Form No: HCJD/C-121

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

W.P. No.1772 of 2020

Mrs Zeenat Salim

Vs.

Pakistan Naval Farms, etc.

Petitioners by	:	M/s Babar Sattar, Zainab Janjua, Syed Adil Safdar and Alia Zareen Abbasi Advocates.
Respondents by	:	M/s Ashtar Ausaf Ali, Malik Qamar Afzal, Nayyab Hassan Gardazi, Raja Zahoorul Hassan, Asad Rahim Khan, Muhammad Usama Rauf,Misbahul Mustafa Safir, Muhammad Munir Paracha, Nauman Munir Paracha, Ahmed Iqbal Maken, Saad Khan, Muhammad Nazir Jawad, Advocates for their respective respondents. Syed Muhammad Tayyab, Deputy Attorney General. Mr Irfan Inayat Illahi, Member CDA. Malik Faraz, Director (Regional Planning)CDA. Mr Arshad Chohan, Director(Regional Planning), CDA. Mr Faisal Naeem, Director (Building Control)CDA. Mr Naeem Dar, Director (Law) CDA. Mr Aamir Abbas Khan, Dy. Director PEPRA. Commander (Retd.) Arshad, representative for respondent no. 1.
Dates of Hearing	:	19.08.2020, 09.09.2020, 12.09.2020, 14.09.2020, 19.09.2020, 26.09.2020, 10.10.2020, 17.10.2020, 06-01-2022.

ATHAR MINALLAH, C.J.- The petitioners, in W.P. No. 1772/2020, *titled "Mrs. Zeenat Salim v. Pakistan Naval Farms, etc."* and

W.P. No. 946/2020, titled *"Nasir Ali v. Federation of Pakistan, etc.",* have raised constitutional questions of paramount public importance. The pivotal questions that have arisen are not confined to the enforcement of fundamental rights of the petitioners alone but, rather, it gravely affects every citizen of Pakistan.

2. The conduct of state institutions and public functionaries observed during the proceedings is alarming and definitely reflects a grave undermining of the rule of law. It appears that the primary reason for the grave status of governance is elite capture, which inevitably affects every citizen's fundamental rights. State institutions and public functionaries owe a duty of care towards the citizens and, rather than serving them, they are benefiting themselves by abusing the power entrusted to fulfill their sole constitutional duty to serve the actual stakeholders i.e. the people of Pakistan.

3. It is a classic example of how enforced laws are ignored, abused and treated with contempt by those who are under oath to uphold and implement them for the benefit of the people. The existence of a state within the state and a few classes having assumed the role of being above the law does not seem to be a rhetoric but a reality. The most disturbing factor is the impunity against grave violations of law committed by the powerful institutions and public functionaries.

4. The petitions in hand have raised questions regarding the constitutional duties and obligations of the Armed Forces of Pakistan. Notably, it raises the question of potential harm and threat to every citizen's fundamental rights and good governance when there is a likely

conflict created by the Armed Forces with the citizens and the society. Every citizen has a stake in its Armed Forces and any such conflict is unimaginable in a state that is governed under a constitutional frame work.

5. Mrs. Zeenat Salim [hereinafter referred to as the **"Petitioner no. 1"**] has challenged two projects undertaken by one of the components of the Armed Forces i.e. the Pakistan Navy. She has challenged the acts of the Pakistan Navy regarding developing and managing a private *real estate venture,* Pakistan Naval Farms [hereinafter referred to as the **"PN Farms"**]. She has also challenged the alleged illegal occupation of land and the construction of a Club House in the notified protected area of the *National Park.* Both the projects have been undertaken and executed by the Pakistan Navy.

6. In the connected petition, Nasir Ali son, of Zafar Ali, who is a resident of village Mera Bhagwal, Post Office Bhara Kahu, District Islamabad [hereinafter referred to as the **"Petitioner no. 2"**], has raised serious allegations of intimidation, coercion and abuse of authority against the proponents of PN Farms. The village of the Petitioner no. 2 is situated in the area where the Pakistan Navy is now extending its real estate venture without approval from the competent authorities. Petitioner No. 2 has alleged that the management of PN Farms and its agents had resorted to the widely prevalent phenomenon of acquiring land through intimidation and forced dispossession, which has been highlighted by this Court in the judgment dated 2-09-2020 passed in WP No. 3877 of 2019 titled "Farhan Mustafa v. The State".

The questions raised in both the petitions in hand will be adjudicated through this consolidated judgment. It would be beneficial to give a brief description of both the ventures in the light of comments and arguments filed by the parties:

PN Farms:

7. According to the stance taken by PN Farms, approximately 2400 kanals of land, situated in mouza Pind Bhagwal, District Islamabad, were purchased by and mutated in the name of a private citizen, Mr Ameer, who is stated to be a retired officer of Pakistan Navy. It is the case of PN Farms that the purchase was made by the said private citizen on behalf of Bahria Foundation but no document has been placed on record in support of this assertion, nor to show who had paid the sale consideration. Later the land was mutated in the revenue record in the name of Director General (Welfare and Rehabilitation), Directorate of Pak Navy. The latter, vide letter dated 20.02.1993, addressed to the Capital Development Authority [hereinafter referred to as the **"Authority"**] confirmed the transfer and requested the issuance of a 'No Objection Certificate' to develop a real estate venture. The 'No Objection Certificate', dated 13.03.1993, [hereinafter referred to as the **"NOC"**], was issued diligently by the Authority, subject to the fulfillment of mandatory conditions described therein. The conditions relevant for the adjudication of these petitions are reproduced as follows:

> **"**iii) The Plots shall be used only for the orchard and / or vegetable farms and no agro-industry, livestock, poultry farm shall be brought into use.

iv) The work shall be completed and a completion certificate in respect thereof shall be obtained from the CDA within four years of the issuance of this letter.

v) The possession of individual plots shall not be handed over to the allottees until the completion certificate referred to in the preceding clause (iv) has been obtained.

vi) The construction of a farm house having a covered area of not more than 2,250 Sq. Ft. shall be permitted and would be construction according to the building bye-laws of CDA. In case of violation of the provision of the prevailing building bye-laws of Islamabad, the offending structure shall be liable to be demolished in accordance with Section 49-C of the CDA Ordinance, 1960, unless regularized by the Authority on payment of compounding fee as may be fixed by the Authority from time to time.

x) The NOC is valid for the area for which it is granted. You will apply again for the permission if there area is extended subject to the right of the CDA to accept or reject it.

xi) This NOC is not transferrable to any person, group of persons to any firm or to any society.

xii) You will abide by the rules and regulations of the CDA and instructions issued from time to time regarding development of the scheme.

xiv) The scheme shall have an independent sewer treatment and disposal system to be developed by the sponsor at their own cost and expense and no untreated affulents be discharged into the GumrahKas/any other Nallah.

xvi) After completion and allotment, the scheme shall be maintained by the sponsor or by any association of the allottees as the case may be till such time the scheme is taken over by the CDA.**"**

It is noted that the NOC was applied by and granted in favour of the Director Housing, PNS Zafar, Islamabad. The latter is an integral office of the Headquarters of Pakistan Navy and staffed by serving uniformed officers. The correspondence by PN Farms with officials or private citizens is by serving uniformed officers. The address printed on the letter head is that of Naval Headquarters opposite PNS Zafar, Sector E-8, Islamabad. The official flag of Pakistan Navy is printed on the letter head. The official email printed thereon is dpn-farms@paknavy.gov.pk. It is the case of PN Farms that the construction is governed under the "PN Farms

Bylaws". However, nothing has been placed on record to show that the bylaws have been made under any law. They are also in conflict with the regulations issued under the Capital Development Authority Ordinance, 1960 [hereinafter referred to as the **"Ordinance of 1960"**].

Petitioner no. 1 owns property in the PN Farms and she is aggrieved because the management has been threatening her of coercive action under the purported PN Farms Bylaws. She asserts that the bylaws sought to be enforced have no legal backing nor were the officials of the Pakistan Navy empowered to take any action. She has placed on record threatening notices issued by a serving officer of the Pakistan Navy and that too, from an office situated within the Naval Headquarters.

PN Farms has taken a stance that the venture is now being managed by the Pakistan Navy Welfare Trust [hereinafter referred to as the **"Trust"**]. A copy of a document titled "Deed of Trust", executed on 23.06.2018, has been attached with the comments and written arguments. It shows that Admiral Zafar Mehmood Abbasi NI (M), son of Muhammad Sohrab Abbasi, had declared and settled the Trust. The latter was holding the office of Chief of the Naval Staff. Clause (4.2) provides that the Trust shall be headed by the Chief of the Naval Staff. Clause (5.2) contains a list of senior serving officers who have been declared to function as the Board of Trustees. There is nothing on record to show that permission was granted by the Federal Government to establish such an entity by the Chief of Naval Staff or other serving officers. There is also no

document that would show that the Federal Government had authorized the Chief of Naval Staff or any other serving uniformed officer to carry out the activities described in the Trust, let alone managing a private real estate venture, PN Farms.

