submit plans for initiation of remaining about 100 PAs and also compile a quarterly report on completion of work on ongoing 144 PAs.

Priority Projects in ADP 2016-2017: Since the last submission, the Commission has helped some GOPb departments prioritize 15 ‘climate smart’ projects of which 13 were finally approved by P&DD for inclusion in the ADP 2016-2017. The Commission learnt that the financial value of these projects was relatively miniscule in percentage terms of the total development budget of the province.

The Commission recommends that in the next FY, this number should ramp up substantially and that this allocation should include specific budget lines for social and softer components - and not just the infrastructural investments. The Commission, if requested by the Departments will be pleased to review and guide on selected projects.

Framework for Developing and Assessing Climate-Smart Projects under Annual Development Plans: The Commission learnt that there was no shared definition of ‘climate smart’ or ‘climate compatible’ projects that was used by the departments. Therefore, there was a great deal of variance in the quality, consistency even climate relevance (adaptation or mitigation) of these projects. The officers developing projects in GOPb’s various departments needed a guidance tool or a framework for developing climate compatible projects in future. The Framework for Developing and Assessing Climate-Smart Projects under Annual Development Plans was approved at the 9th meeting of the Commission will fill that void now.

Further, the Commission was requested to develop some core material that could facilitate implementation of the Framework and could also be used for the capacity building of the concerned officers. Such material has been developed and ready to be used.

The Commission recommends that, starting from FY 2017-2018, the Framework should be used for designing and developing projects for ADB, at least for some projects by selected provincial departments. For this purpose, the Commission recommends that 1) a high level Committee be constituted to oversee the earnest implementation of the Framework, 2) Secretary P&DD and MOCC initiate capacity building of concerned officers of CC Focal Points in GOPb departments and other concerned officers.

Accessing International Climate Finance & Linkages with NDCs: The Commission learnt that the GOP's capacity to access international climate finance needed substantial strengthening in order to fast track climate related investments/projects.

The Commission has developed 12 recommendations for GOP to access international climate finance and recommends the MOCC to work with P&DD in order to develop projects and access international finance.

The Commission recommends that all climate related investments/projects in the province should be specifically linked with Pakistan's NDC commitments and their implementation at the provincial levels.

Moving forward, the Commission recommends the following steps:

1. The Framework for Developing and Assessing Climate-Smart Projects under Annual Development Plans be used/piloted by each GOPb department to develop their requests for ADB allocations. The preparations for the next ADP have just begun and the timing is perfect. If requested, the Commission can assist with capacity building of the concerned officers in the province.
2. Each GOPb Departments should develop its plans of action, giving a list of priority projects/areas of investment. The Commission can assist them in developing their plans of action and determine their strategic priorities for the next 2-3 year's ADPs.
3. P&DD needs to develop a template/criteria that could guide the decisions on the requests from the departments. The Commission can work with the officers at the P&DD develop such a template and operationalize for the next years' ADP.

I. Acknowledgements

The Chair expresses his gratitude to the members and the focal persons of the Commission and particularly, Mr. Syed Abu Ahmed Akif, Vice Chairman, and Mr. Muhammad Irfan Tariq (Secretary). The Chair also acknowledges the special and dedicated efforts of Mr. Ali Tauqeer Sheikh, Ms. Saima Amin Khawaja, Ms. Hina Lotia, Mr. Bilal Khalid, Mr. Shujaat Umar Pirzada, and Ms. Momna Taufeeq in the preparation of the Supplemental Report.

The Commission is grateful for the continued support for the meetings and venue provided by the Planning & Development Department, Government of Punjab, Lahore.

Dr. Maqsood Ahmad, Deputy Project Director (WCS) PIPIP, Agriculture Department,
Water Management Wing.

CLIMATE CHANGE ORDER-19.

Chairman, Climate Change Commission ("Commission") has tendered appearance and placed on record Supplemental Report dated 24.02.2017 making the following recommendations:-*

.....

