

Form No: HCJD/C-121

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

W.P. No.4245/2014

Prof. Zahid Baig Mirza

Versus

Capital Development Authority
Through Chairman & others

Petitioners by : Mr Muhammad Afzal Siddiqui, Advocate.
Dr. Muhammad Aslam Khaki, Advocate.
Mr Shuja Ullah Gondal, Advocate.
Ms Nataliya Kamal, Advocate.
Raja Sohail Ibad, Advocate.
Mr Ali Asghar Pasha, Advocate.
Barrister Saad Hashmi, Advocate.
Mr Sajid Ur Rehman Mashwani, Advocate

Respondents by : Mr Qasim Wadud, Addl. Attorney General.
Mr Imran Farooq, Asstt. Attorney General.
Mr Farrukh Dall, Asstt. Attorney General.
Mr Daniyal Hassan, State Counsel.

Hafiz Arfat Ahmed Chaudhry, Advocate.
Ms Kashifa Niaz Awan, Advocate.
Syed Muhammad Ali Bukhari, Advocate.
Syed Muhammad Shah, Advocate.
Mian Abdul Rauf, Advocate.
Ms Misbah Gulnar Sharif, Advocate.
Mr Amir Latif Gill, Advocate.
Mr Usama Rauf, Advocate.

General (Rtd) Hilal, Secretary, Ministry of
Defence.
Mr Yousaf Naseem Khokhar, Secretary,
Ministry of Interior.
Mr Sikandar Qayyum, Secretary, Ministry of
Climate Change.
Mr Amir Ali Ahmed, Chairman, Capital
Development Authority.
Ms Farida Altaf Shah, Director General,
Environmental Protection Agency.
Ms Rina Saeed, Chairperson, Islamabad
Wildlife Management Board.
Dr Saima and Mr Atif, Military Lands and
Cantonments Department.
Mr Yawar Hussain Rana, Section Officer
(MCI), Ministry of Interior.
Dr Mazhar Hayat, Dy. Secretary, Ministry of

Climate Change.
Mr Ali Raza Zaidi, Dy. Director (Law),
Ministry of Climate Change.
Ms Tehmina Kausar, Section Officer,
Ministry of Climate Change.

Date of Hearing : **11-01-2022**

Athar Minallah, C.J.-.

Imagine the planet without ecosystem services and the habitats created by nature; it would inevitably lead to the extinction of fauna and flora and thus the destruction of biodiversity. The erosion of biodiversity and ecosystem services undoubtedly have profound consequences for the survival of the human species on the planet. The extinction of the human species from the planet is no more a myth nor a fiction. With superior intellect and the ability to change the balance created by nature, the human species has, through its reckless activities, already caused irretrievable harm to the flora and fauna which ensures its own existence on this planet. The questions raised in the petitions in hand manifest the willful and brazen disregard and abuse of the enforced laws by the very authorities and institutions created to protect the rights of the citizens through the implementation of enforced enactments promulgated by the legislature. Even otherwise the State has an inherent duty to have a proactive role in protecting living species because the right to life guaranteed under Article 9 is dependent on it. The beneficiaries are a few while victims of environmental degradation and destruction of natural habitats and ecosystems are the people, rather the human species. The violators are not the ordinary citizens but institutions and public functionaries who exist solely to serve the actual stakeholders i.e the people and to safeguard their rights. The complacency of State institutions in

environmental degradation and their willful disregard for the enforced laws has been obvious during these proceedings, while accountability seems to be alien in the system of governance practiced within the 1400 square miles of the Islamabad Capital Territory, the capital of the country. The petitions in hand and the proceedings relating thereto are symbolic and manifest the role of State institutions in undermining the rule of law and refusing to protect the assets which belong to the people. The fundamental question raised in these petitions is regarding the failure to implement the laws which have been promulgated to protect, preserve and manage the Margalla Hills National Park (*hereinafter referred to as the "**National Park**"*), more particularly the Margalla Hills Reserve Forest (*hereinafter referred to as the "**Margalla Hills**"*). The proceedings before the Court were indeed disturbing because they have established a lack of political will to protect the rights of the citizens by allowing the destruction of Margalla Hills and thus irretrievably harming the native flora and fauna. The neglect or willful disregard of institutions and public functionaries to perform their fundamental duty to implement the enforced laws and prevent their violation and abuse has already caused irretrievable damage to the natural habitats, ecosystem services and the biodiversity. This definitely has grave consequences in the context of environmental degradation and the challenges faced by humanity on account of the threatening consequences of climate change. The right to life guaranteed under Article 9 of the Constitution of the Islamic Republic of Pakistan (*hereinafter referred to as the "**Constitution**"*) flagrantly stands violated. The victims are the citizens but, more importantly, the future generations as well.

2. Professor Zahid Baig Mirza, has enviable and distinguished antecedents in the field of protecting biodiversity, habitats and ecosystem services. His monumental research work in the realm of the native flora and fauna of the Margalla Hills has been acknowledged not only at the national level but internationally as well. His passion and commitment to ensure preservation, protection and conservation of the native flora, fauna and the environment had led him to invoke the jurisdiction of this Court under Article 199 of the Constitution, seeking a direction to the State organs/institutions to fulfill their obligations/duties to enforce the promulgated laws intended to preserve, protect and conserve the flora and fauna of the Margalla Hills and to refrain from causing environmental degradation in the National Park in general and the Margalla Hills in particular. In the connected petitions the petitioners have raised similar questions. The Court, vide order dated 20-02-2015, passed in the connected petition, W.P. No.1276/2011, had constituted a Commission to inquire into the status of the implementation of the enforced laws and to recommend measures to save the environment from further degradation. The order, whereby the Commission had been constituted, was assailed by the Capital Development Authority (*hereinafter referred to as the "CDA"*) before the august Supreme Court in Civil Petition No.820/2015. However, the apex Court upheld the direction of this Court as is evident from the order, dated 25-09-2017. Likewise, Civil Petition no.821/2015 was dismissed vide order, dated 09-06-2015, by the august Supreme Court. The constitution of the Commission was, therefore, not interfered with by the august Supreme Court. The commendable work of the Commission and its monumental report will be discussed in more detail later. The Commission had, inter alia, identified the status of the enforced laws

and the illegal violations and encroachments made in the Margalla Hills, which included food outlets such as Monal restaurant (*hereinafter referred to as "Monal"*) and other commercial ventures. The Environmental Protection Agency (*hereinafter referred to as the "EPA"*) had also informed the Court that the constructions were made and they continue to cause environmental degradation in violation of the Pakistan Environmental Protection Agency Act, 1997 (*hereinafter referred to as the "EPA Act"*). The Director General EPA had appeared and informed that proceedings were initiated against Monal and other food outlets. She had further informed that Monal had been sealed for causing serious damage to the environment and the Margalla Hills but the owner and management, by taking the law into their own hands, had illegally removed the seals. She has further informed that proceedings against all other food outlets have been initiated. While these proceedings were pending, the Monal Group of Companies (*hereinafter referred to as the "Monal Companies"*) filed F.A.O. No.111/2021 and C.R. No.13/2021. It is noted that the latter is not a juridical person but a sole proprietorship engaged in operating and managing the Monal, which is situated in the protected forest area of the Margalla Hills. The case of Monal was, therefore, clubbed and heard with the titled petition and its case will be discussed in more detail later. In a nutshell, the case in hand is regarding the systematic destruction of the Margalla Hills solely on account of refusal on the part of the public functionaries and the institutions/authorities to respect and implement the enforced laws promulgated by the legislature. It is a case which manifests complacency or willful violations committed by powerful and influential institutions and public functionaries resulting in the undermining of the rule of law and abuse of the enforced laws. The dereliction of statutory

duties, abuse of power and breach of fiduciary duty that public functionaries owe to the people is obvious and established. The questions, therefore, to be answered by the Court are: the status of the Margalla Hills; the enforced laws promulgated for its management, conservation, protection and preservation and, lastly, their abuse thereof and the accountability of those involved in causing harm to the citizens and their guaranteed rights.

3. In order to appreciate the paramount questions of public importance, it would be beneficial to survey the background to and the scheme of laws promulgated and enforced within the Islamabad Capital Territory with the object to preserve, conserve, protect and manage the Margalla Hills. A larger Bench of this Court, in the judgment reported as "*Shahzada Sikandar Ul Mulk and 4 others v. Capital Development Authority and 4 others*" [PLD 2019 Islamabad 365], has elaborately discussed the scheme of legislation enforced in the Islamabad Capital Territory. The said judgment was later upheld by the august Supreme Court. However, for the purposes of adjudication of the petitions in hand, the scheme of legislation promulgated and enforced within the Islamabad Capital Territory is discussed as follows.-

Legal Framework:

(i) Background of the legislation:

4. In order to discover the legislative intent in promulgating the enforced statutes and laws it would be essential to examine the historical events which had preceded their enactment. The Islamic Republic of Pakistan came into existence after a long drawn struggle.

On the eve of independence the newly formed nation did not have a capital. The first task of the Government was to search for the most suitable place which could be declared as the country's capital. The Government of Pakistan appointed a consultant company namely MRVP to prepare a master plan for the city of Karachi. The master plan was prepared in 1952 but it could not get official approval. The then President of Pakistan constituted a special Commission for identifying a suitable location for the Capital. The Commission held its first meeting in 1959. Nine Sub-Committees were constituted consisting of experts from various fields to make recommendations. In February 1959, the President of Pakistan appointed a renowned architect and city planner having international repute, namely Dr C. A Doxiadis, as Advisor to the special Commission for location of the Capital. A preliminary report was submitted by the Commission, i.e. DOX-PA 88, to the Government. In June 1959 the special Commission for location of the Capital submitted its report, wherein it was recommended that the city of Karachi was not a suitable site for establishing a Capital and that the area around the city of Rawalpindi was more appropriate. Two sites i.e. A & B were proposed. In June 1959, the President of Pakistan publicly announced his decision regarding the selection of the proposed area-A as the site for the Capital. Dr. C. A Doxiadis was given the task of preparing the next phase. In September 1959, the President of Pakistan and the Cabinet established the Federal Capital Commission. The renowned international firm of town planning, namely M/S Doxiadis Associates, was appointed as consultant to the Federal Capital Commission. The said Commission constituted fourteen sub committees of experts to carry out surveys and investigations for preparing a Master Plan for the selected area-A, which was to be the Capital of Pakistan. The said sub

committees submitted several reports after extensive research and they carried out in depth studies regarding several important aspects which, inter alia, included topographical survey, hydrological and surface water survey, investigations relating to geological, sub soil and ground water, transportation and communications, economic and financial studies etc. On 24.02.1960, the Cabinet gave the new Capital the name of Islamabad. In May 1960, pursuant to the surveys and studies conducted by the fourteen committees, a preliminary master programme and master plan was prepared and designed by the Greek architect Dr C. A Doxodias and his firm. On 24.05.1960, the first Cabinet meeting was held in Islamabad. On 01.06.1960, the Federal Capital Commission was succeeded by the Capital Development Authority. The Authority was established on 01.06.1960 for planning and developing the Capital i.e. Islamabad, in accordance with the Master Plan and the phased master programme. The President of Pakistan was pleased to promulgate the Ordinance of 1960. Simultaneously, another crucial legislative instrument i.e. the Pakistan Capital Regulation MLR-82, 1960 (hereinafter referred to as the "**MLR-82**") was also enforced.

(ii) The Master Plan:

5. After extensive surveys and studies the sub committees submitted their final reports. Dr. C. A Doxiadis and his consultant firm submitted a final report titled 'Recapitulative Report DOX-PA 88'. This report consists of three parts and an introduction. The three parts are titled "Towards a new Capital", "Towards Islamabad" and "Programme and plan for Islamabad" respectively. This report is the descriptive part of the Master Plan and programme for the development of the Capital.

This Court has had the privilege of going through this historical document and its detail, comprehensiveness and professional excellence are praiseworthy. This document, in fact, explains and gives the details of the Master Plan (hereinafter referred to as the "**Master Plan**"). This historic and internationally outstanding work of town planning was the outcome of several months of deliberations and extensive surveys conducted and data collected by various sub committees which had been constituted for this purpose. Constantinos Apostolou Doxiadis was honored with special awards for this masterpiece of town planning i.e. the Master Plan of Islamabad. The vision of the founding planners of the Capital of Islamabad is recorded in page 160 of the Master Plan as follows:-

"The Capital of a country is not merely just another city; it is a LEADER among cities. To this city come leaders of administration and politics, commerce and trade, literature and art, religion and science. From this city flows the inspiration which pulsates life into the nation. It is a symbol of our hopes. It is a mirror of our desires. It is the heart and soul of the nation. It is, therefore, essential that the environment of the Capital should be such as to ensure continued vitality of the nation".

6. The Master Plan prescribes detailed guidelines for a five year and a twenty year plan. The Master Plan is indeed a comprehensive document giving the details for the planning and development of Islamabad as the Capital of Pakistan. The Master Plan, inter alia, caters to the needs of all the different classes i.e. from the highest to the lowest income groups. The Master Plan has divided the entire territory of the 'Specified Areas' of the Federal Capital into five

distinct Zones. The Master Plan is protected and has statutory backing in terms of section 11 and the Zoning Regulations, which would be discussed later. The location of the site and preparation of the Master Plan were based on the fundamental principle of the creation of the Capital of Pakistan as a city which would be able to develop freely and naturally along a planned and predetermined course. As explained in the detailed report, the descriptive form of the Master Plan, this master piece was based on the principle of comprehensive planning which included all social, all income groups and all types of functions. The principle was explicitly described as planning a city "where everybody is provided for, where privileged groups do not exist, and where the inhabitants are considered as entitled to equal treatment". It was further emphasized that "If we are to use our resources to serve all citizens and not a small minority, we must also design for economy in every respect". Based on these fundamental principles the Master Plan was prepared in great detail and its description was recorded in written form in several reports, particularly the final report.