The Court could also not be persuaded that the name of one of the branches of the Armed Forces could be used to name a private real estate venture. According to the stance taken in the comments and written arguments, the venture does not involve public funds and has been developed with contributions made by serving officers. Admittedly, it is a project of *real estate development* by private individuals and having no concern whatsoever with the constitutional mandate of the Pakistan Navy.

As already noted, in the revenue record the mutation is registered in the name of the Director Naval Farms. The Petitioner no. 1 is absolutely justified in demanding a legal title document regarding ownership of her property. The management of PN Farms obviously cannot issue such an instrument. It is not disputed that PN Farms, without obtaining any permission or required authorizations, has been involved in developing land outside the area for which the NOC was granted. The development work is stated to have been undertaken as Phase-II and Phase-II (Extension). The Authority has posted a notification on its website listing illegal housing schemes which, inter-alia, includes the venture Naval Farms (4,5 and 8 Kanals) Simly Dam road, Islamabad.

Admittedly, the regulations issued under the Ordinance of 1960 have not been complied with. The Authority, in its report, has stated that the proposals regarding the issuance of Phase-II and its extension are being considered. Petitioner no. 2 has raised serious allegations against the managers and operators of PN Farms in his memorandum of petition. It has been alleged that the management has resorted to illegal methods in order to acquire extra land through coercive means. Petitioner no. 1 has been receiving notices from offices situated within the Naval Headquarters, threatening that part of her built up property would be demolished. It is the case of Petitioner no. 1 that her property can only be regulated under the Ordinance of 1960 and the regulations made there under. On the other hand, the management of PN Farms has taken the stance that it is authorized to take action in accordance with the PN Farms Bylaws.

Sailing Club:

8. The newly constructed building of the purported Sailing Club was inaugurated by the Chief of Naval Staff, Admiral Zafar Mahmood NI (M) on 01.07.2020, despite the issuance of multiple notices by the Authority wherein it had been brought to the notice of the Pakistan Navy that the activity was illegal.

The Chief of Naval Staff has been arrayed as one of the respondents in the constitutional petition. The latter, in the written comments and arguments submitted on his behalf, has taken the stance that the construction was justified and legal because,

pursuant to the appointment of the Chief of Naval Staff as Patron-in-Chief, it was directed, vide letter dated 18.10.1992, to develop water support centers, inter-alia, at the Rawal Lake. The development was subject to the report required to be submitted by a consultant regarding the environmental impact. The then Prime Minister of Pakistan had appointed the Chief of the Naval Staff as Patron-in-Chief of all water sports, vide notification, dated 23.08.1991, issued by the Culture and Support Division of the Government of Pakistan. The Environment and Urban Affairs Division, vide letter dated 28.02.1993, addressed to the Chairman of the Authority had informed that the Prime Minister's Secretariat, vide letter dated 11.08.1992, had directed the In charge Minister to convene a meeting of the concerned agencies to discuss the proposal submitted by the Pakistan Navy in the light of the study prepared by the UN Expert on the Margalla National Hills Park and, thereafter, submit concrete proposals. A copy of such a study has not been placed on record by the respondents. A meeting was held on 22.12.1992, wherein it was decided to appoint a reputed consultant/firm to undertake an environmental study regarding the water sports, inter alia, at the Rawal Lake. Messrs RCG/Haigler Bailly (Pvt.) Ltd. [hereinafter referred to as the **"Consultant**"] was selected and the Authority was directed to pay its fee.

The Consultant carried out a detailed environmental assessment regarding the proposed water sports and submitted its report to the concerned authority. Rawal Lake was described as a precious reservoir of water for supply to the residents of Rawalpindi. The report declared the surroundings of the lake to be,

from the ecological point of view, falling within the notified area of the Margalla Hills National Park, defined as Zone-3 in the Islamabad Capital Territory (Zoning) Regulations, 1992 [hereinafter referred to as the **"Regulations of 1992"**]. It was pointed out that changes in land use for recreation purposes were permitted, subject to strictly following the guide lines prescribed in the Margalla Hills National Park Management Plan. It was also pointed out that the area was governed and protected under the Islamabad Wildlife (Protection, Preservation, Conservation and Management) Ordinance of 1979 [hereinafter referred to as the **"Ordinance of 1979"**], which prohibited construction or change in the land use. Notably, it was expressly pointed out that lake was a wildlife habitat for migratory birds. Concerns were explicitly recorded to the effect that rowing activities would give rise to potential conflicts. Rawal Lake was declared as an ecologically sensitive area. Regarding the proposed construction of a Club House, it was explicitly recommended as follows:

> "It is recommended that the Club House should be relocated from its proposed location to an off shores site. The building of the National Rowing Centre, as proposed, is not acceptable due to the following concerns.
>
> - The proposed National Rowing Centre building does not conform to the spirit of the MHNP Management Plan that calls for only modest size structures in the park.

- The National Rowing Center building will dominate the lake view and hence effect the aesthetic quality of the lake. The structure should not alter the natural shoreline and cordon-off a section of the shoreline.
- Construction activity close to the shoreline will result in degradation of the water quality, wetland, and affect the migratory birds and the waterfowl.
- The Club House component of the National Rowing Center building will be a contact source of pollution leading to littering, run-off and high probability of leakage from the sewage system. The utility of the Club House does not merit a lake-front location considering the adverse impacts it will have on the water quality and the shoreline.

The Boat House as proposed is not acceptable."

According to the copies of official documents placed on record by and on behalf of the Chief of Naval Staff, one of the documents issued by the Cabinet Division and titled as 'Working Paper" shows that the Pakistan Navy was required to prepare a 'Management Plan' for the proposed rowing activities on the Rawal Lake. A copy of the Management Plan has also been placed on

record wherein it has been explicitly mentioned that the Club House would be located at least half a kilometer away from the lake and that a modest structure was proposed to be erected for the storage of boats only. It was further stated that no more than ten rowing boats and five canoes would be kept at the lake and that they would be operational for not more than four hours every day. Regarding the Authority, it was stated that it would exercise overall administrative control of the area and the National Park. The role of the Pakistan Navy was explained as controlling the boating on the lake.

A copy of a letter dated 24.07.1994, of the Authority, describes the minutes of a meeting held on 15.06.1994. The meeting was attended by representatives of all the concerned departments/organizations. It has been explicitly mentioned that the Small Dams Organization was responsible for water storage and maintenance of the dams and that they were the custodians of the water body of the lake. The role of the Authority explained in the letter was of a regulatory authority exercising control in the areas surrounding the lake. Alarmingly, it was observed that activities on the lake were undertaken without obtaining prior permission from the relevant authorities, particularly the Small Dams Organization. The Management Plan prepared by the Pakistan Navy was declared to be sketchy and failing to address the relevant issues. The Small Dams Organization had raised serious concerns regarding the proposed structure on the embankment of the lake, which was likely to endanger the safety of the reservoir. The representatives

of the concerned departments/organizations attending the meeting had unanimously decided as follows:

> "It is added that there is already a grave threat to the water of Rawal Lake, therefore, by allowing Navy in initiate boating activity it shall further deteriorate the quality of water in the lake as well as threaten the safety of the Dam. In the meeting all the representatives of the departments unanimously agreed that the boating may not be allowed at this lake. However, as per the Management Plan for the Rawal Lake boating activity can be undertaken when there is more than 50% of the total capacity of water in the reservoir and there are no migratory birds present in the lake. Following these two conditions the boating can take place only during two month i.e. August and September. Moreover, no construction on the embankment of the dam is allowed, therefore, it seems that establishing boating facility at Rawal Lake by Navy or any other agency may not be viable."

There is nothing on record to show that the land occupied by the Pakistan Navy was allotted to it by the competent authority. The Chief of Naval Staff, admittedly, is not in possession of any such letter or instrument. The Authority also did not lease, allot or in any other manner authorize the Pakistan Navy to occupy the state land. The Sailing Club, illegally constructed by the Pakistan Navy, consists of a kitchen, dining area, gymnasium,

guest rooms, indoor swimming pool and Jacuzzi/steam room. It is a two story building. The Authority has explicitly stated that the land was never allotted to the Pakistan Navy nor was permission granted to initiate construction thereon. Neither were the building plans submitted nor was permission from the Small Dams Organization obtained.