Considering that these recommendations are an outcome of the deliberations of the Commission, which includes members of the Government, therefore, I make these recommendations part of this order and direct the concerned Ministries/Departments of Federal, as well as, Provincial Governments to implement the same.

2. As far as recommendation of the Commission regarding constituting a High Level Committee is concerned, let the same be constituted by the Chairman of the Commission, if required.
3. Chairman of the Commission further submits that Water Policy of the Federal, as well as, Provincial Government will come up for discussion before the Commission on its next meeting.
4. Let the Commission submit a report regarding implementation of the above recommendations, as well as, the status of the Water Policy at the National, as well as, Provincial level.
5. To come up for the Report of the Commission and further proceedings on 12.05.2017.

(Syed Mansoor Ali Shah)
Chief Justice

* The Court reproduced Section H. Recommendations from the Supplemental Report of the Climate Change Commission (Section D. of this Chapter).

F. Recommendations of the Chair of the Commission in a meeting, on 17 April 2017, with the Chairman, Planning and Development, Government of Punjab

**Climate Change Commission
Meeting with Chairman P&D Department, Punjab**

1. Progress report on the work of CCC:

In line with the direction of Lahore High Court, the Climate Change Commission (the "Commission") has tendered a Supplemental Report to the honourable Court dated 24th February, 2017. The purpose of the report was stocktaking of the progress on implementation on the National Climate Change Policy in Punjab. Progress has been reported against 144 Priority Areas of the Framework of Climate Change Implementation while 100 Priority Areas remain unaddressed. The report has also identified numerous challenges and opportunities that deserve attention of the Planning & Development Department.

2. Cooperation and Support to GoPb:

The Commission has observed that there is no shared definition of 'climate smart' or 'climate compatible' projects being used by the Departments. The officers developing projects in GOPb's various departments needed a guidance tool, or a framework, for developing climate compatible projects in future. A Framework for Developing and Assessing Climate-Smart Projects under Annual Development Plans (the "Framework") was approved at the 9th meeting of the Commission. The Framework, attached, will help fill that void now.

Further, the Commission was requested by various departments to develop some core training material that could facilitate implementation of the Framework and could also be used for the capacity building of the concerned officers. Such material has also been developed and ready to be used. This material has already been shared with the Secretary P&DD with a request to help schedule the training and the final date is awaited.

The Commission can arrange a short presentation to you and to your senior colleagues at the P&DD & Departments, to assist the process of mainstreaming

climate change in the next FY's ADP. The preparatory process for ADP for the next fiscal year has started and the Commission commits the support of the CCC to this effort.

3. Way Forward:

There are three key recommendations which require support from P&D Department.

- i. The Framework approved by the Commission can help the process of mainstreaming climate compatible development. The Commission recommends that the Framework should be used for designing and developing projects for upcoming ADP, at least for some projects by select departments. We recommend that each department should be advised to apply the framework and 2-3 projects from each department should be selected for their application the Framework.
- ii. Each GoPb department should develop an action plan, outlining a list of priority projects/areas of investment for mainstreaming climate considerations. The Commission can provide assistance in this regard.
- iii. P&DD should develop a template/criteria that could guide the decisions on the requests of departments (and not restricting decisions only to the financial or other such considerations). Again, the Commission can work with officers of P&DD to develop such a template and operationalize for next years.
- iv. As the Commission moves forward with its work, we will be expected to periodically report progress to the Chief Justice of the Lahore High Court. It will be useful for us to put in place some mechanisms for the timely communication of significant developments and initiatives by your colleagues in mainstreaming climate change in the provincial policies, plans and budgetary allocation. We recommend that a high level standing committee should be constituted, comprising of Secretary P&DD and a representative of the Commission. The committee can oversee relevant developments and tender a quarterly progress report to the honourable Court through the office of the Commission.