7. The purpose for which the Authority was established and its duties and obligations under the Ordinance of 1960 have been eloquently described by Dr. C. A Doxiadis at page 426 of the final report, which was approved by the Government, and the relevant portions thereof are reproduced as follows;

"1041. CDA will be responsible for coordinating all endeavours for the development of the whole of the Capital Region so that unity of purpose is ensured at all times. The extent of the region to be controlled will be defined immediately upon approval of the regional plan, which has to be prepared as soon as possible.

1042. But even before that point is reached, in fact from now on, CDA will be generally responsible for coordinating all development within the Metropolitan Area.

1043. As soon as the regional plan is completed, CDA will have to take full control of all new developments within the region, which means that no major development will be possible within the region without its special approval.

1044. CDA may authorize other authorities to prepare plans or carry them out within the region without being itself in charge of all these projects. For example, a new resort may be created, of which CDA might in principle approve the location, size and importance, while at the same time leaving the designs in the hands of another authority for organization although necessarily retaining the right to approve these designs.

1045. Within the Metropolitan Area, however, the responsibilities of CDA will be much larger. It is within the Metropolitan Area that CDA should have not only full control, but full responsibility for every development. Here CDA will itself issue the permits for every kind of building, even the smallest one.

1046. It will not be permitted to add houses to existing villages, or even demolish houses within villages, without the special permission of CDA. This is because CDA may well think that some villages will have to be demolished later and that no investment should be encouraged or allowed in them, or that some villages must be preserved as elements of the National Park and that thus no addition to them should be allowed.

1047. The same is true of all other types of development within the Metropolitan Area and not only of buildings and construction. For example, change of cultivation, or cultivation of new areas, will also have to be approved by CDA, as likewise will the opening of new roads, even of minor importance, or the creation of new Cantonments."

(iii) Description of National Park in the Master Plan:

8. The expressions 'region', 'metropolitan area' and 'Islamabad' have been separately defined in Articles 400 to 405. Article 404 defines the 'metropolitan area' and it has been divided into three distinct areas. Clause b of Article 404 describes the 'National Park' with all related functions, otherwise called the 'semi urban part of Islamabad', as an integral part of the 'metropolitan area'. Article 408 further describes the 'National Park' as follows:

"408. The National Park consists of:

- a. The national Park itself.*
- b. The rural areas within the National Park which will gradually be converted to other functions.*
- c. Special functions, such as the University town, Research stations and National institutions, which should not be built within Islamabad but within its Metropolitan area."*

Articles 653 to 656 describe the 'semi urban area of Islamabad/National park' as follows:

"c. Semi Urban Area of Islamabad (National Park)

653. The area East of BD and South of BC, which has been excluded as a possible Capital site, offers many advantages as a site for the National Park. It has great variety of landscape features, including the lake to be formed by the Rawal Dam, the hills and the rivers. This is the area where it is proposed to erect the Educational Institutions, the National University, the National Stadium, the Academy of Medical Sciences, the Atomic Research Institute, and all other Institutes related to culture, research or national development.

654. *In this way the whole of the Metropolitan area has been divided into three clearly separated and defined areas in such manner as to avoid any unfavorable intermingling of functions in the future.*

655. *The Metropolitan area, from now on, includes Islamabad, the National Park, Rawalpindi and the Cantonments.*

656. *Agricultural areas will exist within the National Park, as well as within Rawalpindi and the Cantonments, for many years to come. These will not, therefore, be called rural areas in the future, but rural within the Metropolitan area."*

Likewise Article 911 gives the description of 'National Park' as below:

- "911. a. *Educational functions of national importance: National University, etc.*
- b. *Institutions of a National character, i.e. National Research Centre, national Medical Centre.*
- c. *National Sports Centre.*
- d. *National Park functions (preservation of rural life, wild life, forests).*
- e. *Zoo, botanical gardens.*
- f. *Exhibition grounds."*

A further elaboration of the 'National Park' has been made in Articles 950 to 961 as follows:

"950. *The area of the National Park is an area which, by contrast to the previous ones of Islamabad and Rawalpindi - described as definitely urban areas - could be described as a park area. The title of*

National Park is given for the following two reasons:

- a. Because it is intended that this area should gradually be bought by the Government and become national property, and*
- b. Because it is considered to be an area which could be developed into a very big park where nature will be preserved in all its forms, as natural landscape - even when this consists only of stones and rocks - or hills, small valleys and rivers, as well as vegetation and animal-life.*

951. The fact that Rawallake has already been created presents an excellent opportunity for the creation of a place allowing for the development of an aquarium, of sports related to the water and the lake, etc.

952. At the Southern part of the National Park it is provided in the future to be constructed a second dam on the Kurangriver, the Lohibhir dam, and in this way a second lake would be created in the National Park. As a whole, the area of the National Park is already beautiful and can be made much more so and become an object of national pride.

953. It is thought that this area will provide the ideal site for the creation of many institutions of national character which are not necessarily parts of Islamabad or Rawalpindi at all, but which should be very close to them inside the same Metropolitan area.

954. *Such for example is the National Sports Centre, which can include an Olympic stadium and corresponding installations for all types of sports including rowing and sailing, race course and gold course, etc.*

955. *It is suggested that the part which is along the Murree road should be become the national sports center thus the Olympic stadium would be in the hills, which are at the crossing of Islamabad Highway and the Murree Highway; the sports which require wide open spaces, such as golf, etc., would be between the Olympic Stadium and the lake; while water sports would be on the lake itself.*

956. *Thus, we can consider that an elongated area covering approximately the width of five normal sectors and running along the Murree, Highway, will become the National Sports Centre, with many installations spread within the National Park in such a way that the area does not lose its character.*

957. *The second category of institutions to be built within the National Park area are educational and research institutions, such as a National University, National Research Institution, etc. Such functions will be created in several parts of the National Park and especially on the sides of the hills. This is the best location, since the tops of the hills should be preserved as parts of the natural beauty of the National Park, and not spoiled by any building except the small restaurants and tea-houses provided for visitors and tourists, while the lower parts of the valleys are better for cultivation.*

958. *Another part of this area can be turned into a zoological garden and botanical garden, while other parts can be organized to provide facilities for picnics for the inhabitants of the Metropolitan area, as well as visitors who want to visit the metropolitan area and enjoy its natural beauties.*

959. *The same role will be played by the Margala hills and other places up to Murree and the surroundings, but this is a matter for the regional plan to be studied at the later stage.*

960. *Finally, national and international exhibitions can be organized within the area of the National Park.*

961. *The pattern of roads in the National Park connected with the rectangular grid of roads of the Master Plan and follows the landscape of the area. The right-of-way provided for those roads in the National Park is 600 foot."*

The graphic description of the 'National Park' was in the form of a pictorial '**map**' which formed an integral part of the 'Master Plan'. **It is noted that the area of Zone III was to be maintained as protected forest area to preserve, protect and manage the Margalla Hills and it will be discussed in more detail later.**

(iv) The Capital Development Authority Ordinance, 1960:

9. The above mentioned events and the background which led to the enactment of the Capital Development Authority Ordinance, 1960 (*hereinafter referred to as the "**Ordinance of 1960**"*) are a relevant

guide in understanding the legislative intent. Its main object was to give statutory backing to the Master Plan. It is also important to note that the Master Plan was prepared and approved for an area consisting of 1,400 sq miles on the Potohar Plateau, as described in paragraphs 411 and 412 of the descriptive form thereof. The above discussed background would, therefore, facilitate in appreciating the legislative scheme and intent of the Ordinance of 1960, which was notified in the official gazette on 27.06.1960, more particularly the Wildlife Ordinance of 1979. The preamble of the Ordinance of 1960 describes the object and purpose for establishing the Authority as making all arrangements for the planning and development of Islamabad within the framework of the Regional Development Plan. Sub-section (2) of Section 1 explicitly provides that it extends to the 'Specified Areas'. Section 2 defines various expressions. Agency and Authority are defined in Clauses (a) and (b) while the Board and the Chairman are defined in Clauses (c) and (f) respectively. Clause (i) defines 'land'. Clause (o) defines a 'Scheme' as meaning a planning scheme or a development scheme made under the Ordinance of 1960. The two other important definitions are that of a 'Capital Site' and 'Specified Areas'. Capital Site is defined as meaning part or parts of the 'Specified Areas' declared to be the site for the Pakistan Capital under Section 3. Likewise, 'Specified Areas' is defined in Clause (2) (p) as meaning the areas specified in the schedule and any other such area or areas which may from time to time be included therein by notification in the official gazette. Section 3 empowers the Federal Government to declare any part or parts of the 'Specified Areas' to be the site for the Capital of Pakistan. The 'Specified Areas' are described in the schedule of the Ordinance of 1960 and is the same as highlighted in the Master Plan i.e covering almost 1,400 sq

miles. Chapter II relates to the constitution of the Authority. Chapter III describes the powers and duties of the Authority. Section 11 provides that the Authority shall prepare a master plan and a phased master programme for the development of the Capital Site and a similar plan and programme for the rest of the 'Specified Areas'. All such plans and programmes are required to be submitted to the Federal Government for approval. As already noted, the Master Plan was prepared and approved at the time of the enactment of the Ordinance of 1960. Section 12 empowers the Authority, pursuant to the master plan and the master programme, to call upon any local body or agency operating in the 'Specified Areas' to prepare in consultation with the Authority a Scheme or Schemes in respect of matters dealt with by such local body or agency. The scope of a scheme has been described in clauses (a) to (i) of sub-section (2) of Section 12. Section 13 vests the power and jurisdiction in the Authority to prepare on its own a Scheme pursuant to the master programme whenever it considers it desirable to do so in the public interest. It is obvious from a plain reading of these provisions that the Scheme prepared has to be within the framework of the Master Plan and a phased master programme. The language of sections 12 and 13 explicitly provide that the Scheme so prepared has to be pursuant to the Master Plan and the master programme. Section 14 describes the manner and form in respect of the preparation of a Scheme. Section 15 enumerates the powers vested in the Authority, which are expansive and, inter alia, explicitly include acquiring any land in the 'Specified Areas' in accordance with the procedure laid down in the Ordinance of 1960. Section 19 provides the procedure for amending a Scheme while section 21 describes how it is to be executed. Chapter IV of the Ordinance of 1960 explicitly relates to acquisition of land in the

"Specified Areas". Section 22 unambiguously provides that all land within the 'Specified Areas' shall be liable to be acquired at any time and in accordance with the provisions of Chapter IV of the Ordinance of 1960. It is noted that through this statutory provision the entire land comprising the 'Specified Areas' has been declared as being liable to acquisition. It is a declaration made by the legislature and the use of the expression "shall" instead of "may" is significant. Sections 23 to section 30 explicitly describe the power vested in the Authority and the procedure for acquiring land within the 'Specified Areas". Section 32 unequivocally declares that, immediately on making of the award under Section 28, the land shall vest in the Authority free from all encumbrances and, subject to reasonable notice, it shall enter and take possession thereof. Section 33 vests the power of acquisition of the land within the 'Specified Area' in cases of urgency. Chapter V of the Ordinance of 1960 empowers the Authority to appoint officers and servants and to determine their terms and conditions of service. Chapter VI is in respect of matters relating to Finance and the powers of the Authority with regard thereto. Chapter VII is in respect of penal provisions. Section 46 explicitly provides that whoever contravenes any provision or any rules or regulations made, or sanctioned under the Ordinance of 1960, shall, if no other penalty is provided for such contravention, be punishable with imprisonment. Section 49 describes the power of the Authority in respect of the disposal of land which vests in it. Sections 49-C and 49-D provide for the powers of the Authority in relation to the removal of buildings etc. erected or used in contravention of the Ordinance of 1960. Sections 50 and 51 empower the competent authority, as the case may be, to make rules and regulations respectively.

10. A plain reading of the above provisions unambiguously shows that the Ordinance of 1960 is a self-contained, comprehensive and special statute enacted for establishing the Authority and having the object and purpose of making all arrangements for the planning and development of Islamabad within the framework of a regional development plan. The Master Plan is the foundation or premise on which the scheme of the Ordinance of 1960 is dependent. As already noted, the Master Plan was prepared by an internationally renowned town planner and approved by the Government. The autonomy of the Authority is manifest from the unambiguous language of the Ordinance of 1960 and the entire scheme thereof. The legislative intent is further affirmed by the enactment of MLR-82. However, as will be discussed later, the preservation, protection and management of the Margalla Hills is governed under the Wildlife Ordinance of 1979.

(v) MLR-82:

11. MLR-82 was enacted and notified on 16.06.1960. It extends to the "Specified Areas". Regulation 3 explicitly provides that its provisions or any rule or order made there under shall have effect, notwithstanding anything to the contrary in any other law or in any contract, instrument or other document. It extends to the Specified Areas i.e. 1,400 sq miles of Islamabad Capital Territory. Regulation 4 prescribes restrictions on the building on and use of land. The restrictions in clause (a) of section 4 are in relation to the Capital Site and provide that no person shall construct or cause to be constructed any building or alter or enlarge any existing building except under the Authority or with the permission of the Commission appointed for this

purpose, nor can convert any land being used for purposes of agriculture to any other use, cutting of standing trees is also prohibited. Clause (b) of Regulation 4 (i) is in respect of lands outside the Capital Site. It unambiguously provides that within the "Specified Areas' outside the Capital Site no person shall construct or cause to be constructed any building except in accordance with such general or specific directions as may from time to time be issued by the Commission to the local authorities. Likewise, conversion of land used for the purposes of agriculture to any other use has been prohibited, except in accordance with such general or specific directions as may from time to time be issued by the Commission in this regard. Section 12 provides for offences and penalties for contravention or failure to comply with the provisions of the regulations. MLR-82, therefore, when read with the provisions of the Ordinance of 1960, clearly shows the intent that the entire land comprising 'Specified Areas' i.e. comprising almost 1,400 sq miles, has been exclusively identified and reserved for planning and developing the Capital of Pakistan, having regard to the Master Plan and in accordance with the provisions of the Ordinance of 1960.

(vi) The Determination of the Area:

12. The Capital of the Republic (Determination of Area) Ordinance, 1963 (hereinafter referred to as the "***Determination of Area***") declared the area specified in the Schedule thereto as the site selected for the Capital of Pakistan.