A copy of the order dated 03.09.2010, passed by the august Supreme Court in Suo-Motu Case no. 13/2010 regarding the supply of contaminated water to Rawalpindi from Rawal Lake has also been placed on record, which explicitly shows that stringent restrictions were directed to be observed by the apex Court in order to protect Rawal Lake. The Authority had issued a notice, dated 17.09.2019, informing the Pakistan Navy that the construction was illegal and in violation of the Ordinance of 1960 and the regulations made there under. The Authority had explicitly directed to forthwith stop the illegal construction. This was followed by another notice, dated 04.10.2019, addressed to the Deputy Chief of Naval Staff (WH) wherein the latter was, inter-alia, directed to provide the allotment letter. Finally, notices, dated 21.02.2020 and 13.07.2020, were issued. Instead of complying with the notices issued by the competent authority, the Pakistan Navy went ahead with the illegal construction and the purported unauthorized project was inaugurated by no less a person than the Chief of Naval Staff.

The Small Dams Organization, vide notice dated 13.07.2020, had also informed the Chief Staff Officer of Pakistan Navy that the purported construction adjacent to the reservoir was illegal. The

Director General, Pakistan Environmental Agency, has submitted its report and has stated therein that the purported project was initiated without complying with the provisions of the Pakistan Environmental Protection Agency Act 1979 [hereinafter referred to as the **"Act of 1979"].** A report has also been submitted by the Cabinet Secretary, Government of Pakistan and perusal thereof shows that even the Federal Government i.e. the Federal Cabinet, appears to have been helpless.

9. The learned counsels for the parties have submitted their written arguments. The written arguments have been made part of the record. With the able assistance of the learned counsels the record has been carefully perused.

Opinion of the Court:

10. The proceedings before this Court were indeed disturbing because one of the three branches of the Armed Forces i.e. the Pakistan Navy and the Chief of Naval Staff were pitted against the citizens for whose defense they have been established. The nature of the litigation in hand is definitely not in the public interest because of its consequences for the image of the Armed Forces.

Regrettably, the Chief of Naval Staff and other uniformed officers who chose to take law into their hands and exceeded the limits of the defined mandate under the Constitution are to be blamed for the embarrassment they have caused to their brave and professional soldiers.

The written report submitted by the Chief of Naval Staff and the arguments placed on record on his behalf have cast unfounded aspersions on the intention of Petitioner no. 1 in bringing questions of paramount public importance before this constitutional court. The Chief of Naval Staff and other officers have brazenly transgressed from their constitutional duties by violating the enforced laws without demur. They have wrongly doubted the intent of Petitioner no. 1 for invoking the constitutional jurisdiction of this Court. It is an onerous duty of every patriotic citizen to jealously guard against acts that tarnish the image of the Armed Forces. This is exactly what Petitioner no. 1 has done, while the Chief of Naval Staff and other responsible officials, through their conduct, have unjustifiably caused harm to their institution.

During the proceedings it was observed by the Court that Petitioner no. 1 and her husband were pursuing this matter to protect the repute and sanctity of the Armed Forces as responsible and patriotic citizens. The unjustified aspersions cast on the intent of Petitioner no. 1 is deprecated. At one stage Respondent no. 1 and her husband had also brought to the attention of the Court attempts to harass and intimidate them.

The questions to be considered for adjudication are; whether the Pakistan Navy, a branch of the Armed Forces, is empowered to directly or indirectly acquire, own or deal with immovable land for the purpose of developing real estate ventures; whether the Chief of Naval Staff is vested with the power to create a juridical person such as the Trust; whether the Authority was empowered to grant the NOC for

developing the PN Farms; whether the Ordinance of 1960 and the regulations made there under are applicable in the case of PN Farms or the PN Farms Byelaws; whether the status of the Sailing Club is legal; whether the Chief of Naval Staff and other officials are accountable for transgressing the mandate of the Armed Forces described under the Constitution.

Mandate of the Armed Forces and whether the respective branches are empowered to directly or indirectly acquire or in any other manner deal with immovable property:

11. 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 and the same is reproduced as follows:

> "(In the name of Allah, the most Beneficent, the most Merciful.)
>
> I, _____, do solemnly swear that I will bear true faith and allegiance to Pakistan and uphold the Constitution of the Islamic Republic of Pakistan which embodies the will of the people, that I will not engage myself in any political activities whatsoever and that I will honestly

and faithfully serve Pakistan in the Pakistan Army (or Navy or Air Force) as required by and under the law.

[May Allah Almighty help and guide me (A'meen).]**"**

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], "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 Navy Regulations, 1987 [hereinafter referred to as the **"Regulations of 1987"**] the Navy Regulations, 1988

[hereinafter referred to as the **"Regulations of 1988"**] governs the internal governance of Pakistan Navy. The Ordinance of 1961 nor the aforementioned regulations empower the officers of the Pakistan Navy nor the Chief of Naval Staff to undertake any activity beyond the Navy establishment. The composition of the Navy has been described under regulation 1 of 0101 as ships, submarines, vessels, naval aircrafts, naval establishments, other crafts and units belonging to or under the control of the Navy, whether within or outside Pakistan and the personnel who man them. The provisions regarding sports or welfare are confined to the composition of the Navy. There is no provision under the Ordinance of 1961 nor the regulations which authorizes or empowers the Pakistan Navy to undertake, directly or indirectly, activities beyond its composition for the purposes of sports or welfare, unless the Federal Government has expressly granted permission to do so. As a corollary, the Pakistan Navy has no power nor jurisdiction to, directly or indirectly, engage in business ventures of any nature outside its composition.

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.

A plain reading of the Ordinance of 1961 does not vest the power or jurisdiction the Pakistan Navy to undertake any function on its own other than the two constitutional mandates expressly provided under Article 245 of the Constitution. 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. It is thus obvious that members of Armed Forces, in the case in hand the officers and soldiers of the Pakistan Navy, violate their oath and transgress their constitutional mandate by performing any function other than prescribed under Article 245 (1).

The Pakistan Navy nor its officers are authorized or mandated to undertake, directly or indirectly, any activity in the nature of real estate development, trade or any other business. Doing so would amount to transgression from the constitutional mandate and expose the responsible officials to disciplinary, civil and criminal liability under the law.

The next crucial question is whether the Pakistan Navy or its officers are empowered to acquire, own or, in any other manner, deal with immovable property for developing real estate ventures or for welfare or 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 distinct from the Armed Forces.

PN Farms and its legal status:

12. This Court, in the judgment titled "Shahzada Sikandarul Mulk and four others v. The Capital Development Authority and 4 others" [PLD 2019 Islamabad 365], has described in detail the scheme and laws enforced in the 1400 square miles of the Islamabad Capital Territory. All types of construction or development and execution of housing schemes or other real estate ventures are regulated under the enforced laws.

The Pakistan Capital Regulation MLR-82, 1960 [hereinafter referred to as the ***"MLR-82"***], the Ordinance of 1960, The Islamabad Capital Territory (Zoning) Regulations, 1992 [hereinafter referred to as the ***"Zoning Regulations of 1992"***], *The Islamabad Building Regulations, 1963 [hereinafter referred to as the* ***"Regulations of 1963"****],* the Islamabad Residential Sectors Zoning (Building Control) Regulations, 2005 [hereinafter referred to as the **'Building Control Regulations'**], the Islamabad Wildlife (Protection, Preservation, Conservation and Management) Ordinance, 1979 [hereinafter referred to as the **'Wildlife Ordinance of 1979'**] are enforced and they are required to be strictly implemented in the case of establishing and regulating a real estate venture. The regulator for the purposes of the aforementioned laws, except in case of the Ordinance of 1979, is the Authority.

The aforementioned laws extend to the area where the PN Farms was proposed. The proponent of the real estate venture was an internal office of the headquarters of the Pakistan Navy. The latter

was not mandated to undertake any activity in the nature of developing a real estate venture nor to mutate the land for the private gain of a few officers. It was an obvious transgression by the Pakistan Navy from its constitutional obligations and duties. Also the Authority could not have entertained the request from an ineligible proponent. Moreover, the name of a branch of the Armed Forces could not be used for this purpose.

Regardless of such grave violations and constitutional deviations, the Authority issued the NOC which was subject to fulfillment of specific conditions and the relevant have been reproduced above. The NOC was void ab initio because it was violative of the constitutional mandate of the Armed Forces. The development of the real estate venture i.e. PN Farms, was explicitly subject to compliance with the provisions of the Ordinance of 1960 and the regulations made there under. The stance of the Pakistan Navy that no public funds were involved in establishing the PN Farms is atrocious because in the revenue records the land was mutated in the name of one of the internal departments of the Pakistan Navy's headquarters. The NOC was applied for and issued in the name of a department of the Pakistan Navy. The correspondence with private citizens was on official letterheads as discussed above.