G. Organization of Capacity Building Training Sessions of Officers of the Planning and Development Department, Government of Punjab, on Climate Compatible Projects by the Commission

REVISED TRAINING NOTICE

No. 1(61) ENV./P&D/2016-17
Government of the Punjab
Planning & Development Department

Dated Lahore, the 14th July, 2017

To,

1. All the Members P&D Board,
 2. All the Senior Chiefs,
 3. All the Chief of Sections,
 4. All the Advisors / Consultants,
 5. All the Assistant Chiefs,
 6. All the Planning Officers,
 7. All the Research Analysts / Associates.
- Planning & Development Department.

Subject: **REVISED SCHEDULE OF TRAINING OF SENIOR STAFF OF P&DD**
ON CLIMATE COMPATIBLE PROJECTS BY CLIMATE CHANGE
COMMISSION

I am directed to refer to this office letter of even (sic) No. dated 06.07.2017 on the subject cited above and to convey that on the recommendation of LEAD Pakistan (Training Partner), the Competent Authority has allowed to reschedule the training sessions on climate smart development projects for senior level staff of P&DD by Climate Change Commission (CCC) with the support of Ministry of Climate Change. Revised schedule of trainings will be as follows:

Sr. No.	Schedule Date & Time	Venue	Participants
1	20.07.2017 (Thursday), 09:00 am to 11:00 am	CR-I, P&DD	Members, Senior Chiefs, Chiefs, Advisors, Consultants etc.
2	21.07.2017 (Friday), 09.00 am to 12.00 Noon		Assistant Chiefs, Planning Officers, Research Analysts / Associates etc.

You are requested to attend the training sessions in person as per scheduled date, time and venue accordingly.

By the Order of Competent Authority

(MUHAMMAD RASHID)
PLANNING OFFICER (ENVIRONMENT)

CC:

1. The Chairman, Climate Change Commission, Lahore.
2. The Chief Executive Officer, LEAD Pakistan, Islamabad.
3. PSO to Chairman, P&D Board.
4. PS to Secretary, P&D Department.
5. The Section Officer (General), for making the necessary arrangements.

CHAPTER 11

HOUBARA BUSTARD COMMISSION

Naeem Sadiq vs. Government of Pakistan

Writ Petition No. 32 of 2014

A. Order of the Court dated 15 June 2017 re appointment of the Commission

B. Minutes of the First Meeting of the Commission

C. Order of the Court dated 27 July 2017

Learned counsel for the petitioner, Law Officers, representatives of Forestry, Wildlife & Fisheries Department, Government of Punjab, representative of WWF, IUCN, as well as, Houbara Foundation International and learned counsel for the local residents, unanimously agreed that in order to definitively ascertain whether hunting of Houbara Bustards is sustainable in Pakistan, a credible field survey be conducted in the upcoming

hunting season starting October, 2017. During the course of the survey it might be useful to assess whether the hunting of Houbara Bustards is beneficial for the local community.

2. All the parties agreed that a neutral body be constituted to undertake this exercise so that the issue regarding hunting of Houbara Bustards is resolved once and for all in Pakistan.

I. CONSTITUTION OF HOUBARA BUSTARD COMMISSION:

Keeping in view the welfare, protection and conservation of Houbara Bustards, I hereby constitute the Houbara Bustards Commission comprising the following members:

1.	Dr. Parvez Hassan, Advocate, Paaf Building, 2 nd Floor, 7-D, Kashmir Egerton Road, Lahore. (042-36360800-1).	Chairman
2.	Nominee of the Forestry, Wildlife & Fisheries Department, Government of Punjab	Member
3.	Nominee of IUCN	Member
4.	Nominee of WWF	Member
5.	Nominee of Houbara Foundation International	Member
6.	Nominee of the Advocate General, Punjab	Member
7-8.	Two nominees from amongst the applicants representing the residents of the local community (in C.M. Nos. 1965/2017, 1966/2017, 1967/2017 and 1968/2017)	Member
9.	Ms. Saima Amin Khawaja, Advocate/Member of Civil Society, 78-B, Mozang Road, Lahore (0300-8414843) (042-36315469-70).	Member

II. TERMS OF REFERENCE:

- i. To carry out field survey(s) to assess whether hunting of Houbara Bustards is a sustainable activity in Punjab.
- ii. To assess whether the said hunting is beneficial for the local community.
- iii. Any other recommendations for the protection and conservation of Houbara Bustards.