(vii) The Islamabad Capital Territory:

13. The expression 'Islamabad Capital Territory' has been defined in Regulation 2 (13) of the Islamabad Capital Territory (Zoning)

Regulation, 1992 (hereinafter referred to as the "**Zoning Regulations of 1992**") as meaning "Islamabad Capital Territory' defined under the Capital Territory Local Government Ordinance, 1979. Section 2 (d) of the latter statute defines 'Capital Territory' as meaning 'Islamabad Capital Territory' referred to in paragraph (b) clause (1) of Article 1 of the Constitution of the Islamic Republic of Pakistan, 1973. The 'Islamabad Capital Territory', therefore, refers to and consists of the entire land described in the Schedule of the Ordinance of 1960 as the "Specified Areas". The Ordinance of 1960 and the regulations and rules made there under are, therefore, enforced and attracted in the entire land consisting of "Specified Areas", whether acquired or un-acquired.

(viii) The Regulations of 1992:

14. The Zoning Regulations of 1992 were framed and duly notified in the exercise of powers conferred under section 51 of the Ordinance of 1960, read with section 11 thereof. The Zoning Regulations of 1992, in fact, are based on giving effect to the Master Plan approved in 1960, which has been discussed above. This delegated legislation is most crucial because it manifests the basic and fundamental features of the Master Plan. Regulation 2 defines various expressions. The expressions "Existing Village", "Forest", "Illegal Construction", "Layout Plan", "Native Resident", "Structure" and "Zone" are defined in sub-regulations (10), (12), (14), (16), (20), (24) and (27), respectively. It is pertinent to note that "Existing House", "Existing Village" and "Native Resident" are the most important definitions for appreciating the scheme of law enforced in the Islamabad Capital Territory. According to the Master Plan, the Islamabad Capital Territory

has been divided into five distinct Zones and the same are described in Regulation 3. For the adjudication of the petitions in hand, the provisions regarding Zone III are relevant because they govern the Margalla Hills and the same are reproduced as follows.-

"(3) Zone-3: *In this zone,*

(a) no private residential, farming, orchard, poultry and dairy farming scheme shall be allowed;

(b) no change in land-use will be permissible except for such projects as may be related to conservation, preservation, afforestation and recreation and are covered by Margallah Hills National Park Management Plan;

(c) no sale/purchase of land which entails change in land use, shall be allowed;

(d) some of the existing rural settlements, being central and important villages, shall be allowed to stay under controlled programme to cater for the basic necessities of the local population, selection of such settlements shall be in accordance with the provisions of Margallah Hills National Park Management Plan. These rural settlements would not be allowed to expand;

(e) no residential scheme can be floated in this zone, nor construction of houses shall be allowed."

(ix) The Islamabad (Preservation of Landscape) Ordinance, 1966:

15. The Islamabad (Preservation of Landscape) Ordinance, 1966 (*hereinafter referred to as the "Ordinance of 1966"*) has been

enacted to preserve the landscape of Islamabad and extends to the entire area falling within the Islamabad Capital Territory. The expression "landscape" has been defined in clause (a) of section 2. Section 3 provides that the Ordinance of 1966 and the rules made there under shall be in addition to and not in derogation of the provisions of the Ordinance of 1960 and the MLR-82. Section 4 provides that no person shall remove, destroy, damage or alter anything, or commit any other act if such removal, destruction, damage, alteration or act affects or is likely to affect a landscape injuriously. Sub section (2) of section 4 makes it mandatory to seek permission from the Authority so as to avoid the consequences mentioned in section 5. Section 5 makes it a criminal offence to contravene the provisions of the Ordinance of 1966 and such a person is liable to be punished with imprisonment for a term which may extend to six months or a fine upto five thousand rupees. The power to arrest without warrant for contravention of the Ordinance of 1966 has been provided under section 6 *ibid*. In exercise of powers vested under section 15 of the Ordinance of 1966, the Islamabad (Preservation of Landscape) Rules, 1967 have been made and duly notified.

(x) The Islamabad Wildlife (Protection, Preservation, Conservation and Management) Ordinance, 1979

16. The Islamabad Wildlife (Protection, Preservation, Conservation and Management) Ordinance 1979 (*hereinafter referred to as the 'Wildlife Ordinance of 1979'*) was promulgated to provide for the protection, preservation, conservation and management of wildlife and setting up of a National Park in the Islamabad Capital Territory. The Wildlife Ordinance of 1979 extends to the entire area of the Islamabad

Capital Territory. Section 2 defines various expressions. Clause (l) of section 2 defines "National Park" as meaning an area declared as such under section 21 and the Margalla Hills are an integral part thereof. Section 4 provides for the constitution of the Board of Wildlife Management. Section 20 provides for the declaration of a wildlife sanctuary. The Federal Government, in exercise of its powers vested under section 20, has issued Notification No.3(15)/76-Capital Development Authority.III(3), dated 27th April, 1980 (*hereinafter referred to as the 'Wildlife Sanctuary Notification'*). The said notification is reproduced as follows.-

"No.3(15)/76-Capital Development Authority.III(3), dated 27th April, 1980. *In exercise of the powers conferred by sub-section (1) of section 20 of the Islamabad Wildlife (Protection, Preservation, Conservation and Management Ordinance, 1979) (LXX of 1979), the Federal Government is pleased to declare the following areas of the Islamabad Capital Territory to be the Wildlife sanctuaries namely:*

(1) All public open spaces, developed or underdeveloped within the municipal limits of Islamabad, excluding the areas declared to be a national park under the said Ordinance.

(2) Bannigallah hills bounded by Kurang river in the north, Mohra Noor in the west, Thal in the east and Belgh in the south; and

(3) C.D.A. Nursery at ChakShahzad."

Section 21 empowers the Federal Government to declare any area to be a National Park with a view to protect, preserve the scenery, flora and fauna in natural state. The Federal Government in exercise of its powers under section 21 has issued S.R.O. 433(I)/80 dated 28th April, 1980 and the same is reproduced as follows.-

"No.S.R.O. 443(I)/80, dated 28th April, 1980. In exercise of the powers conferred by sub-section (1) of section 21 of the Islamabad Wildlife (Protection, Preservation, Conservation and Management) Ordinance, 1979 (LXX of 1979), the Federal Government is pleased to declare the following areas to be the Margallah Hills National Park, namely:

(1) Margallah Reserve Forest comprising compartments Nos. 2 to 5, 7 to 23, 28, 30 to 38(i) and 41(ii).

(2) Military Grass Farm comprising compartments 1 to 25.

(3) Lands falling in villages Mangial, MalachDakhli, Phulgran, Mandla, JhangBagial, Malpur (Bijran), Rumli, Narias, PadohDakhli, NoorpurShahan, RattaHottar, Saidpur, DhokeJiwan, Gandiar, Kalinjar and Saniari.

(4) Area bounded by Shahrah-i-Kashmir in the north, Shahrah-i-Islamabad in the west and Murree Road in the south and east upto its junction with Shahrah-i-Kashmir; and

(5) Rawal lake and area within a distance of 2 Kilometers from the highest water mark of Rawal Lake."

Section 22 empowers the Federal Government to declare in the prescribed manner an area to be a game reserve and pursuant thereto S.R.O. No.444(I)/80, dated 27th April, 1980 has been issued and the same is reproduced as follows.-

"No.S.R.O. 444(I)/80. In exercise of the powers conferred by subsection (1) of section 22 of the Islamabad Wildlife (Protection, Preservation, Conservation and Management) Ordinance, 1979 (LXX of 1979), the Federal Government is pleased to declare the whole of the Islamabad Capital Territory, except the areas declared as

wildlife sanctuary and national park, to be the game reserve."

In exercise of powers conferred under section 41 of the Wildlife Ordinance of 1979, the Federal Government has made the Islamabad Wildlife (Protection, Preservation, Conservation and Management) Rules, 1983. The concept and description of "National Park" has been elaborately dealt with in the descriptive part of the Master Plan.

It is noted that sub section (2) of section 21 explicitly provides that the National Park shall be accessible to public for recreation, education and research, subject to such restrictions as the Federal Government may impose. Moreover, sub section (3) of section 21 provides that provision for access road to, and construction of rest houses, hotels and other buildings in the National Park along with amenities for public may be so made. **It has been explicitly declared that the forest therein shall be so managed and forest produce so obtained so as not to impair the object for which it is declared as the National Park. The prohibited activities have been described under sub section (4) of section 21.** It is, therefore, obvious that within the National Park area, the Margalla Hills have a special status in the context of its protection, preservation and management.

The Commission and its report.

17. As already noted above, the Commission was constituted vide order, dated 20-02-2015, passed in the connected petition W.P. No.1276/2011 and the said order was subsequently upheld by the august Supreme Court. The report of the Commission was made an integral part of the judgment rendered by a larger Bench of this Court

in the case reported as "*Shahzada Sikandar Ul Mulk and 4 others v. Capital Development Authority and 4 others*" [PLD 2019 Islamabad 365] and a direction regarding its implementation was also given vide clause (iv) of paragraph 42 thereof. The said judgment was subsequently upheld by the august Supreme Court. The report of the Commission shall be read and treated as an integral part of this judgment and it has been attached as Annexure B hereto. The monumental work done by the Commission headed by Dr Pervaiz Hassan, Sr ASC, was commendable and the first of its kind in the context of environmental degradation in the Islamabad Capital Territory. The Commission included almost all the stakeholders and experts in the field of environment. The seminal work that had led to the preparation of the report and the recommendations made therein definitely deserves recording of appreciation by the Court. The Commission, in its report, has generally found the legal and regulatory framework to be sufficient and satisfactory for the protection, preservation and conservation of the environment. However, the findings of the Commission unequivocally manifest that the regulatory framework has not been properly implemented nor enforced. According to the findings of the Commission, the fundamental reasons were lack of capacity and political will to implement the enforced laws. It was explicitly observed that the mandatory requirement of environmental impact assessment, despite being a backbone of an appropriate architecture for environmental protection, has been completely ignored, let alone being used effectively, particularly in the case of projects undertaken by the Government and statutory entities. The Commission, in its findings, has also observed a complete disregard for compliance with the mandatory requirements prescribed under the EPA Act. The failure of the EPA to

fulfill its statutory obligations was obvious to the Commission. Regarding Zone III, the violations have been explicitly described as follows.-

"(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.*
- 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 Margallah 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."*

The Commission has also made observations regarding the grave changes, modifications and violations of the Master Plan and remedial measures have been recommended to prevent its further destruction.

The Margalla Hills

18. The Margalla Hills have a peculiar and significantly important status under the laws discussed above. It has a distinct status within the National Park because it falls in Zone III of the Master Plan and is described as such under the Regulations of 1992. It has been declared as a protected area and the object and purpose was to protect, preserve and conserve the native flora and fauna and to further ensure that its natural character was not harmed. The Master Plan, rightly declared as a living document by the Commission, has explicitly

contemplated that no change in the land use will be allowed. As already noted, the Margalla Hills fall within the area described as Zone III. The Regulations of 1992, which were made under the Ordinance of 1960, has prescribed stringent conditions in order to ensure that the natural character of the Margalla Hills remain protected and preserved. The relevant provisions have been reproduced above.

Perusal of documents brought on the record establishes that part of the area falling within the Margalla Hills was owned and managed by the Forest Department of the Government of Punjab and after promulgation of the Ordinance of 1960 it was taken over by the CDA in 1970. The area of Margalla Hills was notified as an integral part of the National Park by the Federal Government in exercise of powers conferred under section 21 of the Wildlife Ordinance of 1979 vide notification, dated 28-04-1980. It, therefore, was given a special status in relation to its protection, conservation and management. Pursuant to issuance of the notification, the area covered therein became a notified area under the special law for the purpose of its protection, conservation and management. As a consequence, the Ordinance of 1960 and jurisdiction of the CDA was excluded to the extent of inconsistency or conflict with the provisions of the Wildlife Ordinance of 1979 and the rules made there under. The latter statute has the status of a special law relating to preservation, protection and management of the area notified as the Margalla Hills, and thus prevails over the other laws. It is noted that the notified areas includes 11610 acres of Margalla Reserved Forest, 8602 acres of Military Grass Farm, 10935 acres of land acquired by the CDA while the rest consists of un acquired private land. In 1992 the Federal Government, in association with the International Union for the Conservation of Nature, had prepared the Margalla Hills

National Park Management Plan (*hereinafter referred to as the "Margalla Hills Plan"*). The notified area of Margalla Hills was to be exclusively managed, protected and preserved under the Wildlife Ordinance of 1979 and that too by the Board constituted there under. The CDA was bereft of power and jurisdiction to interfere in matters relating to the Margalla Hills nor could it undertake or allow construction in violation of the Wildlife Ordinance of 1979, particularly in complete disregard to the mandatory requirements prescribed under the EPA Act. The construction of buildings and allowing food outlets were thus undertaken and leased out by the CDA in violation of the aforementioned enforced laws. Regrettably, most illegal encroachments in the notified area of the Margalla Hills have been made by State institutions/entities such as Pakistan Navy, Pakistan Air Force, etc. The CDA was either complacent or seemed to be helpless. The provisions of the Wildlife Ordinance of 1979 were brazenly violated and disregarded by public functionaries who are under oath to uphold the law and protect the rights of the citizens. The provisions of the aforementioned statutes were rendered ineffective, resulting in the destruction of the Margalla Hills and inevitably leading to environmental degradation. The illegal encroachments have profound consequences for the destruction of ecosystem services, the habitats and the native flora and fauna.