The land could not have been mutated in the name of one of the branches of the Armed Forces nor was the Authority competent to entertain the request for issuance of the NOC. The copies of photographs attached with the petition shows that, contrary to the mandatory conditions of the NOC, palatial houses have been

constructed. The PN Farms Byelaws have no legal backing, nor was a department of the Pakistan Navy authorized to issue or enforce such purported byelaws in derogation of the provisions of the Ordinance of 1960 and the regulations made there under. The Chief of Naval Staff was bereft of jurisdiction to create an entity in the nature of the Trust to manage an illegal real estate venture. No document has been placed on record to show that permission of the Federal Government had been obtained to do so. The palatial buildings have been constructed without approval of building plans. The conditions of the NOC have been consistently violated but no action was taken by the Authority.

The purported extension schemes by the PN Farms have been undertaken by Pakistan Navy in disregard to and violation of the enforced laws. There could not have been a more obvious example of impunity against abuse of law as has been observed in the case in hand. The PN Farms, the issuance of the NOC to an office of the Pakistan Navy's headquarters and all subsequent acts were and continue to be illegal, without lawful authority and jurisdiction. The Pakistan Navy and officials involved in matters relating to the PN Farms have played fraud upon the Constitution.

Sailing Club:

13. The reservoir of Rawal Lake is a precious source of supply of water to the residents of Rawalpindi. The safety and security of Rawal Dam is the responsibility of the Small Dams Organization. The acquired area around the reservoir vests in the Authority. The

land on which the purported Sailing Club has been constructed falls within the notified area of the National Park, vide notification dated 28.04.1980.The

Pakistan Navy had trespassed/encroached upon and was in illegal occupation of a sizeable portion of land on the embankment of the lake in disregard to the likely environmental pollution and threat to the safety of the dam. The concerns of all the relevant departments/entities from the inception of the proposed water sports center have been discussed above. The Consultant appointed by the government had raised serious concerns regarding likely environmental pollution and threat to the reservoir because it was a precious habitat for migratory birds. Regrettably, the illegal activities undertaken by the Pakistan Navy on the embankments of the reservoir, besides being in violation of all the enforced laws, were destructive of the landscape and thus in contravention of the Islamabad (Preservation of Landscape) Ordinance of 1966 [hereinafter referred to as the **"Ordinance of 1966"**].

The Consultant had also raised serious concerns because of the ecological sensitivity and the fact that the reservoir, besides being a source of water to the residents of Rawalpindi, was also a habitat for migratory birds. The Management Plan prepared by the Pakistan Navy and the attached copy whereof, with the comments filed on behalf of the Chief of Naval Staff, explicitly shows that the Club House was proposed to be constructed at a distance of at least half a kilometer from the reservoir. The land occupied by the Pakistan Navy was never allotted to it by a competent authority under an enforced

law. The Authority and the Small Dams Organization had brought the illegalities and the likely consequences to the attention of the Pakistan Navy but its officials preferred to ignore the notices issued by competent authorities. One notice was issued to an official of the Pakistan Navy, having the rank of Deputy Naval Chief.

Ironically, the Chief of Naval Staff, in his reply, has taken the stance that no public funds were used because the resources were provided by an entity, the Pakistan Navy Welfare Fund. As noted above, the Pakistan Navy, under the governing law, cannot undertake any activity in the garb of 'welfare' outside its establishment. It is also not authorized to establish, manage or operate recreational centers outside its establishment as defined under the Regulations of 1988 and that too, on illegally occupied state land. The machinery and organizational structure of a branch of the Armed Forces were exploited to undermine the rule of law. Despite all these blatant illegalities and gross constitutional deviations, the Chief of Naval Staff brazenly inaugurated the project by laying down a stone. Membership of the club was offered to selected elite classes i.e. officers of the branches of the Armed Forces, civil bureaucrats, business personnel and diplomats.

All the laws enforced for the protection of the environment were violated. The violations of section 12 of the Act of 1997 stand proved and, regrettably, the Chief of Naval Staff has exposed himself to criminal proceedings under section 19 ibid. The emphasis of the Chief of Naval Staff and the Pakistan Navy on its achievements in the field of sports are not denied, rather, they are appreciated, but they

cannot be raised as a ground to justify violation of the enforced laws nor to legalize the illegal occupation of state land and ignoring the safety concerns raised by the Small Dams Organization. Neither the Prime Minister nor the Federal Government had the authority or jurisdiction, under the Ordinance of 1960, to direct the Authority or other organizations to facilitate the Pakistan Navy to establish a sports center and undertake activities in an ecologically sensitive reservoir.

The Sailing Club was constructed on illegally occupied land in a notified protected area. Neither the Chief of Naval Staff nor the Pakistan Navy could produce a valid and legal document regarding the allotment of land in a protected national park. The occupation of land and construction of the Sailing Club were and continue to be illegal, without lawful authority and jurisdiction. The Chief of Naval Staff and other officers who were involved in the illegal undertaking have transgressed their mandate and, consequently, violated their constitutional oath. By doing so they have not been fair to the martyrs of the Pakistan Navy and the other branches of the Armed Forces.

Environmental degradation and likely consequences in the context of climate change:

14. As noted above, the reservoir and surroundings of Rawal Lake are, ecologically, a highly sensitive area. It is a precious source of water supply to the residents of Rawalpindi. It has also served as a habitat for the migratory birds. The area of the reservoir

and its surroundings was an environmentally sensitive area and thus required extraordinary care.

This Court, in its aforementioned judgment, had emphasized the importance of protecting the environment from further damage, particularly Rawal Lake and its surrounding area. The same is reiterated. It is an undeniable fact that unregulated human activities such as illegal construction, urbanization and violation of the Master Plan have serious consequences which inevitably leads to irreversible environmental degradation and climatic changes. 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 construction and urban sprawl, 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. 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 the atmospheric green house. Environmental degradation and the adverse impacts of climatic change 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 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".

In this context it would be beneficial to refer to the report of a Commission which was constituted by this Court exclusively to investigate and make recommendations regarding environmental

degradation and failure of regulatory framework in the Islamabad Capital Territory. This Court had constituted the Commission for examining the consequences flowing from failure on the part of the Authority to enforce the regulatory framework in the context of environmental degradation in the Islamabad Capital Territory. Through order, dated 20-02-2015, passed in W.P. No.1276/2011 titled *'Sheraza Shakeel v. Capital Development Authority, etc.'* and other connected petitions, this Court had constituted the Commission chaired by a distinguished environmental law expert, namely, Dr. Pervez Hassan. The Terms of Reference were explicitly confined to environmental issues relating to the Islamabad Capital Territory. After extensive deliberations the Commission submitted its detailed report, dated 19-10-2015. The report has been made an integral part of this judgment as Annexure A. This report is unique and exceptional because it was unanimously adopted by all the members of the Commission, which included the highest officials of the Federal Government, the Capital Development Authority, members of the Parliament, experts in the environmental field and civil society organizations. The unanimity in adopting the report is of great significance. It was indeed the first public document of this nature which had forthrightly and openly acknowledged the failures which have led to serious environmental degradation. The composition of the Commission and the unanimous recommendations adopted by all its members, including representatives of the Federal Government and the Capital Development Authority, is of great significance. This report further reaffirmed the need for adopting the preventive principle. Perusal of the report explicitly shows that the Commission was by and large satisfied with the existing legal and regulatory frame

work for the purposes of protecting the environment in the Islamabad Capital Territory. However, it has been openly accepted and acknowledged that "the challenge has been that these laws and regulations are not properly implemented and enforced by the Federal Government, CDA, PEPA and ICT. Other reasons for the ineffective implementation include the lack of public awareness. Regarding Rawal Lake, the Commission had, inter alia, given the following findings:

> *"Further, Rawal Lake, which is a source of drinking water for Rawalpindi, is receiving untreated sewage and other wastes from the irregularly growing population in Barakaho, Bari Imam, Shadera, Banigala and other adjoining population 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."*

The report of the Commission was sufficient to establish the urgent need for implementing the existing laws and regulatory framework in the Islamabad Capital Territory so as to save the environment from further harm and irreversible damage. This had become inevitable because the right to life guaranteed under Article 9 has been flagrantly violated. Reliance is placed on *'Ms Shehla Zia and others v. WAPDA'* [PLD 1994 SC 693], *'Suo Motu Case No.25 of*

2009' [2011 SCMR 1743], *'General Secretary, West Pakistan Salt Miners Labour Union (CBA) Khewra, Jhelum v. The Director, Industries and Mineral Development Punjab, Lahore'* [1994 SCMR 2061]. It is, therefore, obvious that great care was required to be exercised by all the state institutions, agencies etc and the public functionaries.