III. POWER OF THE COMMISSION:

- a) The above Commission shall enjoy the powers under Order 26 of the CPC in order to achieve the objective of the Commission.
- b) The Commission shall have the power to co-opt any person/expert, at any stage.
- c) The Commission can seek assistance of any Federal or Provincial Government Ministries/Departments by approaching the concerned Ministry/Department in writing and the concerned Ministry/Department is hereby directed to render full assistance to the Commission in respect of the above Terms of Reference.

IV. QUORUM OF THE COMMISSION:

The quorum of the Commission shall be **five** which shall include the Chairman.

V. SECRETARIAT OF THE COMMISSION:

The secretariat of the Commission shall be housed in the office of the Chairman.

VI. EXPENSES OF THE COMMISSION:

- (a) Secretarial/field expenses of the Commission shall be borne by the Forestry, Wildlife & Fisheries Department, Government of the Punjab.
- (b) The Commission may approach this Court at any stage to seek appropriate orders for facilitation of their work.

VII. INTERIM REPORT:

The Commission shall file interim reports as and when directed by this Court.

3. Office is directed to dispatch a copy of the petition alongwith all the annexures to the Chairman of the Commission including the recent report submitted by Syed Tasvir Hussain, as well as, reports submitted by Brig. Mukhtar Ahmad of the Houbara Foundation International, as well as, the reports of IUCN and WWF and the Forestry, Wildlife & Fisheries Department, Government of Punjab.

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4. The Commission shall hold its first meeting in the office of the Chairman on **05.07.2017** at **3.00 p.m.** Commission shall place on record interim report regarding strategy for carrying out the survey in October, 2017 on the next date of hearing.

5. To come up on 20.07.2017.

(Syed Mansoor Ali Shah)
Chief Justice

B. Minutes of the First Meeting of the Commission

Minutes of First Meeting of the Houbara Bustard Commission,
held at 10.00 a.m. on 15 July 2017
at PAAF Building, 7D Kashmir Egerton Road, Lahore

In Attendance:

- (1) Dr. Parvez Hassan, Chairman
- (2) Ms. Saima A. Khawaja, Advocate
- (3) Dr. Afsar Mian, Professor
- (4) Mr. Khalid Ayaz Khan, Director General, Wildlife & Parks, Punjab, with Mr. Muhammad Naeem Bhatti, Deputy Director, Wildlife & Parks, Punjab, and Mr. Mudasser Hasan, Assistant Director, Wildlife Planning, Punjab
- (5) Dr. Khalid Hamid Sheikh, Former Vice Chancellor, Punjab University, Lahore
- (6) Mr. Anwaar Hussain, Additional Advocate General, Punjab
- (7) Mr. Mahmood Akhtar Cheema, Country Representative, International Union for Conservation of Nature (IUCN)
- (8) Mr. Hammad Naqi Khan, Director General/Chief Executive Officer, WWF, Pakistan
- (9) Brig. (r) Mukhtar Ahmed, President, Houbara Foundation International Pakistan (HFIP), with Mr. Javed Majid, HFIP
- (10) Mr. Umair Saleem, Advocate (as Secretary of the Commission)

1. Welcome:

The Chair in his opening remarks, welcoming the members of the Commission, read out the Order dated 15 June 2017 of the Lahore High Court, specifically I. Constitution of Houbara Bustard Commission, II. Terms of Reference, III. Power of the Commission, IV. Quorum of the Commission, V. Secretariat of the Commission, VI. Expenses of the Commission, and VII. Interim Report.