It is important to note that the august Supreme Court, in CMAs No.6158& 6159 of 2013 (in Suo Moto Case No.20 of 2007, Suo Moto Regarding Margallah Tunnel) vide order, dated 25-10-2013 has observed and held in the context of the Margalla Hills as follows.-

"Thus, Chairman CDA, Chairman NHA and any other executing agency are hereby restrained not to

undertake any exercise towards the construction of Tunnel in the Margalla Hills enroute to the Province of KPK, nor CDA shall grant licence of crushing stones from the Margallah Hills. The Chairman CDA is further directed to constitute a team which shall put up a report that no activity of constructing of Tunnel or crushing of stones or encroachment or any other activity in the National Park is going on. If there is any such activity, the same shall be stopped at once. Copy of the compliance report shall be submitted before the Court through Registrar for our perusal in Chambers and passing further orders if need be."

Moreover, the august Supreme Court, vide orders dated 25-10-2013, 16-03-2015, 18-03-2015, 19-03-2015 passed in CRPs Nos. 315-316 of 2013 in CMAs 6158-6159/2-13 in SMC-20 of 2007 and CrI.O.P. No. 115 of 2014, has unambiguously held that no illegal activity or construction can be allowed within the notified area of the Margalla Hills.

It is, therefore, obvious from the above discussion that no construction nor any activity whatsoever can be undertaken in the notified protected area of the Margalla Hills in violation of the Regulations of 1992, the Wildlife Ordinance of 1979, the rules made there under nor without meaningful fulfillment of the requirements prescribed under the EPA Act. The environmental threats emanating from the existence of a cement manufacturing unit, M/S FECTO, was brought to an end pursuant to culmination of proceedings before the august Supreme Court. The claim of Remount, Veterinary and Farms Directorate (*hereinafter referred to as the "RVF Directorate"*) over possession of 8602 acres of the land falling within the notified area of

Margalla Hills is in violation of the scheme of the Constitution and the Wildlife Ordinance of 1979. This will be discussed in more detail later. The other major encroachment in the notified Margalla Hills, identified in the reports submitted by the respondents, is the Naval Golf Club established by the Pakistan Navy.

Naval Golf Club.

19. An entire sector i.e sector E-8 was allotted for establishing residential and official accommodations for the Pakistan Navy, one of the branches of the Armed Forces. The sector is situated in the foothills of the Margalla mountain range bordering the notified area of the Margalla Hills. The boundaries of the allotted land were clearly demarcated by the CDA and there is no dispute in this regard. Without seeking approvals from the competent authorities under the Ordinance of 1960, the Wildlife Ordinance of 1979, the EPA Act and other enforced laws, Pakistan Navy took the law into its own hands by illegally encroaching the area notified under the Margalla Hills for establishing the unlawful Navy Golf Course. It is evident from the material brought on record that the CDA had repeatedly sent notices directing the management of the Pakistan Navy to hand over the illegally encroached area but to no avail. The Court has been informed that illegal buildings and boundary wall/fence were constructed. The CDA vide letters/notices, dated 12-03-2020, 07-09-2020, 16-09-2020, 31-08-2020, 17-09-2020 etc had repeatedly asked the Pakistan Navy to vacate and hand over the encroached land to the CDA. The record further shows that meetings were also held with senior high ranking officials of the Pakistan Navy but they refused to hand over possession of the illegally encroached land. The Federal Cabinet in its meeting held

on 11-08-2020 had decided to retrieve the illegally occupied land and had directed the CDA to remove all the encroachments. Regrettably, the CDA and all other authorities had been sending notices as a formality without proceeding in accordance with law as would have been done in the case of citizens.

It is not disputed that the Pakistan Navy has established the Navy Golf Course on land that falls outside the area allotted for its use. Its status as an illegal encroachment is admitted. The Pakistan Navy had willingly undermined the sanctity of the notified Maragalla Hills and had violated the enforced laws which have been highlighted above. The learned Attorney General has argued that the area was taken over for security reasons. This argument is fallacious because no one can claim to be above the law nor can anyone be given the license to violate the enforced laws. Providing security is the function of the State and establishing a golf course in violation of law on the pretext of security cannot be justified by any stretch of the imagination. The functionaries of the Pakistan Navy who chose to illegally encroach the State land by brazenly violating the enforced laws have exposed themselves to disciplinary proceedings besides attracting criminal liability prescribed under the Ordinance of 1960 or the EPA Act, as the case may be. There is a far greater responsibility of the State institutions and its public functionaries to obey and respect the enforced laws because, when they are involved in its abuse, it becomes the worst form of undermining of the rule of law and violation of the rights guaranteed under the Constitution. The learned Additional Attorney General could not give any lawful explanation for the illegal encroachment of State land and establishing of the golf course by the Pakistan Navy. The Navy Golf

Course is thus declared as an illegal encroachment in violation of the Ordinance of 1960, the Wildlife Ordinance of 1979 and the EPA Act. The CDA and the Board established under the Wildlife Ordinance of 1979 are forthwith directed to take over possession thereof.

Status and Claim of the RVF Directorate and its competence to own land and to execute commercial leases

20. The RVF Directorate is an internal office of the General Headquarters (GHQ) of the Pakistan Army, one of the branches of the Armed Forces. The GHQ is under the administrative control of the Ministry of Defense, Government of Pakistan. The RVF Directorate nor the GHQ have the legal status under the Constitution or the law to own State owned land. As will be discussed later, land is allocated for the use of the branches of the Armed Forces and it is managed and retained in accordance with the scheme of the governing law and, that too, by the entities and public functionaries designated there under.

The stance of the RVF Directorate regarding 8602 acres of the integral land of the notified Margalla Hills has been unequivocally described in its correspondence addressed to the CDA and the sole proprietor of the Monal Restaurant. In its letter, dated 23-12-2019 addressed to the CDA, the RVF Directorate has taken the stance that the 8602 acres land consisting of 9 Rakhs situated in the Margalla Hills was allocated by the Government of Punjab vide notification, dated 23-04-1910, for the use of production of 'hay' for the animals of the Army. It has been admitted that the land was taken over by the CDA in 1961. It is the case of the RVF Directorate that since the land was owned by the Army, therefore, the latter had to be compensated or alternate land

was to be allocated for the purpose. It is also the case of the RVF Directorate that the CDA had offered to pay compensation but it was later refused. In 1986, according to the stance of the RFG Directorate, the dispute was raised before the Cabinet Division but it could not be resolved. The RVF Directorate has also referred to an audit para suggesting that the ownership of the 8602 acres of land situated in the Margalla Hills was theirs. It has been asserted that on 08-11-2016 a meeting was held in the Ministry of Defense, chaired by the then Minister of Defense wherein it was decided that the 8602 acres of land in the Margalla Hills would be reverted to the RVF Directorate as A-1 land. Pursuant to this decision, the Survey General of Pakistan had demarcated the land and concrete pillars were erected by the Pakistan Army. It was on the basis of this stance that RVF Directorate claimed the rent of Monal Restaurant and all other food outlets constructed and operated in the Margalla Hills. This stance has been reiterated by RVF Directorate in its letters, dated 22-05-2019, 28-08-2019 and 12-09-2019.

The above stance of RVF Directorate has not been accepted by the CDA. Initially, the learned Additional Attorney General had taken the stance that the Federal Government had issued a notification in 2016 reverting the 8602 acres to the Pakistan Army. However, during the hearing today, he has taken a summersault by candidly conceding that no such notification was ever issued. He was asked whether the Federal Government had amended the notification issued under section 21 of the Wildlife Ordinance of 1979. His answer was in the negative. He could also not explain under which law could the RVF Directorate or the GHQ own property or enter into commercial lease agreements. In

an earlier judgment this Court has elaborately described the status of the Armed Forces and its locus standi to own and manage State land and the same is reiterated as follows.

The mandate of the Armed Forces of Pakistan has been described in Chapter 2 of Part XII of the Constitution. The three main branches of the Armed Forces are the Pakistan Army, Pakistan Navy and Pakistan Air Force. Article 243 of the Constitution provides that the Federal Government shall have control and command of the Armed Forces. The supreme command of the Armed Forces vests in the President of Pakistan. The latter, subject to law, has the power to raise and maintain the three branches of the Armed Forces. Article 244 makes it a constitutional requirement for every member of the Armed Forces to take an oath in the form set out in the Third Schedule, which includes a solemn pledge and commitment to uphold the Constitution and to serve as required by and under the law. Sub Article (1) of Article 245 explicitly provides that the Armed Forces shall, under the directions of the Federal Government, defend Pakistan against external aggression or threat of war and, subject to law, act in aid of the civil power when called upon to do so. The Rules of Business, 1973 enjoys constitutional backing and section 3 thereof describes how business is to be allocated amongst the Ministries and Divisions listed in Schedule-1 thereto. Sub section (3) provides that the business of the Government shall be distributed amongst the Divisions in the manner indicated in Schedule-II. The Armed Forces of Pakistan i.e. the Pakistan Army, Pakistan Navy and Pakistan Air Force are the administrative responsibility of the Ministry of Defence/ Defence Division. It is noted that the administration of Military Lands and Cantonments Group is also under

its administrative control. The august Supreme Court, in the case titled "*Justice Hassnat Ahmed Khan and others v. Federation of Pakistan/State*" [PLD 2011 SC 680] has held that under Article 245(1) of the Constitution, the Armed Forces of Pakistan are bound to remain under the direction of the Federal Government to defend Pakistan against external aggression or threat of war and, subject to law, act in aid of the civil power when called upon to do so. It has been further held that non-adherence to the constitutional provisions, prima-facie, tends to establish denying the oath to uphold the Constitution. It has been further held that deviation from the constitutional mandate by members of the Armed Forces cannot be condoned by the superior courts. In the case titled "*Sindh High Court Bar Association v. Federation of Pakistan*" [PLD 2009 SC 879] the apex Court has elaborated the scheme of the constitution and has observed that, on a plain reading of Article 245(1), the functions of the Armed Forces can be bifurcated into two categories, i.e. to defend Pakistan against external aggression or threat of war and, subject to law, act in aid of civil power when called upon to do so. Moreover, it has been observed that under clause (1) of Article 243, the control and command of the Armed Forces is vested in the Federal Government, therefore, in the performance of both the categories of the aforementioned functions, the Armed Forces act under the directions of the Federal Government. Reliance is placed on the cases titled "*Air Marshal (Retd.) Muhammad Asghar Khan v. General (Retd.) Mirza Aslam Baig, former Chief of Army Staff and others*" [PLD 2013 SC 1], "*Sh. Liaquat Hussain and others v. Federation of Pakistan through Ministry of Law, Justice and Parliamentary Affairs, Islamabad and others*" [PLD 1999 SC 504], Page

- 21 W.P. No. 1772 of 2020. "*District Bar Association, Rawalpindi and others v. Federation of Pakistan and others*" [PLD 2015 SC 401].

The Pakistan Army Act 1952 [*hereinafter referred to as the "Act of 1952"*], the Air Force Act 1953 [*hereinafter referred to as the "Act of 1953"*] and the Pakistan Navy Ordinance, 1961 [*hereinafter referred to as the "Ordinance of 1961"*] have been promulgated to regulate the respective branches of the Armed Forces and its discipline. The aforementioned statutes regulate the discipline and internal working of the respective branches of the Armed Forces but does not empower the officers to undertake any activity beyond the establishments. There is no provision under the afore mentioned laws which authorizes or empowers the Pakistan Army to undertake, directly or indirectly, activities beyond its composition for the purposes of welfare, unless the Federal Government has expressly granted permission to do so. As a corollary, the Pakistan Army has no power nor jurisdiction to, directly or indirectly, engage in business ventures of any nature outside its composition nor to claim the ownership of state land.

As noted above, the Constitution expressly describes two functions of the Armed Forces. The primary function or constitutional duty of the Armed Forces is to defend Pakistan against external aggression or threat of war and that too under the direction of the Federal Government. The direction of the Federal Government is a precondition. The other function is to act in aid of the civil power when called upon to do so. There could be multiple eventualities requiring the Armed Forces to act in aid of the civil power e.g. internal security, natural calamities such as floods, earthquakes etc. The secondary

function to act in aid of the civil power is subject to law and can only be undertaken if 'called upon to do so'. In case of both the functions the Armed Forces cannot act on its own. These are the only two constitutional functions mandated to the Armed Forces. Since the command and control of the Armed Forces vests in the Federal Government, therefore, no branch can undertake any activity or perform functions outside their respective establishments unless expressly directed or called upon to do so. The unique responsibilities have been prescribed under the Constitution and, therefore, obedience to the provisions *ibid* and law is an inviolable obligation of every branch and member of the Armed Forces as provided under Article 5. The branches of the Armed Forces and their members take a constitutional oath in the name of Allah to uphold the Constitution and to honestly and faithfully serve Pakistan as required by and under the law. Violation of law by members of the Armed Forces is definitely a breach of their constitutional oath and a transgression from the prescribed functions. The Pakistan Army nor its officers are authorized or mandated to undertake, directly or indirectly, any activity such as leasing government land for commercial purpose.

The next crucial question is whether the Pakistan Army or its officers are empowered to acquire, own or, in any other manner, deal with immovable property for commercial purposes. The scheme of the Constitution and the relevant laws regarding acquiring land for the use of the Armed Forces is unambiguous. Article 173 of the Constitution explicitly declares that the executive authority of the Federation shall extend, subject to any Act of the appropriate legislature, to the grant, sale, disposition or mortgage of any property vested in, and to the

purchase or acquisition of property on behalf of the Federal Government or, as the case may be, the Provincial Government and to the making of contracts. Sub Article (2) of the Article 173 explicitly provides that all properties acquired for the purposes of the Federation or of a Provincial Government shall vest in the Federal Government. Sub Article (3) of Article 173 further provides that all contracts made in the exercise of the executive authority of the Federation or of a Province shall be expressed to be made in the name of the President or, as the case may be, the Governor of the Province. The Cantonment Act 1924 [*hereinafter referred to as the "Act of 1924"*], The Cantonment Lands and Administration Rules, 1937 [*hereinafter referred to as the "Rules of 1937"*] and the Rules for the Acquisition, Custody, Relinquishment etc., of Military Lands (A.C.R. Rules) 1944 [*hereinafter referred to as the "A.C.R. Rules"*] govern the manner in which immovable property can be acquired for and put to use for the branches of the Armed Forces. As already noted, it is the mandate of the constitution that property acquired for the purposes of the Federation shall exclusively vest in the Federal Government.