The development of the PN Farms and the unauthorized construction of the Sailing Club was in violation of the laws enforced to protect the environment from irrecoverable harm. The Act of 1997 and the rules/regulations made there under have been gravely violated by one of the branches of the Armed Forces and the Chief of the Naval Staff. The latter and other officers who were involved in undertaking such gross illegal activities have attempted to harm the environment and thus jeopardized the living conditions for the future generations. The impunity for acts likely to cause environmental degradation and that too by public office holders must come to an end. The impunity is because there is no environmental accountability contemplated under section 19 of the Act of 1997. Let this be the beginning so that no office holder, public or private entity and the government or its agencies are guilty of being complicit in the impunity against environmental degradation. The irretrievable damage already caused has threatened the living conditions for the future generations.

Conclusion:

15. It is ironic that, in the case in hand, the Chief of Naval Staff and one of the branches of the Armed Forces i.e. the Pakistan Navy were involved in violating the enforced laws and transgressions from the mandate prescribed under the supreme law of the country, the Constitution. The most disturbing factor was the conflict created by one of the branches of the Armed Forces with the society and its citizens. Any such conflict is intolerable in a society governed under the Constitution.

As has been discussed above, the Armed Forces have a unique and special status under the Constitution. Because of the unique status certain attributes of the Armed Forces become intrinsic. They must be respected by the society and the people they serve ought to have confidence in their neutrality, professionalism, discipline and commitment with the mandate prescribed under the Constitution. Such confidence rests on the foundation of a demonstrable adherence by the Armed Forces to the mandate explicitly provided under the Constitution and the oath prescribed under schedule 3 ibid. No society can afford its Armed Forces becoming controversial and they do not when they remain confined to their constitutional role. Transgression from the prescribed mandate exposes the Armed Forces to conflict with the society and its citizens. The Armed Forces of Pakistan enjoy a special and unique status in the society because of the restricted role under the Constitution.

The primary constitutional role of the Armed Forces is to defend and protect the people and the territories of Pakistan. This is an onerous obligation because it involves the spirit, commitment and will to sacrifice one's life in the line of duty. The people who the Armed Forces

serve and defend, revere and look up to them for such an extraordinary feat. The nation of Pakistan takes pride in their brave and courageous officers and soldiers such as Captain Karnal Sher Khan Shaheed (SJ) and thousands of others who gave the ultimate sacrifice of their lives in defending the people and the country. The enemy also acknowledge their valor. The Armed Forces have been created to protect the citizens and the country and they cannot afford to be perceived by the people as having become a threat to their rights or having a conflict with the society. Such an eventuality leads to erosion of the confidence of the people and it tarnishes the image of an institution which ought to be respected if it has to effectively perform its constitutional functions.

The engagement of the Armed Forces in an activity which is a transgression from the constitutional mandate e.g. undertaking commercial or real estate ventures etc. is definitely not in the public interest. Its coercive power, strength and discipline can only be used for the restricted functions prescribed under the Constitution, rather than using these characteristics to enforce its will on the people that created it. Engaging in such undertakings, on the one hand, compromises the professionalism, integrity, cohesion of the Armed Forces while on the other it weakens the civilian institutions and becomes a cause for distraction from the core function. It damages the relationship of the Armed Forces with the people and the society. This results in grave violations of the fundamental rights of the people and definitely becomes an extreme example of undermining the rule of law.

In the case in hand, the engagement of the Chief of Naval Staff and other officers involved in the affairs of the PN Farms and the illegal construction of the Sailing Club are responsible for transgressing their constitutional mandate and tarnishing the image of their institution. Their acts and conduct relating to these two ventures are a disrespect to the brave officers and soldiers, particularly the heroic martyrs and their loved ones. Such acts cannot be condoned because of the profound consequences for the actual stake holders i.e. the people of Pakistan. It is ironic that the special status of the Armed Forces is exploited when the people rightly criticize their illegal actions. The unjustified aspersions cast on the intent of Petitioner no. 1 for raising the matter before this Court is a classic example. The latter has done what every responsible and patriotic citizen is bound to do.

As already discussed, the ventures of the PN Farms and the Sailing Club were directly or indirectly undertaken by the Pakistan Navy illegally, without lawful authority and in violation of the constitutional mandate. Both the ventures were executed in violation of the enforced law. The relevant authorities and regulators looked the other way and felt satisfied with the issuance of notices as a mere formality. This apathy of public functionaries and regulators is not confined to the case in hand but, rather, it appears to be a persistent phenomenon. The status of governance and rule of law within the 1400 square miles of the Capital of the country is deplorable. There is virtually non-existence of rule of law, which has been relegated to a mere political rhetoric.

This Court has consistently observed that the governance in the capital is confined to serving the privileged and the elite while the

citizens are exposed to their fundamental rights being gravely violated. This Court has no hesitation in observing that the governance within the manageable area of the capital is based on the phenomena of elite capture. The execution of the two ventures, PN Farms and the Sailing Club, is a classic example of the non- existence of rule of law. Some classes are probably genuinely convinced that they are above the law. No one is above the law and whoever undermines the rule of law ought to be held accountable and made an example, so as to bring an end to decades of impunity. Pakistan is governed under a Constitution and it ought to be upheld to root out injustice, poverty and the phenomena of elite capture. Both the ventures in the case in hand undertaken by one of the branches of the Armed Forces were illegal from its inception but, because of the institution's status, no authority was willing to take action. The buck stopped at the Chief of Naval Staff and those officers who were involved in violating the enforced laws.

16. For the foregoing reasons, it is held and declared as follows:

A. The Armed Forces of Pakistan have a special status under the Constitution and transgression there from is against the public interest and is a subversion and violation of the fundamental rights guaranteed under the Constitution.

B. The mandate of the Armed Forces has been expressly prescribed under the Constitution. Pakistan Navy had no jurisdiction or authority to directly or indirectly engage in real estate venture, thus, undertaking the venture of PN Farms by the Pakistan Navy through one of the offices of

its headquarters was a transgression, illegal and without lawful authority and jurisdiction.

C. The name of Pakistan Navy nor of any State institution can be used directly or indirectly for a real estate venture having no concern with the functions of such an institution or department.

D. The mutation of land in the name of an office of the headquarters of the Pakistan Navy was unconstitutional, illegal and in violation of the scheme of law described above. The ownership of the land will be dealt with by the Federal Government as mandated under Article 173 of the Constitution.

E. The Authority was not empowered to issue the NOC in favor of an office of the headquarters of the Pakistan Navy. The NOC was issued without lawful authority and jurisdiction.

F. The Authority shall forthwith resume and take over the land covered under the purported NOC and thereafter proceed strictly in accordance with the Ordinance of 1960 and the regulations made there under. A fortnightly report regarding actions taken shall be submitted to the Registrar of this Court.

G. The Ordinance of 1960 and regulations made there under govern the PN Farms while the PN Farm Byelaws were void having no legal sanctity whatsoever.

H. The Pakistan Navy had trespassed on the land situated on the embankment of Rawal Lake and that too in a protected national park area. The occupation of the land was illegal, without lawful authority and jurisdiction.

I. The construction of the Sailing Club on trespassed land was illegal and a grave violation of the enforced laws discussed above.

J. The building of the Sailing Club shall be demolished within three weeks so that rule of law could be restored and it shall not be regularized in any manner for having been illegally constructed in an ecologically sensitive area in violation of the mandatory provisions of the Act of 1997.

K. Admiral Zafar Mehmud Abbassi NI(M), Chief of Naval Staff, violated his oath and transgressed his constitutional duty by inaugurating an illegal building on encroached land in violation of the Act of 1997 and the Ordinance of 1960. This was despite notices having been sent by the Authority and the Small Dams Organization.

L. Admiral Zafar Mehmud Abassi NI(M), Chief of Naval Staff and other officers involved in the illegal construction and inauguration of the Sailing Club have made themselves liable to criminal proceedings under section 46 and section 19 of the Ordinance of 1960 and the Act of 1997 respectively. The competent authorities under the

respective laws shall ensure that criminal proceedings are initiated forthwith.

M. The Federal Government shall proceed against Admiral Zafar Mehmud Abassi NI(M) under the Ordinance of 1961 for acts and omissions amounting to misconduct on his part.

N. The Pakistan Navy shall forthwith cease all its activities on Rawal Lake and hand over the trespassed land to the Small Dams Organization. The Board of Islamabad Wildlife Management constituted under the Ordinance of 1979 shall endeavor to restore the habitat in the surrounding area of the lake in consultation with the Authority and the Small Dams Organization and subject to recommendations made by the Commission appointed herein.