2. Agenda:

The Chair had already sent the Proposed Agenda for the first meeting of the Commission to the members which was adopted:

- (1) Adoption of Agenda
- (2) Organization of Meeting
- (3) Co-option of the Additional Members
- (4) Expenses of travel for out of town members (if required by such members)
- (5) Terms of Reference of the Commission
- (6) Plan of Action of the Commission
- (7) Next meeting of the Commission
- (8) Any other business with the permission of the Chair

3. Organization of Meeting:

(1) Dr. Afsar Mian and Dr. Khalid Hamid Sheikh were, unanimously, co-opted as members of the Commission.

(2) The Chair requested Mr. Anwaar Hussain, Additional Advocate General, Punjab to contact Mr. Naeem Sadiq, the Petitioner, on the next date of hearing for seeking the Petitioner's representation on the Commission. The Chair also requested Mr. Anwaar Hussain to contact the interested parties of the local community, who have filed applications in Writ Petition No. 32/2014 for representation in the Commission. The representation of both is limited to two as per the order of the Court.

(3) Mr. Umair Saleem, Associate, Hassan & Hassan (Advocates), shall act as the Secretary to the Commission.

4. Expenses of the Commission:

(1) The Court Order requires the Forestry, Wildlife & Fisheries Department (the "FWF Department") to bear the expenses of the Commission. The Chair commented that most of the members shall bear their own expenses for attending the meetings of the Commission.

(2) Mr. Hammad Naqi Khan graciously offered that the travel expenses of Dr. Afsar Mian will be fully borne by WWF-Pakistan. The Chair recorded his appreciation to WWF-Pakistan.

5. Terms of Reference of the Commission:

(1) Whether Hunting is Sustainable in Pakistan

Following an extended discussion on this subject, it was decided that a reliable survey be carried out and that such a survey would be useful to assess sustainability if held over a minimum period of three (3) years. It was agreed that the survey shall be carried out by the FWF Department with the support and guidance of the Commission. The FWF Department will co-ordinate the resources and the personnel required for the surveys. The other decisions in this respect are summarised:

- (a) The survey shall be carried out in Rajanpur, Rahim Yar Khan, Bhakkar and Dera Ghazi Khan Districts.
- (b) The surveys shall be carried out from the second week of December till the second week of January.
- (c) All the four (4) surveys shall be carried out simultaneously.
- (d) The FWF Department shall augment its capacity for four (4) simultaneous surveys.
- (e) The primary responsibility for organizing and co-ordinating the surveys shall be with Mr. Khalid Ayaz Khan, Director General, Wildlife & Parks, Punjab (the "DG"). The guidance and support of the Commission shall be by a Committee of the Commission. The composition of the Committee on Sustainability shall be:
 - (i) Dr. Afsar Mian, Convenor
 - (ii) Mr. Anwaar Hussain
 - (iii) Mr. Hammad Naqi Khan
 - (iv) Brig. (r) Mukhtar Ahmed
 - (v) Mr. Mahmood Akhtar Cheema
 - (vi) Ms. Saima A. Khawaja

The Committee may co-opt additional members from inside and outside the Commission and may meet and take decisions as a Committee for approval and ratification by the Commission. The Chair shall be an ex officio member of this Committee.