The Rules of 1937 contemplate to secure all possible military requirements and to prevent encroachment upon the rights of the government. A detailed procedure has been prescribed for the management of all lands based on its classification. The General Land Register is maintained by the Military State Officer wherein details of all the land put to the use of the Armed Forces is recorded. The classes of land have been described in the Rules of 1937. The property/land is only for the use of the Armed Forces. The department of Military Land and Cantonments, under the administrative control of the Defence

Ministry/Division, is distinct from the Armed Forces and so is the Military Land Officer or the Cantonment Executive Officer. The land for the use of the Armed Forces, except Class A(1), are exclusively managed and dealt with by the aforementioned distinct department and the officials, as the case may be. The Armed Forces cannot own, acquire or otherwise deal with immovable property. The land vests in the government and is managed by departments and officials who have been expressly designated under the aforementioned laws.

The RVF Directorate nor the GHQ can own or acquire nor manage land given for its use otherwise than as provided under the Constitution and the aforementioned laws. The land is allocated by the Federal Government for a particular and declared use of the branches of the Armed Forces. The land remains the ownership of the Federal Government or the Provincial Government, as the case may be. It has been explicitly declared in the aforementioned laws that the nature or character of the land allocated for the use of the Armed Forces cannot be changed without the express permission of the Federal Government. Moreover, after the land is no more used for the purpose for which it had been allocated then it would revert to the Federal Government or the Provincial Government, as the case may be. The Pakistan Army nor any other branch of the Armed Forces can claim the ownership of the land allocated by the Federal Government for its use. Likewise, it cannot claim any compensation in the eventuality of reversion of the allocated land when it is no more used for the allotted purpose. In any case the GHQ nor RVF Directorate has a locus standi to bypass the designated civilian authorities who are responsible to deal with and manage lands

and properties allocated for the use of the Pakistan Army. Even A-I land can only be managed exclusively for the use for which it was allocated.

The stance of the GHQ or the RVF Directorate regarding the 8602 acres of land situated in the Margalla Hills is atrocious and in violation of the scheme of the Constitution and the applicable laws. Admittedly, the 8602 acres of land were given for the exclusive use of "growing hay" for the animals of Army in 1910. After the promulgation of the Ordinance of 1960 the land was reverted to the government and its control and possession was taken over by the CDA. Pursuant to the notification, dated 28-04-1980, issued by the Federal Government in exercise of powers vested under section 21 of the Wildlife Ordinance of 1979, the 8602 acres became an integral part of the National Park, particularly the Margalla Hills. The said notification has not been amended nor can any activity, let alone growing hay for animals, be undertaken within the notified area of the Margalla Hills in the light of the above mentioned explicit directions of the august Supreme Court. The Commission, in its report, has also affirmed this legal status. The RVF Directorate nor the GHQ of the Pakistan Army was not vested with any authority under the law to claim the ownership because the status of the 8602 acres of land had ceased as an area allocated for the use of "growing hay" for the animals of the Army after the promulgation of the Ordinance of 1960 and, more particularly, the issuance of the notification issued under section 21 of the Wildlife Ordinance of 1979. The claim of ownership of the 8602 acres of land in the notified area of the Margalla Hills by the GHQ or the RFV Directorate is illegal, without lawful authority and in violation of the scheme of the laws discussed above. Moreover, the RFV Directorate took the law into its own hands

by compelling the proprietor of Monal Restaurant to enter into a commercial lease agreement. The reliance on a purported meeting, dated 08-11-2016, chaired by the then Minister of Defense is without any substance. The Minister of Defense nor the Ministry of Defense were vested with jurisdiction or power under the Ordinance of 1960 nor the Wildlife Ordinance of 1979 to take decisions regarding the notified area of the Margalla Hills. Notwithstanding the stance taken by the RFV Directorate, the learned Additional Attorney General has candidly conceded that no decision was taken nor a notification was issued by the Federal Government regarding reverting 8602 acres of the notified area of the Margalla Hills for the use of "growing hay" by the Pakistan Army for its animals. The 8602 acres of land unlawfully claimed by the RFV Directorate on the basis of a notification issued in 1910 is an integral part of the notified protected area of the Margalla Hills and it is to be exclusively managed under the Wildlife Ordinance of 1979 by the Board constituted there under. The RFV Directorate was not empowered nor was it vested with jurisdiction to enter into a commercial relationship with food outlets in the notified protected area of the Margalla Hills nor receive the rent. The officials of the RFV Directorate have violated the law and abused their authority and have thus exposed themselves to disciplinary proceedings. They have also caused loss to the public exchequer by illegally entering into commercial relationships and receiving rent. It is, therefore, declared that the claim of the RFV Directorate regarding the 8602 acres of the protected notified area of the Margalla Hills is unconstitutional and in violation of the aforementioned enforced laws, particularly the Wildlife Ordinance of 1979. Likewise, the commercial lease agreements executed by the RFV Directorate with food outlets situated in the notified area and receiving

of rents is declared as illegal, without lawful authority and abuse of the functions contemplated under the Constitution and the applicable laws. The demarcation by the Surveyor General of Pakistan and the erection of concrete pillars by the RFV Directorate and the GHQ in the protected area of the Margalla Hills was a serious abuse of authority and obligations clearly described under the Constitution and the enforced laws.

It is disturbing to note that the enforced laws are being flagrantly violated by institutions in disregard to the scheme contemplated under the Constitution. The urge of State institutions to act as a state within the state is obvious from the above discussed facts. The authorities entrusted with statutory powers to guard against violations seem to be helpless or complacent. The acts and stance of the RFV Directorate and the GHQ of the Pakistan Army have profound consequences for the rule of law. They acted on their own and while doing so they have seriously undermined the rule of law in derogation to their declared functions under the Constitution. The sanctity of the protected and preserved notified area of the Margalla Hills has been desecrated. The biodiversity, habitats, flora and fauna have been threatened. The Court expects that the Federal Government will fulfill its obligation to inquire into the matter and hold those accountable who chose to take the law into their hands by desecrating the sanctity of the protected and preserved notified area of the Margalla Hills and thus violating the guaranteed rights of not only the present but future generations as well.

Monal and other food outlets established in the Margalla Hills.

21. The building of the food outlet, Monal, was the first concrete building constructed by the CDA in the protected and preserved notified area of the Margalla Hills, followed by other constructions identified by the Commission in its report. The CDA asserts that it had invited proposals from interested parties in August, 2005. An individual, Mr Luqman Ali Afzal (*hereinafter referred to the "Proprietor"*) was shortlisted on 22-08-2005 for managing and operating a restaurant at Gokian Moor, Pir Sohawa in the Margalla Hills i.e the Monal Restaurant. On 03-01-2006 permission of the then Minister of Interior was sought, followed by declaring the Proprietor as the 'successful applicant' on 19-01-2006. The CDA executed a lease agreement with the Proprietor on 10-03-2006 for a period of fifteen years, commencing with effect from 01-08-2006. The term of the lease was to expire in 2021. The transparency of execution of the lease with the Proprietor is questionable but that matter is not before this Court. However, during the validity of the term of lease, the RFV Directorate of the GHQ claimed its purported ownership of the building of Monal Restaurant. The correspondence brought on record shows that the RFV Directorate, without having any lawful authority, as has been discussed above, asked the Proprietor to enter into a lease agreement and pay rent relating to Monal Restaurant to the Directorate of the GHQ. The CDA had never accepted the stance of the RFV Directorate. The Metropolitan Corporation of Islamabad had informed the Proprietor vide letters dated 23-07-2019 and 30-09-2019 that the RFV Directorate had no concern with the leased out premises. The CDA did not accede to the claim of the RFV Directorate. The proprietor, in breach of the terms of his lease agreement, chose to negotiate with the RFV Directorate. The documents

brought on record show that the Proprietor, during the validity of the term of lease executed with the CDA, held meetings with the Director General of the RFV Directorate of the GHQ of the Pakistan Army. The Director General had no authority under the law to hold such meetings nor to enter into negotiations regarding the execution of commercial lease of buildings situated within the protected and preserved notified area of the Margalla Hills. While the lease executed with the CDA had expired, the Proprietor purportedly executed a lease agreement with the RFV Directorate for a period of seventeen years and it was agreed that payment of rent will be made to the latter. There is nothing on record to show that the RFV Directorate or the GHQ had sought the express consent of the Federal Government. Even otherwise, under the laws governing and regulating land allotted for the use of the branches of the Armed Forces, discussed in detail above, the designated authorities described there under were only empowered to deal with the matter. The RFV Directorate had no locus standi nor was it competent to execute a lease agreement of a commercial nature in respect of a property situated in the notified protected and preserved area of the Margalla Hills.

As already discussed above, the purported claim of the RFV Directorate regarding its ownership of the 8602 acres of land, which was expressly covered under the notification dated 28-04-1980, issued by the Federal Government in exercise of powers conferred under section 21 of the Wildlife Ordinance of 1979, was illegal, unconstitutional and without lawful authority and jurisdiction. It is ironic because despite the unambiguous enforced laws, the Federal Government, the CDA and the Board constituted under the Wildlife Ordinance of 1979 refused to exercise their powers and failed in their

constitutional as well as statutory duties to safeguard the protected and preserved notified area of the Margalla Hills. The wanton disregard of the enforced laws by the RFV Directorate and the GHQ for the enforced laws, already highlighted above, has been disturbing as well as shocking. The officials of the RFV Directorate have definitely abused their influence and power and have exposed themselves to being proceeded against for misconduct. They had recklessly and willfully taken the law into their own hands while those who had the statutory duty to protect, preserve and manage the notified area of the Margalla Hills did nothing more than hesitantly sending notices as a mere formality. The inaction and refusal on the part of the public functionaries to exercise due diligence makes it a classic example of undermining the rule of law and dereliction of their fiduciary duties which they owe to the people. It is noted that even the CDA was bereft of authority and jurisdiction under the Ordinance of 1960 and the Wildlife Ordinance of 1979 to construct concrete buildings to be used as food outlets in the area notified under section 21 *ibid*. The construction and subsequent grant of a commercial lease for operating and managing restaurants in an environmentally protected and preserved notified area was also in violation of the EPA Act because, admittedly, authorization/permission was not granted by the EPA nor had the mandatory statutory requirements been complied with. The Director General EPA who has appeared today has informed that proceedings were initiated against Monal Restaurant and it had been sealed but the conduct of the proprietor was contumacious. She has informed that the EPA has initiated proceedings against the other food outlets established and operating in the notified protected and preserved area of the Margalla Hills in violation of the EPA Act. The Proprietor, after expiry of

the term of lease executed with the CDA, had no legal authority to execute the purported lease with the RFV Directorate nor did the latter have the jurisdiction to do so.

The buildings of Monal Restaurant and other such food outlets are situated within the notified protected and preserved area of the Margalla Hills. The notified area is managed and governed under the Wildlife Ordinance of 1979 and the designated authority for the purpose is the Board constituted there under. The CDA has been established under the Ordinance of 1960 and it had no authority nor jurisdiction under the Wildlife Ordinance of 1979 to approve, construct and lease out buildings for commercial use within the notified area of the Margalla Hills. The construction of the buildings and leases granted to Monal Restaurant and all other commercial food outlets within the protected and preserved notified area of the Margalla Hills was in violation of the Ordinance of 1960, the regulations made there under, the Wildlife Ordinance of 1979 and the EPA Act.

A suit was filed purportedly by the Proprietor on 27-02-2021, seeking a declaration and permanent injunction because the CDA and the Metropolitan Corporation of Islamabad had issued eviction notices. On account of the threat of eviction, along with the suit an application under Order 39, Rule 1 and 2 of CPC was also filed. The learned court, vide order dated 27-02-2021, refused to grant an ad interim order on the ground that after the expiry of the lease the plaintiff was not entitled to retain the possession. The appeal preferred before the learned District Judge was dismissed vide order, dated 01-03-2022. The aforementioned orders were challenged through the

connected CR 13/2021. In the meanwhile the application filed under Order 39 Rule 1 and 2 of the CPC was dismissed by the learned trial court vide order, dated 04-10-2021. The latter order has been challenged through the appeal in hand i.e FAO no. 111/2021. The learned counsel has been heard at length but he was not able to persuade the Court that the impugned orders suffer from any legal infirmity. Admittedly, the fifteen year lease executed by the CDA has expired. The Proprietor and the RFV Directorate entered into a lease agreement for a period of seventeen years in violation of the Ordinance of 1960, the regulations made there under, the Wildlife Ordinance of 1979 and the EPA Act. The property regarding which the purported lease agreement was executed is an integral part of the notified protected and preserved area of the Margalla Hills. Its management and regulation is exclusively governed under the Wildlife Ordinance of 1979 and that too by the Board constituted there under. As discussed above, the RFV Directorate had no authority nor locus standi to claim the ownership of the land where Monal Restaurant is situated. The purported lease was, therefore, illegal, void and devoid of any legal effect whatsoever. The Proprietor has no legal basis to remain in possession of the property. The latter's status after expiry of the lease with the CDA is that of a trespasser in the notified protected and preserved area of the Margalla Hills. It is the duty of the Board constituted under the Wildlife Ordinance of 1979 to forthwith take over possession of the property and the CDA shall extend its assistance in this regard. The Proprietor definitely has no prima facie case. As will be discussed later, the balance of convenience is in favour of protecting the notified protected area of the Margalla Hills from environmental degradation on the touch stone of the precautionary principle and the

duty of the State to exercise due diligence. The Proprietor will certainly not suffer irreparable loss. By allowing Monal Restaurant to continue its commercial activities, the notified protected and preserved area of the Margalla Hills is likely to suffer irretrievable damage because of environmental degradation. The satisfaction of the essential ingredients required for the grant of an injunction are not fulfilled and, therefore, the learned trial court has rightly dismissed the application whereby an injunction was sought. Consequently the civil revision and the appeal are meritless and accordingly dismissed.