O. The Small Dams Organization and the Authority shall ensure that all the activities in the reservoir, except as necessary for the purposes of the safety or maintenance of the dam, shall forth with cease in order to protect the habitat from further damage and the reservoir from being polluted.

P. Dr Pervaiz Hassan, Sr. ASC, is hereby appointed as a one person Implementation Commission for giving effect to the recommendations made in the report (Annexure-A) regarding Rawal Lake and to investigate the environmental damage caused to the reservoir of Rawal Lake and its surrounding areas. The Commission will be

assisted by the Secretary, Climate Change and the Director General, Environmental Protection Agency. The Commission shall make recommendations for restoring the reservoir and its surrounding areas as a habitat for various species, particularly the migratory birds.

Q. The Secretary, Climate Change shall forthwith establish contact with the Commission and make appropriate arrangements to facilitate the Commission in completing its proceedings at the earliest.

R. The Secretary, Climate Change shall submit a fortnightly report before the Registrar of the Court regarding the progress of proceedings by the Commission. The Commission shall be at liberty to file an application in case any clarification is required.

S. The Auditor General of Pakistan shall conduct a forensic audit of PN Farms and the Sailing Club to ascertain the loss caused to the exchequer. The loss to exchequer shall be recovered from the officers found responsible for committing illegalities in relation to the respective ventures.

T. The Secretary, Cabinet Division shall place the copies of this judgment before the worthy Prime Minister and members of the Cabinet i.e. the Federal Government. The latter shall take measures for ensuring restoration of rule of law and strict implementation of the enforced laws within the 1400 square mile area of the Islamabad Capital

Territory. The shall ensure that the demonstrable impunity against violation of the enforced laws, particularly relating to protection of the environment are demonstrably implemented. Accountability, inter alia, regarding acts likely to cause environmental degradation must be ensured.

U. The Deputy Commissioner, Islamabad Capital Territory shall contact Petitioner no. 2 in order to redress the grievances highlighted in the petition.

V. The Secretary, Ministry of Interior shall contact Petitioner no. 1 and ensure that neither she nor her husband are in any manner harassed for invoking the jurisdiction of this Court.

W. The Registrar of the Court shall send copies of this judgment to the above authorities for compliance.

17. The petitions are **allowed** and **disposed of** in the above terms.

(CHIEF JUSTICE)

Announced in open Court on ***07.01.2022***.

(CHIEF JUSTICE)

Approved for reporting.

Tanveer Ahmed/*

Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

W.P. No. 1772 of 2020

Mrs Zeenat Salim
Vs

Pakistan Naval Farms, etc.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.

07.01.2022.

ATHAR MINALLAH, C.J.-The Court has noted that in paragraph 15 of the judgment of even date, there is a typographical/ clerical accidental slip because Captain Karnal Sher Khan Shaheed has been inadvertently shown as recipient of Sitara-e-Jurrat while it should have been Nishan-e-Haider. The Court orders correction of this accidental slip and clerical mistake pursuant to powers vested under section 152 read with other enabling provisions of the Code of Civil Procedure, 1908.

2. Paragraph 15 shall, therefore, be read as follows and the same shall be deemed as an integral part of the judgment, 07.01.2022, passed in the instant case:

> " The primary constitutional role of the Armed Forces is to defend and protect the people and the territories of Pakistan. This is an onerous obligation because it involves the spirit, commitment and will to sacrifice one's life in the line of duty. The people who the Armed Forces serve and defend, revere and

look up to them for such an extraordinary feat. The nation of Pakistan takes pride in their brave and courageous officers and soldiers such as Captain Karnal Sher Khan Shaheed (Nishan-e-Haider) and thousands of others who gave the ultimate sacrifice of their lives in defending the people and the country. The enemy also acknowledge their valor. The Armed Forces have been created to protect the citizens and the country and they cannot afford to be perceived by the people as having become a threat to their rights or having a conflict with the society. Such an eventuality leads to erosion of the confidence of the people and it tarnishes the image of an institution which ought to be respected if it has to effectively perform its constitutional functions.**"**

(CHIEF JUSTICE)

ANNEX A

IN THE ISLAMABAD HIGH COURT

(11)

Writ Petition No. 1276/2011

Shiraz Shakeel

versus

Capital Development Authority

Report of the Islamabad Environmental Commission*

19 October 2015

* The Islamabad Environmental Commission was appointed by the Order dated 20 February 2015 of Mr. Justice Athar Minallah and comprises Dr. Parvez Hassan (Chair), Mr. Arif Ahmed Khan (Vice Chair), Mr. Raja Hasan Abbas, Mr. Mahmood Akhtar Cheema, Mr. Hammad Naqi Khan, Ms. Saima Amin Khawaja, Dr. Abid Qaiyum Suleri, Mr. Maroof Afzal, Dr. Muhammad Khurshid, Mr. Asad Umar, Mr. Zulfikar Haider, Syed Talat Hussain, and Dr. M. A. Baig.

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GLOSSARY

(VI)

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



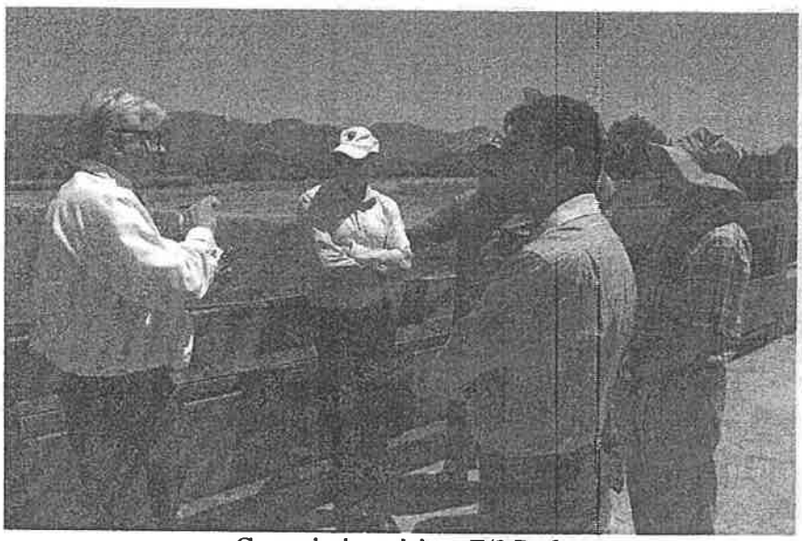
Commission visit to the Industrial Area in Sectors I-9 and I-10

[1] Considered and approved in Cutting Of Trees For Canal Widening Project, Lahore, Suo Motu Case No. 25 of 2009, 2011 SCMR 1743.

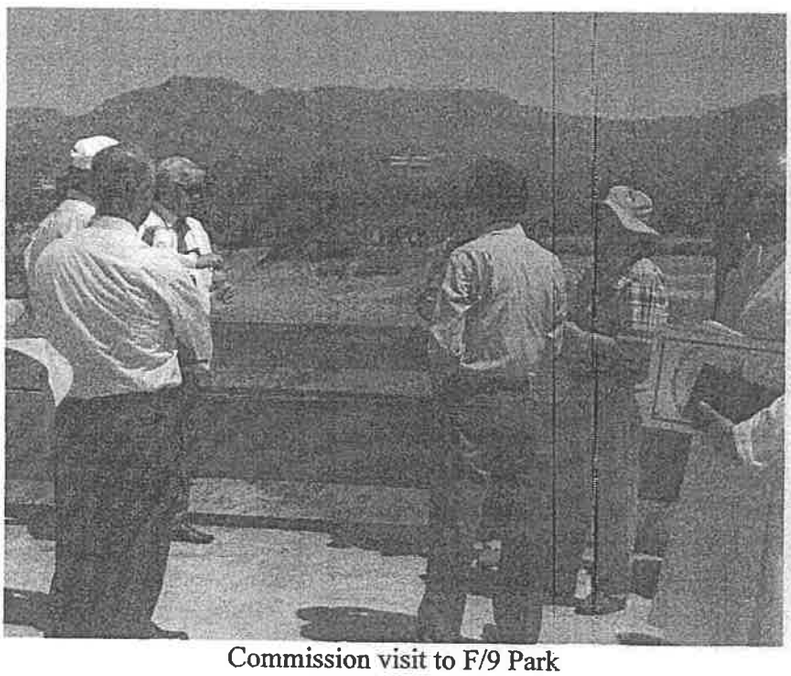
[2] Considered and approved in Syed Mansoor Ali Shah vs. Government of Punjab, PLD 2007 Lahore 403.

[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.