- (f) The surveys shall be co-ordinated by the DG, under the supervision and direction of the Committee on Sustainability.
- (g) The DG shared the methodology used by the FWF Department in the Survey of Houbara Bustard in DG Khan, Rajanpur and Thal in December 2016 and the Commission, subject to (h) below, tentatively agreed that:

The survey will be conducted by sampling of the area inhabited by the Houbara Bustard population and then counting the individuals in each sample. Transits of 10 km length and 500 meter width will be studied on 4*4 vehicles with an alternate gap of 5 km between them. The vehicle will be driven at a speed of about 10 km per hour. Distance of the bird flushed will be noted. Indirect clues such as prints, droppings, and signs of feeding will also be considered. Data will be analyzed and population density will be estimated by using the formula:

$$D = N/2 F(L)$$

D=density (animal per square kilometer)

N=Total number of birds counted

F=Average Flushing distance (m)

L=Length of transects (kms)

- (h) The members of the Commission commented on the methodology and it was agreed that the methodology will be revised by the FWF Department in the light of these comments and shall be finalized by the Committee on Sustainability.

(2) Benefits to the Local Communities

The Chair suggested a separate Committee on Benefits to Local Communities. The scope and membership of this Committee will be discussed at the next meeting of the Commission.

6. Plan of Action of the Commission:

(1) All members of the Commission, and particularly the members of the Committee on Sustainability, are invited to participate in the surveys.

(2) The Commission will hold public hearings on its terms of reference. The Chair reported that he had received requests from an Embassy interested in the deliberations of the Commission as well as from Syed Tasvir Husain.

(3) It was agreed that the FWF Department shall share the revised methodology of the surveys with all the members of the Commission.

7. Next meeting of the Commission:

The second meeting of the Commission will be held on a working day of the week in September to be notified by the Chair. The meeting shall be at 3 p.m.

8. Any Other Business

Mr. Hammad Naqi reported on his meeting with BirdLife in London earlier this month. The Chair who was also in London had expected to join this meeting. BirdLife has offered assistance and support in the work of the Commission. Mr. Hammad Naqi was requested to approach BirdLife for guidance in the methodology of the upcoming surveys being undertaken by the Commission.



Members of the Commission at the first meeting of HBC

Dr. Parvez Hassan, Chairman, Houbara Bustards Commission has tendered appearance and has submitted his interim report dated 19.07.2017. He submits that he has broad-based the Commission by coopting technical expertise of Professor Dr. Ifsar Mian, Chairman, Bio-Resources Research Centre and Dr. Khalid Hameed Sheikh, former Vice Chancellor, Punjab University, Lahore. He submits that both these names are highly recommended for their expertise and knowledge in the area. The Chairman submits that the main assignment of the Commission is to hold a field survey in the Districts of Bhakkar, D.G. Khan, Rahim Yar Khan and Rajin Pur (sic) during mid December, 2017 to mid January, 2018 in order to assess the inflow and population of Houbara Bustards. He submits that it is the survey which will finally determine whether hunting of Houbara Bustards is sustainable in Punjab. He further submits that methodology of the said survey is being deliberated upon and will be finalized with the help of the stakeholders

alongwith Wild Life and Fisheries Department, Government of the Punjab. He submits that the survey being proposed by the Commission has not been conducted in Pakistan before. He submits that the field survey will be finalized in the next six months and, therefore, the case may be fixed for hearing after the conclusion of the field survey in the month of January, 2018. Chairman of the Commission further submits that the Commission will conduct public hearing in the area and as a result will be able to reach out to the public representatives of the area, as well as, the members of the civil society of the area.

2. In response to the prayers made in the above mentioned C.Ms., the Chairman has no objection if the learned counsel representing the petitioners are made members of the Commission.

3. In view of the above submissions, M/s Sardar Kalim Ilyas and Sheraz Zaka, Advocates representing the petitioners in two cases, are made the members of the Houbara Bustards Commission. Both C.Ms. are disposed of.

4. To come up 30.01.2018.

(Syed Mansoor Ali Shah)
Chief Justice

EPILOGUE

Since this book went into printing, the following developments bear on its contents:

(1) By his Order dated 19 December 2017 in Walid Iqbal vs. Federation of Pakistan, Writ Petition No. 34789 of 2016, the Chief Justice of the Lahore High Court has appointed a Smog Commission, among others, to “formulate a holistic Smog Policy for Punjab which identifies the root causes and prescribes a plan to protect and safeguard the life and health of the people of Punjab”. The author has been appointed Chairman of the Smog Commission which is to include the Secretaries, Government of Punjab, of (a) Environment, and (b) Health, and leading civic and professional leaders.