The land and building which was leased out to the Proprietor of Monal Restaurant is situated in the notified protected and preserved area of the Margalla Hills. The notified area is governed under the Wildlife Ordinance of 1979. The other buildings commercially leased out to other food outlet entities are also situated within the notified area. The construction of the buildings and the commercial activities undertaken for commercial gains have profound consequences in relation to climate justice and causing further environmental degradation. The Commission, in its report, has also raised grave concerns regarding these food outlets in the context of the likely damage to the environment and the notified protected area of the Margalla Hills. The construction was made and the environmentally threatening activities were commenced and they continue in violation of the mandatory requirements prescribed under the EPA Act. The sole authority under the Wildlife Ordinance of 1979 to allow such activities was and continues to be the Board constituted there under. Though the lease executed by the CDA with the proprietor of Monal Restaurant was, inter alia, in violation of the Wildlife Ordinance of 1979 and the EPA Act

but the fifteen year term had lapsed in 2021. The purported lease executed with the RFV Directorate has already been declared as void and without lawful effect. The property will forthwith be taken over by the Board constituted under the Wildlife Ordinance of 1979 and its fate and future use will be subject to exercising the duty of due diligence by the Federal Government, the Wildlife Board and the EPA. The implementation Commission hereby constituted will also assist the EPA in its duty to ensure that no activity whatsoever which is likely to cause environmental degradation is undertaken. The Wildlife Board, assisted by the CDA, will examine the legal status of the other food outlets identified in the report of the Commission and thereafter take action and proceed in accordance with law. It shall be ensured that all are treated equally. The Director General of the EPA has stated that proceedings against all the food outlets have been initiated and action shall be taken under the EPA so as to protect the environmentally sensitive notified area of the Margalla Hills. She has given an assurance that all will be treated equally and that the area will be safeguarded from further environmental degradation.

The Defense Complex

22. An entire sector i.e sector E-10, has been allotted for the use of the Pakistan Army, one of the branches of the Armed Forces. The petitioners in WP no. 4554/2021 are residents of a village situated outside the allotted sector but in the notified protected area of the Margalla Hills. They assert that the Pakistan Army has encroached the notified area of the Margalla Hills. The construction work in the allotted sector has recently been undertaken. The Chairman CDA, who was in attendance, has informed the Court that possession of the entire

allotted sector has not been taken over as yet because of some outstanding land acquisition disputes. He has stated that the disputes are being resolved and thereafter the allotted land will be demarcated. The Secretary, Ministry of Defense, who was also in attendance, has undertaken on behalf of the Surveyor General of Pakistan that the notified area outside the land allotted for the use of the Pakistan Army will be demarcated so that there is no encroachment in the protected area. He has stated that the process will be completed with due diligence.

It is noted that the allotted land of sector E-10 for the use of the Pakistan Army is governed under the Ordinance of 1960 and the regulations made there under. Likewise, land allotted for the use of the branches of the Armed Forces are regulated under special laws and by designated authorities described there under. The said laws have also been discussed above. No activity whatsoever can be undertaken outside the demarcated area of sector E-10. Any such activity would be an illegal and unauthorized encroachment on State land, exposing the officials to disciplinary besides criminal proceedings, inter alia, under the EPA Act and the Ordinance of 1960. The Court expects that the CDA will diligently demarcate the boundaries of sector E-10 and ensure that activities and projects undertaken therein are regulated under the Ordinance of 1960 and the regulations made there under. The CDA and all other authorities shall and they are directed to take action under the enforced laws in case of encroachments outside the allotted sector E-10.

Duties and obligations of the State to protect and preserve the Margalla Hills, its native flora and fauna, ecosystems and habitats;

23. As discussed above, the Margalla Hills have a unique and distinct status under the aforementioned enforced laws. It falls in Zone III and its area has been notified under section 21 of the Wildlife Ordinance of 1979 in order to protect and preserve the flora and fauna and the habitats created by nature for them to flourish and survive. Both flora and fauna are living organisms or beings because they have been created with the essential attribute of life, the ability to breathe. Flora, fauna and animal life are an integral part of the interdependent and complex web described as biodiversity. The variety of life, including the diverse species of flora and fauna and the ecosystems that are necessary for them to flourish and survive are all part of the biodiversity. The foundation and support for life is biodiversity. Nature has created habitats for the variety of native flora and fauna for their survival. Habitat is a home that meets all the requirements essential for survival. The flora and fauna survive and flourish in their own habitat because it provides the necessary support such as food, space and shelter. It enables an animal to find and gather food and to have successful reproduction. The habitats, therefore, are not only essential for the survival of the native flora and fauna but, simultaneously, enjoyment of the right to life of humans is dependent on it. The air humans breathe, the water and food they drink and eat inevitably rely on the existence of habitats, the flora and fauna native to them and thus on biodiversity. Loss of biodiversity and habitats weakens and may also irretrievably harm the ecosystem services such as fresh water,

food, pollination, nutrient cycling, control of agricultural pests etc. The ecosystem services are thus fundamental for the wellbeing and survival of humans while functioning of the ecosystem services depends on existence of the habitats. Biodiversity, undisturbed habitats and ecosystem services are, therefore, directly linked to the quality of life of humans and their survival. Humans are dependent for their survival on a web of life which functions as a whole and the constituents are interdependent on each other. Disturbing one element of this web can have profound consequences for the entire system on which humans rely for their own survival and wellbeing. The loss of or damage to habitats threatens biodiversity and consequently has consequences for the right to life of humans. The Margalla Hills is home to the native flora and fauna and nature has created distinct habitats so that they may flourish and survive. The protection and preservation of the habitats and the flora and fauna native to it have been protected under the notification issued under the Wildlife Ordinance of 1979. Before discussing the duty of the State to protect and preserve the Margalla Hills, it would be relevant to refer to some of the relevant international agreements, conventions and treatise.

The Stockholm Declaration on the Human Environment, which was adopted by the United Nations Conference held in 1972 declares;

Principle 2

The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems,

must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate.

Principle 4

Man has a special responsibility to safeguard and wisely manage the heritage of wildlife and its habitat, which are now gravely imperiled by a combination of adverse factors. Nature conservation, including wildlife, must therefore receive importance in planning for economic development.

The World Charter for Nature (1982) declares;

Preamble

Aware that: (a) Mankind is a part of nature and life depends on the uninterrupted functioning of natural systems which ensure the supply of energy and nutrients...

Convinced that: (b) Every form of life is unique, warranting respect regardless of its worth to man, and, to accord other organisms such recognition, man must be guided by a moral code of action.

General Principles

1. Nature shall be respected and its essential processes shall not be impaired.

.....

3. All areas of the earth, both land and sea, shall be subject to these principles of conservation; special protection shall be given to unique areas, to representative samples of all

the different types of ecosystems and to the habitats of rare or endangered species.

4. Ecosystems and organisms, as well as the land, marine and atmospheric resources that are utilized by man, shall be managed to achieve and maintain optimum sustainable productivity, but not in such a way as to endanger the integrity of those other ecosystems or species with which they coexist.

Rio Declaration on Environment and Development adopted by UN Conference in 1992

The Rio Declaration for Environment and Development adopted by the United Nation Conference in 1992 has resolved;

Principle 13

States shall develop national law regarding liability and compensation for the victims of pollution and other environmental damage. States shall also cooperate in an expeditious and more determined manner to develop further international law regarding liability and compensation for adverse effects of environmental damage caused by activities within their jurisdiction or control to areas beyond their jurisdiction.

IUCN Draft Covenant (1995)

Preamble.

Recognizing the unity of the biosphere and the interdependence of all its components;

Conscious that humanity is a part of nature and that all life depends on the functioning of natural systems which ensure the supply of energy and nutrients;

Convinced that living in harmony with nature is a prerequisite for sustainable development, because civilization is rooted in nature, which shapes human culture and inspires artistic and scientific achievement;

Part II, Fundamental Principles.

In their actions to achieve the objective of this Covenant and to implement its provisions, the Parties shall cooperate in a spirit of global partnership and shall be guided, inter alia, by the following fundamental principles:

Article 2. Respect for All Life Forms.

Nature as a whole and all life forms warrant respect. The integrity of the Earth's ecological systems shall be maintained and restored. Every form of life is unique and is to be safeguarded independent of its value to humanity.

Article 20. Natural Systems

The Parties shall take appropriate measures to conserve and, where necessary and possible, restore natural systems which support life on Earth in all its diversity, and maintain and restore the ecological functions of these systems as an essential basis for sustainable development, including inter alia

- (a) Forests as natural means to control erosion and floods, and for their role in the climate system;
- (b) Fresh water wetlands and flood plants as recharge areas for ground water, flood water, buffers, filters and oxidizing areas for containments;
- (c) Marine ecosystems, in particular coastal ecosystems including barrier islands, estuaries, mangroves, sea grass beds, coral reefs and mudflats as natural defences against coastal erosion and essential habitats for the support of fisheries...

Article 21. Biological Diversity

The Parties shall take all appropriate measures to conserve biological diversity, including species diversity, genetic diversity within species, and ecosystem diversity, especially through in situ conservation. To this end, the Parties shall:

- (a) Integrate conservation of biological diversity into their physical planning systems, by ecosystem management;
- (b) Establish a system of protected areas, where appropriate with buffer zones and inter connected corridors; and
- (c) Prohibit the taking or destruction of endangered species, protect their habitats, and where necessary develop and apply recovery plants for such species.

The Parties shall regulate or manage biological resources with a view to ensuring their

conservation, sustainable use, and where necessary and possible, restoration. To this end, the Parties shall:

- (a) Develop and implement conservation and management plans for harvested biological resources;
- (b) Prevent a decrease in the size of harvested populations below the level necessary to ensure stable recruitment;
- (c) Safeguard and restore habitats essential to the continued existence of the species or populations concerned;
- (d) Preserve and restore ecological relationships between harvested and dependent or associated species or populations; and
- (e) Prevent or minimize incidental taking of non-target species and prohibit indiscriminate means of taking.

Article 54. Civil Remedies

The Parties shall ensure the availability of effective civil remedies that provide for cessation of harmful activities as well as for compensation to victims of environmental harm irrespective of the nationality or the domicile of the victims.

The Parties that do not provide such remedies shall ensure that compensation is paid for the damage caused by their acts or omissions attributable to them or to activities of persons under their jurisdiction or control....

Earth Charter (2000)

Preamble

Earth, Our Home

Humanity is part of a vast evolving universe. Earth, our home, is alive with a unique community of life. The forces of nature make existence a demanding and uncertain adventure, but Earth has provided the conditions essential to life's evolution. The resilience of the community of life and the well-being of humanity depend upon preserving a healthy biosphere with all its ecological systems, a rich variety of plants and animals, fertile soils, pure waters, and clean air. The global environment with its finite resources is a common concern of all peoples. The protection of Earth's vitality, diversity, and beauty is a sacred trust.

Principles

I. RESPECT AND CARE FOR THE COMMUNITY OF LIFE

1. Respect Earth and life in all its diversity.

- (a) Recognize that all beings are interdependent and every form of life has value regardless of its worth to human beings.
- (b) Affirm faith in the inherent dignity of all human beings and in the intellectual, artistic, ethical, and spiritual potential of humanity.

2. Care for the community of life with understanding, compassion, and love.

- (a) Accept that with the right to own, manage, and use natural resources comes the duty to prevent environmental harm and to protect the rights of people.
- (b) Affirm that with increased freedom, knowledge, and power comes increased responsibility to promote the common good.

Global Pact for Environment (2017)

Preamble

Observing that the planet is facing an unprecedented loss of its biodiversity requiring urgent action,

Reaffirming the need to ensure, while using natural resources, that ecosystems are resilient and continue to provide essential services, thereby preserving the diversity of life on Earth, and contribute to human well-being and the eradication of poverty,

Article 2. Duty to Take Care of the Environment

Every State or international institution, every person, natural or legal, public or private, has the duty to take care of the environment. To this end, everyone contributes at their own levels to the conservation, protection and restoration of the integrity of the Earth's ecosystem.

24. It is noted that Pakistan is ranked amongst the top ten countries of the world which has been declared as most vulnerable to the life threatening outcome of climate change. It has been assessed as amongst those countries which have the highest rate of deforestation. Experts have classified Pakistan as a prime target of global warming. Unregulated human activities, particularly illegal encroachments in the environmentally sensitive and protected areas and any activity in violation of the EPA Act are prime causes for global warming, air pollution, water scarcity, loss of forests, extinction of agricultural land and wild life. The Islamabad Capital Territory already faces a serious water crisis and it would definitely be exacerbated if effective environmental management is not implemented on an urgent basis. The illegal encroachment by the Pakistan Navy and the establishment of the Navy Golf Course is a classic example of contributing to the biodiversity crisis and contributing to environmental degradation. According to a report compiled by the Asian Development Bank "Climatic changes are expected to have wide ranging impact on Pakistan, affecting agricultural productivity, water availability and increased frequency of extreme climatic events". Floods, long spells of drought, heat waves etc experienced in various parts of Pakistan raise a red flag for the policy makers and every citizen to declare an environmental emergency before the damage becomes irreversible. Availability of clean water and keeping the environment free from pollution has a direct nexus with the fundamental right guaranteed to every person under Article 9 of the Constitution. Life is inextricably dependent on safeguarding atmospheric green house. Environmental degradation and the adverse impact of climatic changes inevitably causes loss of lives, disease and increase in poverty. A World Bank study carried out in 2015 has estimated that

environmental degradation is costing Pakistan almost nine per cent of its GDP. The challenges of environmental degradation and adverse climatic changes have become too obvious in Pakistan to be ignored. Pakistan has international commitments, some have been highlighted above, which ought to be implemented in letter and spirit. What is required at this critical juncture is strict implementation of the precautionary principle in order to check irreversible damage to the environment. The principle of precautionary principle was given recognition by incorporating Principle 15 in the United Nations Rio Declaration on Environment and Development (1992) which reads as:" 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".