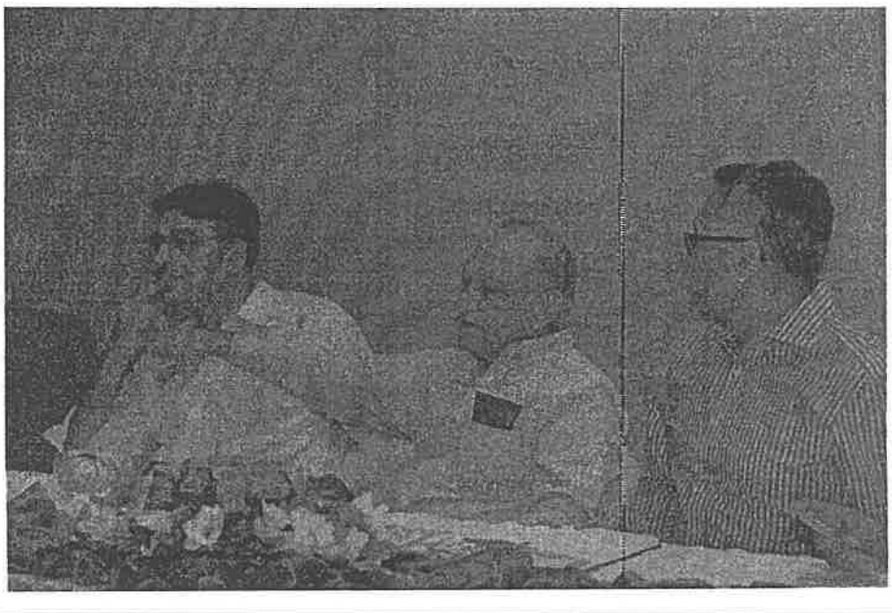
(2) Comments from the Public

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.

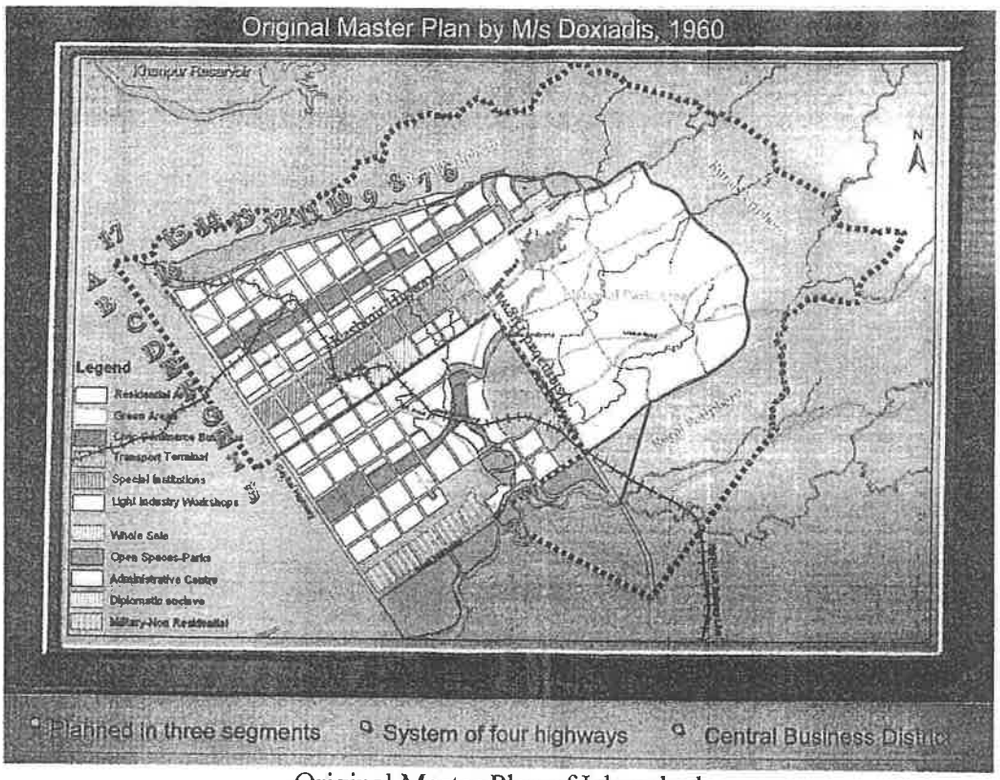
(3) An earlier draft of this Report was circulated to all the members. The comments and suggestions, received, and, particularly, the detailed comments of CDA, are reflected in this Report.

C. Islamabad

1. Founding[5]

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.

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[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 ICT[6]

Presently, the ICT is divided into five (5) zones as follows:

Zone 1: It covers an area of 22,332 ha (55,162 acres). This zone constitutes the sectors up to the existing alignment of the G. T. Road from the point of intersection of G. T. Road with Shahrah-

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

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.

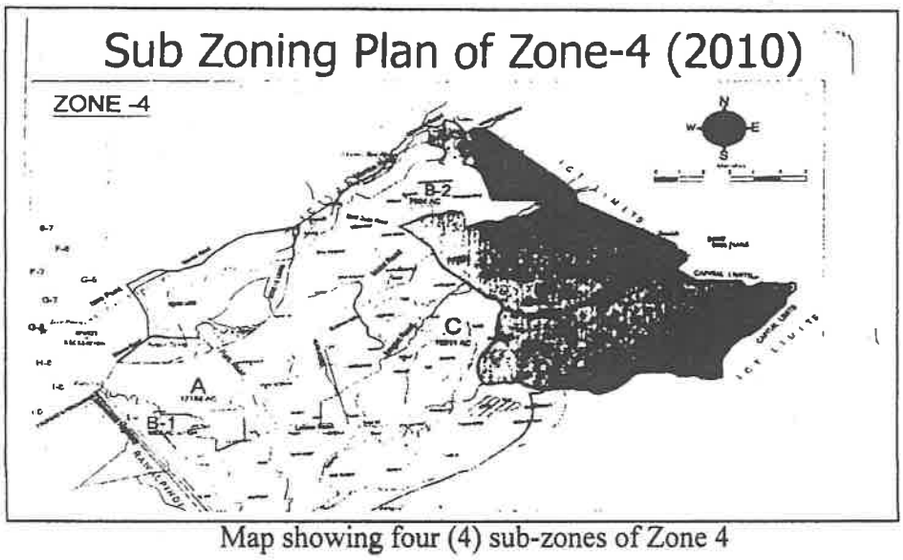
3. Islamabad-specific Legislation and Policies

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 Punjab[8], 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 Punjab[9].

(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 Maragallah Hills National Park is evident and violates Regulation 4(3)(d) of the ICT Zoning Regulations that restricts the expansion of rural settlements.

(h) Setting up of FECTO Cement plant near Margallah Hills National Park in 1985 is also a violation of the original Master Plan.

(4) Similarly, the ICT Zoning Regulations regarding Zone 4 have also been violated, as highlighted in Annexure G. Even though construction of agro farming and residential housing schemes is allowed in Zone 4 under the provisions of ICT Zoning Regulations, there are many schemes that have been constructed without getting the required approval from the CDA.

(5) The Supreme Court, in Suo Motu Case No. 10/2007 (Increased Prices of Daily Commodities)[10], had highlighted the irregular and unplanned construction in Zone 4 and the non-facilitating attitude of the CDA regarding approvals for construction on private land, which led to the irregular construction. Through its order dated 24 January 2008, the Supreme Court gave the following directions to CDA:

(a) The Gazette of Pakistan Notification SRO 670(I)/2007 shall be implemented in letter and spirit and land owners in Zone 4 Islamabad shall be facilitated in getting necessary approvals for development construction on the private land falling within the purview of notification referred to above.

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[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(I)/2014 dated 10 December 2014 to result in the sub-division of Zone 4 into four (4) sub-zones with each sub-zone having defined parameters and land uses. However, many unauthorized housing and agro farming schemes still exist in Zone 4. List of unauthorized housing and agro farming schemes is attached as Annexure H.

(6) Reserved Forests Nos. 31 and 33 have been converted to residential sectors C-13, C-14, Margallah Road has been constructed in Sectors C-13, C-14 and more roads are planned in violation of the Forest Act, 1927.

(7) The ICT Zoning Regulations have been violated by (a) excluding Reserved Forests RF 31 and 33 from Zone 3; (b) large-scale selling/purchasing of land entailing change in land use with construction underway at many sites; and (c) planning of developing housing schemes.

E. Recommendations

The Commission has broad TOR and it would be within its competence to recommend numerous measures in all the fields that impact on the environment and environmental justice. But the Commission has refrained from giving a long wish list. Instead, it has focused on what is doable and must be done immediately if the future environmental harm to Islamabad is to be prevented. If the urgent measures recommended by the Commission are timely implemented, it would provide a good basis to strengthen these measures by a consideration of the several other matters covered and discussed by the Commission.