(2) On 22 December 2017, the Chief Justice of the Lahore High Court, in Syed Miqdad Mehdi vs. Government of Punjab, Writ Petition 107273/2017, constituted the Child Care Commission with the author as Chairman and with detailed terms of reference including the “shifting from a segregated system of education for special needs children to a system of inclusive education, designed to meet Pakistan’s commitments under the Convention on the Rights of Persons with Disabilities, 2006 and the Convention on the Rights of the Child, 1989”, and to address several enumerated requirements of “special needs children”. The membership of the Child Care Commission includes the Secretaries, Government of Punjab, of (a) Special Education, (b) School Education, and (c) Health, as well as prominent lawyers and recognized experts.

(3) It may reflect on the measure of the success of Commissions appointed by the Courts in environmental matters that the Government of Punjab has, through its Secretary, Environment, appointed, on 11 December 2017, an Advisory Committee with broad-ranging terms of reference including for the “protection of environment and ecological stability of the Environmentally Sensitive Areas of Murree, Kotli Sattian and Kahuta”. The author has been appointed the Chairman of the Committee with Secretaries, Government of Punjab, of (a) Environment, (b) Forest, Wildlife and Fisheries, and (c) Law and Parliamentary Affairs, as members. Also included as members of the Committee

are Commissioner, Rawalpindi, prominent academics, and representatives of civil society and professional organizations.

The author has agreed to chair the above Commissions/Advisory Committee. He has a free mandate to co-opt others members which, as per his practice, he will do on the basis of the needs of the bodies and their terms of reference.

It is added that the Climate Change Commission is expected to review the National Water Policy, under finalization, in early 2018 as well as receive reports on the update of the implementation of the Priority Actions in the Framework for Implementation of Climate Change Policy.

The Houbara Bustard Commission conducted population Surveys of the Houbara Bustard through three (3) separate teams in December 2017 in the Districts of Rahim Yar Khan, Rajanpur and Bhakkar in the Punjab. The migratory bird winters in several areas of Pakistan and the Arab dignitaries falcon-hunt it, every year, in specific areas allocated by the Government to these hunters. The Survey Reports of these teams will be considered for approval by the Houbara Bustard Commission at its next meeting expected in January 2018.

The history of Environmental Law in Pakistan would be incomplete without acknowledging the momentous contribution and inspiring leadership of Dr. Parvez Hassan. He planted the seed of environmental law in Pakistan, way back in the Seventies and for almost four decades has nurtured it with unrelenting commitment....

The fusion of fundamental rights and international environmental law principles resulted in the development of an interdisciplinary and inquisitorial brand of justice, also referred to as environmental justice. The Courts realized that they required skills including in environmental science, economics, natural science, and technology to adjudicate upon environmental issues. The Courts reached out to, none else but Dr. Parvez Hassan, to steward this new brand of justice.... And so begins the story of the Commissions. From a mere fact-finding body, the Commissions evolved into broad-based fora comprising technical experts, government and members of the civil society to propose sustainable solutions to environmental issues....

Constituting a Commission by the Court is easy but managing the Commission, harnessing the dissenting voices, building consensus and finding a sustainable solution requires ability and leadership par excellence. A Commission is as good as the Chair that heads it. Dr. Hassan and his remarkable leadership, have made these Commissions a success, which in turn have played a pivotal role in the development of our environmental jurisprudence.

This invaluable book records the journey of our environmental jurisprudence, highlighting for the first time, the role of the Commissions – the real engines of change.

Syed Mansoor Ali Shah
Chief Justice
Lahore High Court
Lahore

(From the Preface in the book)