25. Article 9 of the Constitution guarantees the right to life. The august Supreme Court, in the case titled "*Ms Shehla Zia and others v. WAPDA*" [PLD 1994 SC 693], has observed and held that the word life is very significant because it covers every facet of human existence. "Life includes all such amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally". Placing reliance on the latter judgment, the apex Court, in the case titled "*Ardeshir Cowasjee and 10 others vs. Karachi Building Control Authority (KMC), Karachi and 4 others*", [1999 SCMR 2883] has held that the use of a park involved enjoyment under Article 9 of the Constitution. The duty of the State to protect and preserve the biodiversity, habitats, the ecosystem services and the native flora and

fauna is declared to be covered under the obligation of safeguarding the right to life guaranteed under Article 9 of the Constitution.

26. Flora and Fauna are living organisms and human existence on this planet depends on their existence and wellbeing. As living organisms, they definitely have rights bestowed upon them by nature. It is their natural right not to be deprived of the habitats created for them by nature. As a corollary, it is the duty of the State to protect the rights of fauna and flora by protecting and preserving their habitats. It is thus an obligation of the State to ensure that the habitats created by nature are not disturbed nor interfered with unless there are compelling reasons to do so and that too after the State has exercised due diligence in order to ensure that such an interference will not contribute to environmental degradation.

27. Notwithstanding the international declarations highlighted above, it is the duty of the State and every public functionary to take care of the environment and to conserve, protect and restore the habitats, its native flora and fauna and manage it for the benefit of the present as well as future generations. Environmental degradation also affects the right guaranteed under Article 14 of the Constitution as it affects personal dignity. The environmental degradation and adverse effects of climate change have profound consequences for the realization of all the guaranteed rights. It is the duty of the State to take positive measures in order to ensure that the environment remains unaffected by human activities. It is the constitutional obligation of the State to create necessary conditions and the environment for its citizens to enjoy the rights without causing environmental degradation. The

duty is not restricted to preventing violation of the right to life but to take effective measures to deter any threat to right to life. Exercising due diligence is a duty and it ought to be demonstrably reflected through the actions and conduct of the public functionaries. It is an obligation of every public functionary to ensure that likely harm to the environment is prevented and that in each case the environmental impact assessment is carried out in a meaningful and effective manner. Above all it is the duty of the State through its public functionaries to ensure that the enforced laws are implemented in letter in spirit.

28. In the light of the above discussion it is declared that it is the duty of the State and its public functionaries to protect the Margalla Hills, its flora and fauna and to restore the damage caused, by forthwith removing the illegal encroachments made in violation of the enforced laws already discussed above. It is also a duty to ensure that all those who were responsible for violating the rights of the people are proceeded against and made accountable. It is the duty of the State to respect and protect the sanctity and integrity of the Margalla Hills.

29. It is, regrettable that in the case in hand, the State and its public functionaries failed in protecting, preserving and managing the notified area of the Margalla Hills for the benefit of the present and future generations. They failed in implementing the enforced laws and thus have caused damage to the environment and the integrity of the ecosystem services and habitats that are home to the native flora and fauna. The most ironic and disturbing factor is the involvement of institutions of the State in the desecration of the protected and preserved notified area of the Margalla Hills. The branches of the Armed

Forces, the Pakistan Navy and Pakistan Army, by taking the law into their own hands, have violated the enforced laws while the public functionaries responsible for protecting the rights of the people by implementing the promulgated statutes and hold the perpetrators accountable refused to perform their obligations. In disregard to the wellbeing and welfare of the people at large and their constitutionally guaranteed rights, the public functionaries allowed institutions to illegally damage the protected and preserved notified area of the Margalla Hills and thus cause environmental degradation. It was a classic case of undermining the rule of law and elite capture. The expression 'elite' has been defined in the literature of the World Bank as 'actors who have disproportionate influence in the development process as a result of their superior, social, political or economic status'. Likewise 'elite capture' has been defined as referring 'to a situation where elites shape development processes according to their own priorities and/or appropriate development resources for private gain'. The enforced laws have not been violated by private citizens, rather, by the institutions and by doing so they have exposed themselves to the consequences. It is now the duty of the State to restore the damage done to the Margalla Hills and take positive measures on the touchstone of the precautionary principle so as to save the notified protected area from further environmental degradation.

30. The above are the reasons for the short order, dated 11-01-2022, which is reproduced as follows.-

"For reasons to be recorded later, it is declared and directed as follows:-

- (i) *Biodiversity, ecosystems and natural habitats are possessed of life and are thus living organisms.*
- (ii) *Life, whether that of humans or other living beings, depends on the existence of biodiversity, ecosystems and natural habitats.*
- (iii) *Protection of ecosystems and natural habitats is inextricably linked to right to life guaranteed under Article 9 of the Constitution.*
- (iv) *Protection of ecosystems and natural habitats is a constitutional obligation of the State, its institutions and every public functionary.*
- (v) *The destruction of the National Park is violative of the fundamental rights of the people of Pakistan and saving it from further harm is an inviolable duty of the State, its institutions and the public functionaries.*
- (vi) *The Federal Government, the Capital Development Authority and the Islamabad Wildlife Management Board shall be severally and jointly liable for any further destruction of the National Park.*
- (vii) *The Federal Government, the Capital Development Authority and the Islamabad Wildlife Management Board shall jointly ensure that no further unauthorized activity, construction or acts in any other manner take place or are undertaken within the notified area of the National Park.*
- (viii) *The respective Secretaries of the Ministry of Defence, Ministry of Interior and the Chairman of the Capital Development Authority shall jointly conduct a survey and demarcate the unharmed area of the*

notified National Park. The survey and demarcation shall be completed within sixty days from the date of this order. They will ensure that no activity or construction is allowed within the notified National Park as mandated under MLR 82, the Capital Development Authority Ordinance, 1960 and regulations made thereunder, the Islamabad Wildlife (Protection, Preservation, Conservation and Management) Ordinance, 1979, and the Islamabad (Preservation of Landscape) Ordinance, 1966.

- (ix) The Secretary, Ministry of Defence shall ensure that the enforced laws are strictly implemented in the three sectors allocated for the use of the branches of the Armed Forces. The Chairman of the Capital Development Authority shall forthwith advise the Secretary, Ministry of Defence regarding the enforced and applicable laws.*
- (x) The Pakistan Navy has encroached upon State land, including the notified area of the National Park, by illegally establishing a golf course outside the allocated sector, E-8. The construction on the encroached land and establishing a golf course was and continues to be illegal, without lawful authority and jurisdiction.*
- (xi) The purported Navy Golf Course shall forthwith be sealed and its possession handed over to the Capital Development Authority and the Islamabad Wildlife Management Board.*
- (xii) The construction on the encroached land of the Navy Golf Course shall be demolished within four weeks from the date of the*

order unless it can be utilized for an environmentally friendly activity.

- (xiii) The Capital Development Authority and Islamabad Wildlife Management Board shall jointly restore the encroached land of the Navy Golf Course as part of the National Park.*
- (xiv) The Secretary, Ministry of Defence shall conduct an inquiry and fix responsibility of officials/persons involved in trespassing and encroaching upon State land by illegally establishing the Navy Golf Course.*
- (xv) The Secretary, Ministry of Defence shall conduct a forensic audit through the Auditor General of Pakistan to ascertain the loss caused to the exchequer and the same shall be recovered from the officials/persons found responsible.*
- (xvi) The claim of Remount, Veterinary and Farms Directorate of the Pakistan Army, regarding 8068 acres of land in the notified National Park area, is in violation of the Ordinance of 1979 read with the Ordinance of 1960 and the Master Plan. The claim is also not in conformity with the enforced laws applicable to the management of lands for the use of the Armed Forces. The Federal Government was bereft of jurisdiction to allow the Directorate to use 8068 acres of land in the notified National Park area. The Directorate has no jurisdiction nor the authority to own, use or keep in possession any land within the notified National Park area.*
- (xvii) The Remount, Veterinary and Farms Directorate had no jurisdiction or authority to execute the purported agreement, dated 30.09.2019 with Monal Restaurant. The*

rent recovered by the Directorate from Monal Restaurant was also without lawful authority and jurisdiction. The Secretary, Ministry of Defence shall ensure that the rent received by the Directorate is recovered and deposited in the exchequer within sixty days from the date of the order.

(xviii) The lease agreement of Monal Restaurant with the Capital Development Authority had expired and its agreement, dated 30.09.2019 with the Remount, Veterinary and Farms Directorate was void and without any legal effect. The order, dated 04.10.2021, impugned in F.A.O No.111 of 2021 does not suffer from any illegality.

(xix) The Capital Development Authority and the Islamabad Wildlife Management Board shall forthwith take over possession of Monal Restaurant and thereafter seal its premises subject to allowing its owner/management to take out their property.

(xx) The Chairman of the Capital Development Authority shall undertake an inquiry to identify the officials responsible for the construction of Monal Restaurant and other buildings in the protected area of the National Park in violation of the Act of 1997, Ordinance of 1960, Ordinance of 1966, Ordinance of 1979 and the regulations made under the respective statutes. The Board of the Authority shall thereafter proceed against the officials in accordance with the law.

(xxi) The Secretary, Ministry of Climate Change and the Director General, Environmental Protection Agency shall jointly conduct a survey of Monal Restaurant and other

buildings constructed in the area to assess the damage caused to the environment and thereafter take such measures and actions as may be necessary to avoid further environmental degradation.

- (xxii) *The report and recommendations of the Commission, which forms an integral part of this judgment, shall be forthwith examined by the Secretary, Ministry of Climate Change. The Commission, headed by Dr. Pervez Hassan, Sr. ASC is hereby converted into an Implementation Commission. The Secretary, Ministry of Climate Change shall coordinate with the chair of the Implementation Commission. The recommendations, after deliberations, shall be placed before the Federal Government i.e. the worthy Prime Minister and Members of the Cabinet for approval.*
- (xxiii) *The prestige and special status of the Armed Forces is of paramount importance for the people of Pakistan. The Secretary, Ministry of Defence and Chairman of the Capital Development Authority shall ensure that no controversy is created in future regarding non implementation of the enforced laws within the three sectors allocated for the use of the branches of the Armed Forces in the Islamabad Capital Territory.*
- (xxiv) *The aforementioned officials shall submit their respective compliance reports to the Registrar of the Court within thirty days from the date of the order.*
- (xxv) *The Registrar of the Court shall send copies of this order to the aforementioned officials through special messenger for compliance.*

2. The petitions are **allowed** and **disposed of** in the above terms. However, F.A.O No.111 of 2021, titled 'The Monal Group of Companies vs. Capital Development Authority and others' and C.R.No.13 of 2021 titled 'The Monal Group of Companies vs. Capital Development Authority and others', are meritless and, therefore, accordingly **dismissed**."

31. The above reasons shall be deemed to have been recorded in the petitions/appeal listed in the **Annexure-A** attached hereto.

(CHIEF JUSTICE)

Luqman Khan/*

Approved for reporting.

<u>ANNEXURE-A</u>		
Sr. No.	Case No.	Title
1	W.P. No.4245 of 2014	Prof. Zahid Baig Mirza vs. Capital Development Authority, etc
2	W.P.No.1178 of 2011	Usman Ali Hashmi vs. CDA, through its Chairman, etc
3	W.P.No.1276 of 2011	Shiraza Shakeel vs. CDA, through its Chairman, etc
4	W.P.No.1963 of 2011	Brig. Dr Khalid Mehmood Tariq vs. CDA.
5	C.R No.13 of 2021	The Monal Group of Companies vs CDA, etc
6.	F.A.O No.111 of 2021	The Monal Group of Companies vs. Capital Development Authority, etc.
7	W.P.No.4554 of 2021	Muhammad Jahangir Hussain Shah vs. Federation of Pakistan, etc.
8	CrI. Org. No. 100/2020	The State v. M/o Climate Change Islamabad, etc.
9	CrI. Org. No. 328/2021	Professor Zahid Baig Mirza v. Malik Amin Aslam, etc.

ANNEXURE-B
REPORT OF THE ISLAMABAD ENVIRONMENTAL
COMMISSION

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 Qayyum 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 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 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 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
- (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

* 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.

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

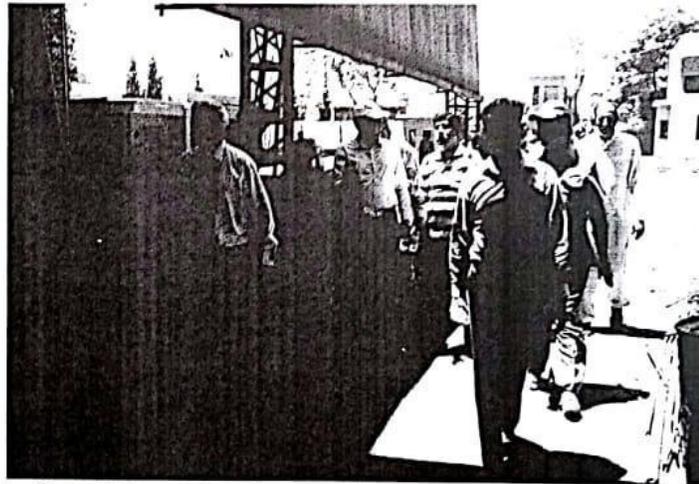
These would give a general idea of the end product, the Final Report of the Commission which will incorporate the work of the Committees.