The Recommendations are time-sequenced as follows: (1) the Priority Recommendations require an immediate implementation, and (2) the Other Recommendations cover a period of 2-3 years. All the TOR are covered by both the Recommendations.

[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 Punjab[12].

(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 Management[15]

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, pyrolization, anaerobic digestion, and landfill gas (LFG) recovery.

Another alternative worth consideration is a public-private partnership to encourage and facilitate a market-based management of solid waste. This can be achieved by the outsourcing of the solid waste management in Islamabad, as has been done in Lahore. The experience of Lahore provides an attractive basis for Islamabad to move on similar lines. This can be replicated by forming a company under Section 42 of the Companies Ordinance, 1984. The company so formed should outsource the solid waste management through an open and competitive bidding by inviting both national and international firms. The winner of the bid should be tasked to develop an integrated system of solid waste management to ensure efficient collection, transportation, recovery, treatment and disposal of the waste generated in Islamabad while the CDA performs a supervisory role.

(3) Hospital Waste Management

The hospitals and other health care facilities generate various kinds of risk and non-risk waste. The non-risk waste is similar to domestic waste and accounts for more than 80% of the hospital waste. The remaining 10-20% is risk waste which, after segregation, needs special treatment. Unfortunately, there are no satisfactory and Hospital Rules-compliant arrangements for hospital waste management in ICT and the waste from hospitals and health care institutions is mixed up with the municipal waste. Some types of such waste, like human placenta, is being used in poultry feed industry.

The Vice Chancellor, PIMS, Dr. Javed Akram, pointed out during his attendance of the third meeting of the Commission as a Special Invitee that there is a long-standing request of PIMS with the Economic Affairs Division for the procurement of an incinerator for PIMS. The French Government had indicated an interest in this. During a meeting on 6 October 2015 at the Ministry of Climate Change requested by the Chair, representatives of several hospitals in Islamabad[16] 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.

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[16] The meeting was attended by the following representatives of the leading hospitals of Islamabad:

1. Dr. Javed Akram, Vice Chancellor, PIMS.
2. Dr. Ayesha Isani Majeed, Additional Director, PIMS.
3. Dr. S. Ghazanfar Hussain, Deputy Director, KRL Hospital.
4. Dr. Fazal Majeed, Deputy Director, CDA Hospital.
5. Dr. Amin Haider, Medical Superintendent, Sayyed Mohammad Hussain Government 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 (PM2.5) (45 to 95 $\mu g\ m^{-3}$) and nitric oxide (NO) (41 to□120 $\mu g\ m^{-3}$) exceed the standard set by the NEQS. The major contributors of air pollution in Islamabad are the motor vehicles and the emissions from the industries in Sectors I-9 and I-10.

To control and manage the air pollution, the Commission recommends:

(a) PEPA should run a city-wide toxic assessment campaign to monitor the total amount of toxins, including mercury, being emitted in the air of Islamabad. Based on this survey, the ambient air quality standards for the city must be revised and compulsory emission limits be set. The present ambient air quality should also be displayed and shared with the public.

(b) Permanent Monitoring units to be set up.

(c) Compulsory emission limits must be set and the "self-monitoring and reporting tool" (SMART) must be reintroduced to the industries of Islamabad. This will monitor the emission quality and quantity and help in better reporting under the National Environmental Quality Standards (Self-Monitoring and Reporting by Industry) Rules, 2001. SMART will also enable PEPA to easily detect industries exceeding the threshold set by NEQS and take timely action.

(d) Strengthen PEPA to enforce test protocols for inspection and maintenance of vehicles and industrial machinery, and "pre-emission cleaning and refining techniques" in the industrial area of Islamabad.

(e) Introduce combustion efficiency in diesel engines of factories by using cleaner fuels like LNG and promote lead-free gasoline by giving incentives to refineries so that they may invest in sulphur content reduction technologies in diesel.

(f) Higher taxes on diesel and other fuels containing high levels of lead and sulphur for vehicles and improving the quality of diesel for decreasing per vehicle emission and on spot checking/fine of polluting vehicles by mobile teams.

(g) Introduce new vehicle standards by adopting Euro-2 norms and aiming for Euro-4 norms gradually.

(h) A follow up of commitments made in the approval of the EIAs of projects in Islamabad to ensure that vegetation cover removed for construction is replenished.

(i) Private sector must be involved in plantation efforts, and the subsequent care, along major road works, such as Islamabad Expressway.

(6) Public Participation/Public Engagement Committees

It is, generally, and well perceived that a lack of institutional mechanism for public consultation and public participation has compromised the standards of transparency and accountability, which, resultantly, has led to arbitrary amendments of the Master Plan and the ICT Zoning Regulations, and weakened the process of EIA.

In view of this, the Commission recommends the setting up of an institutionalized permanent public engagement committee (the "PEC") for each zone of ICT. These PECs may comprise of parliamentarians from Islamabad, representative(s) of the elected local government, urban planners, architects, engineers, media, civil society, academics, and ex officio members from the local administration. The PECs should participate and follow up on EIAs done for different development projects to be carried out in their relevant zones. Also, the PECs will hold public hearings to discuss any proposed changes or amendments in the Master Plan and the ICT Zoning Regulations and convey the recommendations/suggestions to IPAB and CDA.

(7) Climate Change

The continuous degradation of the environment is adversely impacting the already vulnerable climate of Pakistan. For the protection of the environment and the climate, effective steps must be taken to fulfill the objectives of the National Climate Change Policy, 2012, and to implement the strategies in the Framework of Implementation of Climate Change Policy (2014-2030). The Commission draws attention particularly to those items that require priority action. The taking of such steps would protect the environment in the short term while positively affecting the climate of Pakistan in the long term.

(8) Better Co-ordination between Environmental Management Agencies

The different provincial environmental management agencies should co-ordinate between themselves for better and uniform implementation of the provisions of their respective environmental protection acts. The environmental agencies and the governments of the Provinces should also co-ordinate to preserve the Margallah Hills. The province of Khyber PakhtunKhwa has already taken a lead by making the Margallah Hills a protected area.

(9) Holistic Mass Transit Plan for Islamabad

A holistic mass transit plan for Islamabad's commuters needs to be developed. The solution to cater the needs of the ever-increasing number of commuters does not lie in expanding the roads at the cost of the green belts and parks, as is being done in making the signal free Islamabad Expressway, but lies in coming up with the best mass transit solutions.

(10) Restructuring CDA

The professional staff of CDA comprising urban planners, architects, landscape specialists, horticulturists, botanists, zoologists, environment experts, and scientists needs to be strengthened. It is popularly believed that CDA presently consists primarily of bureaucrats, with little or no expertise in urban development and the environment. Member and DG Environment, along with other key technical positions, should be manned by qualified and experienced environmentalists.

(11) Toll-Free Telephone Numbers

There should be toll free telephone numbers to an ENVIRONMENTAL HELPLINE so that the public can contact the officials/agencies concerned and inform of any violation of the 1997 Act and its rules and regulations then and there for remedial action.

(12) Public Education

Mass environmental awareness campaigns are critical to the support of the recommendations of the Commission. For this, the role of media is important in educating the citizens and achieving the objectives of protecting the environment. As per the laws and policies applicable to the Pakistan Electronic Media Regulatory Authority, all TV stations are supposed to use ten percent (10%) of their airtime for public education, therefore, awareness of the environment and its protection should be promoted through this. With respect to solid waste management, for example, the sanitary inspectors, along with the media, can educate the citizens on the sorting and disposal of garbage at home.

(13) ICTLGA and the Commission's recommendations

Under the Islamabad Capital Territory Local Government Act, 2015 (the "ICTLGA"), a local government is to be formed to administer and govern ICT locally. Some of the functions of the local government include the maintenance of the rural water supply schemes and public sources of drinking water, executing development works, approving development schemes for beautification of urban areas, and developing integrated system of water reservoirs, water sources, treatment plants, drainage, liquid and solid waste disposal, sanitation and other municipal services.

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

F. Acknowledgements

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

G. Note on Signatories to this Report

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

Mr. Raja Hasan Abbas
Secretary, Cabinet

Mr. Mahmood Akhtar Cheema
Country Representative, IUCN Pakistan

Mr. Hammad Naqi Khan
Director General/CEO, World Wide Fund for Nature Pakistan

Ms. Saima Amin Khawaja
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Mr. Maroof Afzal
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Dr. Muhammad Khurshid
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Mr. Asad Umar
Member, National Assembly

Mr. Zulfikar Haider
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Dr. Parvez Hassan
(Chair)

Islamabad, 7-19 October 2015