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



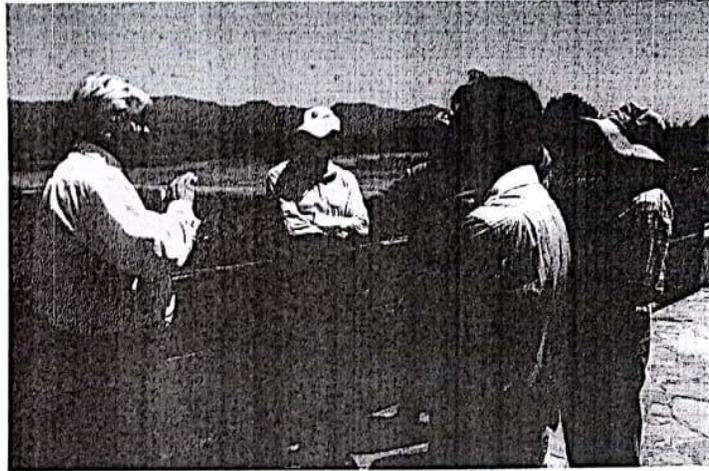
Commission visit to the Industrial Area in Sectors I-9 and I-10

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 F/9 Park



Commission visit to F/9 Park



Commission visit to dumping site at Sector I-12

7. Public Participation

(1) Public Notice

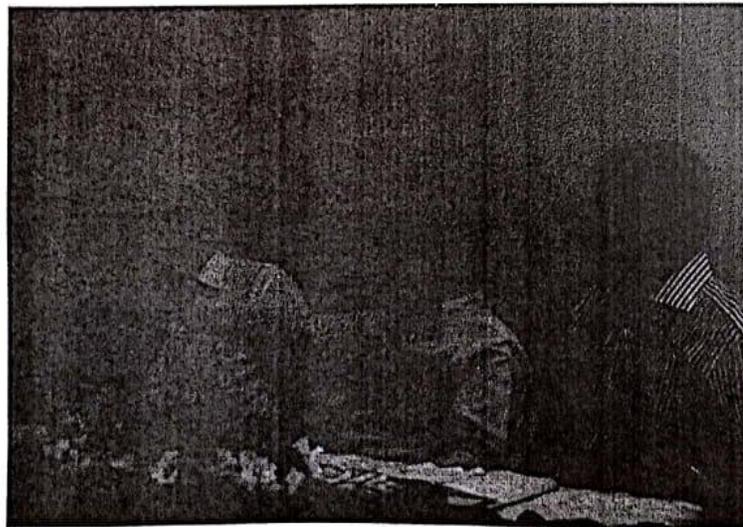
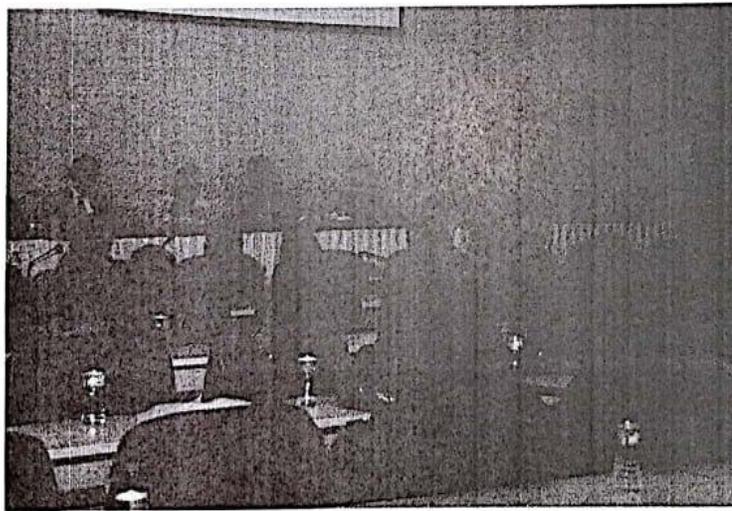
The Commission requested the comments of the public and announced a public hearing at the Pak-China Cultural Central, Shakarparian, on 17 June 2015. The earlier meeting fixed for 2 June 2015 was rescheduled to 17 June 2015. The notices for the comments of the public and the hearing (and the rescheduling of the meeting) are attached as Annexures E/1 to E/2.

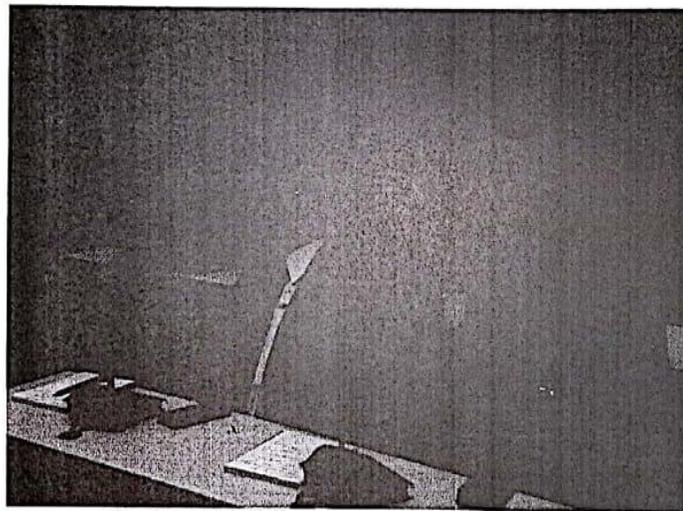
(2) Comments from the Public

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.

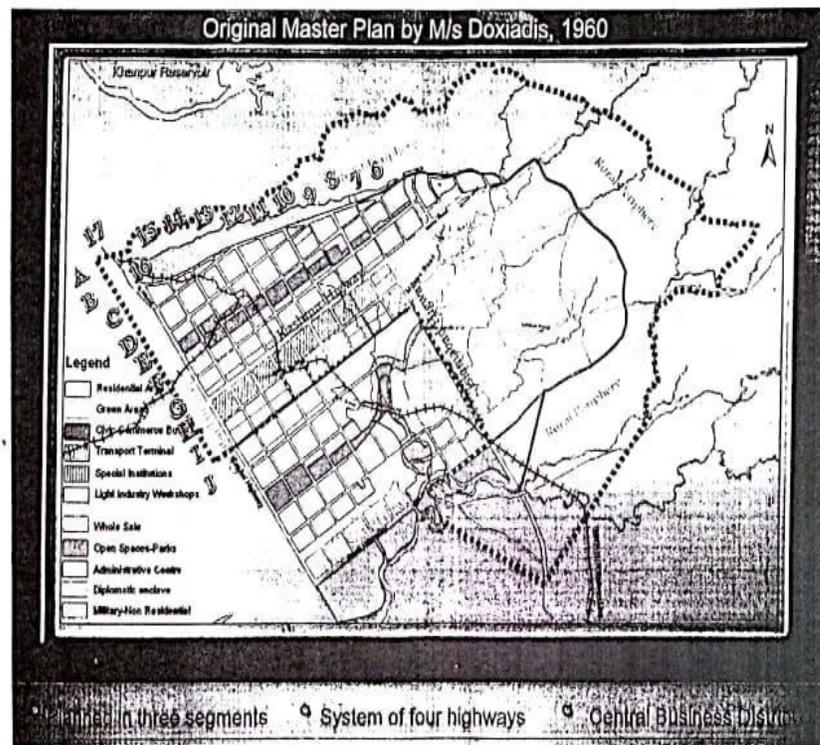
(3) An earlier draft of this Report was circulated to all the members. The comments and suggestions, received, and, particularly, the detailed comments of CDA, are reflected in this Report.

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).



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.

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).

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 Shahrāh-

⁶ Based, generally, on Regulation 3 of the Islamabad Capital Territory (Zoning) Regulation, 1992.

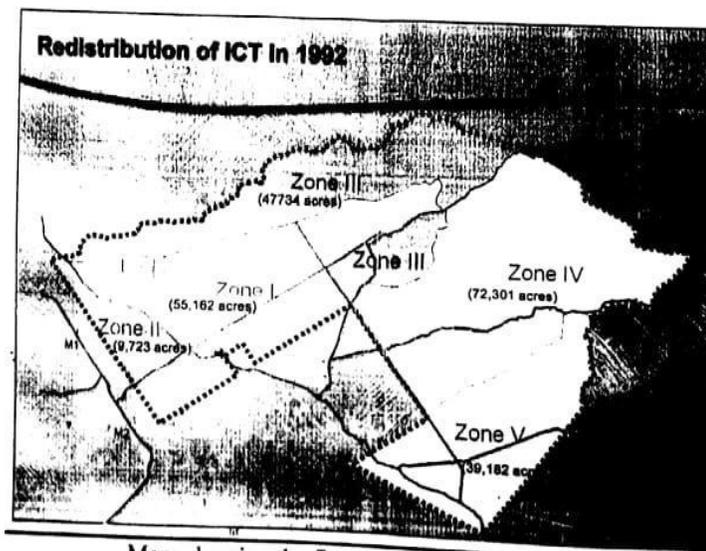
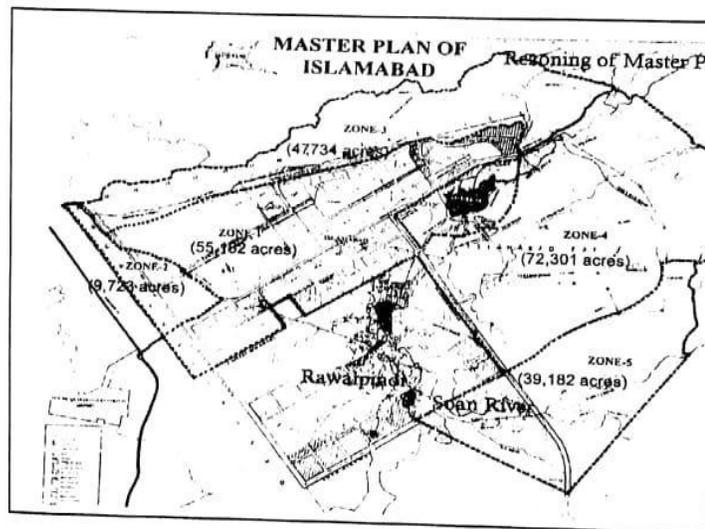
e-Kashmir to the point of Nicholson Monument near B-17 in the west, inclusive of sector H-14, G-15, G-16, G-17, I-14, I-15, I-16 and I-17. It is the most organized and well-developed part of Islamabad.

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.



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);

(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:

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.

(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.

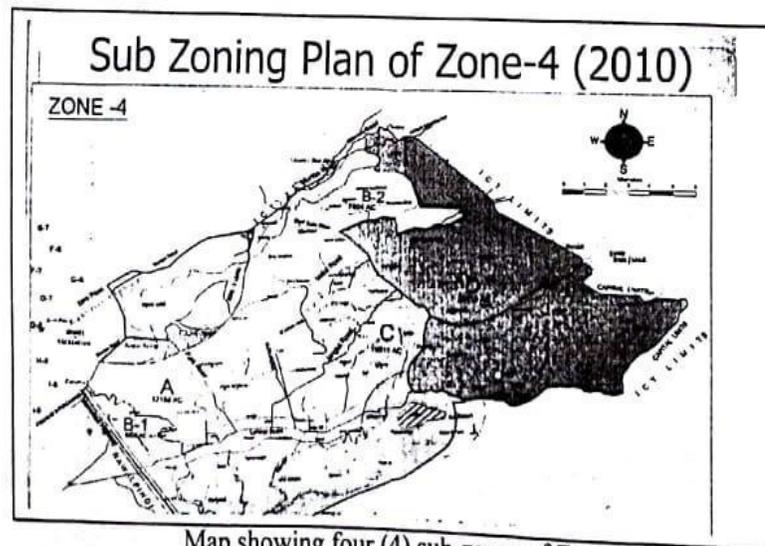
3. Islamabad-specific Legislation and Policies

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

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.

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.
- (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-c)) of the ICT Zoning Regulations.
- (g) Expansion of rural settlements in Margallah 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 necessary approvals for development construction on the private land falling within the purview of notification referred to above.

⁹ Id.

¹⁰ PLD 2008 Supreme Court 673.

- (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 2014 by SRO 1105(1)/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.

¹¹ PLD 2008 Supreme Court 673.

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:

I. 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 and 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 (2/3rd) or three-fourth (3/4th) 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.

(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 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.

¹² See supra note 8.

¹³ See comments of CDA on this proposal in Annexure I.

- (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

(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 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.

¹⁴ For comments of CDA on the proposals re MHNP, see Annexure I.

(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 (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

¹⁵ These recommendations supplement the Priority Recommendation, (3) Landfill Site under 1. Priority Recommendations requiring Immediate Action, above.

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 DA performs a supervisory role.

i) 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 Islamabad⁶ joined to confirm that if PIMS gets the incinerator, 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.

⁶ 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 Tb Sanatorium Samli Murree.
6. Dr. Muhammad Ayub, A.D. Poly Clinic Hospital.
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.

- (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.
- (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.

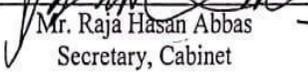
As many of the functions of the local government overlap with the functions of CDA and ICTA, the Commission recommends that the Islamabad local government be fully involved in the implementation of the recommendations of the Commission. The Islamabad High Court may consider sending a copy to the Mayor (Metropolitan Corporation) and/or Chairman (Union Council) of such recommendations of the Commission as may be approved or supported by it.

F. Acknowledgements

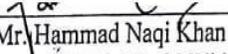
The Chair expresses his gratitude to the members of the Commission and to, particularly, Mr. Arif Ahmed Khan (Vice Chair), Raja Hasan Abbas (Cabinet Secretary), CDA, PEPA, SDPI, Mr. Abdul Saboor Nizamani (Joint Secretary), and Mr. Shujaat Umar Pirzada (Associate, Hassan & Hassan (Advocates)), for their support to the Commission.

G. Note on Signatories to this Report

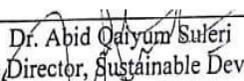
This Report was unanimously adopted by the Commission. All the members have signed the Report. Dr. Muhammad Khurshid, DG, PEPA, took an active part in the work of the Commission till his appointment, in July 2015, as the Director General of South Asia Co-operative Environment Programme (SACEP), in Sri Lanka. He continued to guide the Commission with his valuable comments to an earlier draft of this Report.

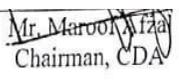

Mr. Raja Hasan Abbas
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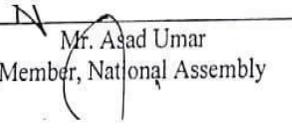

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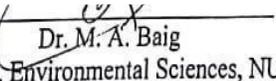

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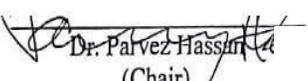

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Dr. Parvez Hassan
(Chair)

Islamabad, 7-19 October 2015