JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.3916 of 2022

Dr. Aziz ur Rehman and others

Versus

Federation of Pakistan through Secretary Cabinet and others

Dates of Hearing:	31.10.2022, 04.11.2022, 02.12.2022, 06.12.2022 & 09.12.2022.
Petitioners by:	M/s Kashif Ali Malik, Qaiser Abbas Gondal Umair Khan, and Hisaan Khalil Noon, Advocates for the petitioners in the instant petition. Mr. Aziz ul Haq Nishtar, Advocate for the petitioners in W.P. No.4077/2022. Barrister Atif Rahim Barki and Abdul Manan, Advocate for the petitioners in W.P. No.4371/2022 M/s Muhammad Munir Paracha and Noman Munir Paracha, Advocates for Q.A.U. in W.P.No.4543/2022
Respondents by:	Mr. Munawar Iqbal Duggal, learned Additional Attorney-General, Syed Ahsan Raza Kazmi, Mian Faisal Irfan, learned Deputy Attorney-General, and Mr. Azmat Bashir Tarar, learned Assistant Attorney-General M/s Muhammad Munir Paracha and Noman Munir Paracha, Advocates for Q.A.U., Dr. Raja Qaiser Ahmed, Registrar and Engr. Bakht Rehman, Dir. (Works) and Sami Ullah Khan, Assistant Registrar Q.A.U. M/s Hafiz Arfat Ahmed Ch., Muhammad Nazir Jawad, Kashifa Niaz Awan, Muhammad Asim Bhatti, Tariq Zaman Ch. Muhammad Farooq, Miuh Aftab Shah and Auf Rehman Khan, Advocates for the C.D.A. M/s Jalil Akhtar Abbasi, Waseem Uddin, Muhammad Furqan Shabbir, Shabbir Mehmood Abbasi and Asad Iqbal, Advocates for respondents No.10 to 17 in W.P.No.3916/2022 Mr. Muhammad Ramzan, A.D. Pak. E.P.A. Dr. Agha Ghulam Haider, Deputy Director M/o F.E.& P.T.

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MIANGUL HASSAN AURANGZEB, J:- Through this judgment, I propose to decide writ petitions No.3916/2022, 4077/2022, 4371/2022, and 4543/2022 since they entail certain common features.

2. Through writ petition No.3916/2022 the petitioners, Dr. Aziz-ur-Rehman and others, who are members of the teaching faculty of the Quaid-e-Azam University, Islamabad (**"Q.A.U."**), seek a declaration that the decision taken by the Capital Development Authority (**"C.D.A."**) regarding the construction of the *Bhara Kahu* Bypass Road (**"B.K.B. Road"**), only to the extent of the same passing through the land allotted to Q.A.U., is unlawful. The petitioners have also voiced their grievances against the steps being taken by C.D.A. pursuant to the decision taken in the 7th meeting of C.D.A. Board held on 17.06.2022 to allot to Q.A.U. alternate land measuring 225 *kanals* adjacent to the boundary of Q.A.U. in exchange for the land that is to be used for the construction of the B.K.B. Road.

3. Dr. Anwar Shah, the petitioner in writ petition No.4077/2022, is an Associate Professor (Economics) at Q.A.U. and seeks a declaration to the effect that the land allotted to Q.A.U. for educational purposes could not be used for any other purpose, including the construction of the B.K.B. Road. He is also assailing the notification dated 14.10.2022 issued by the Ministry of Federal Education and Professional Training constituting the Joint Working Group mandated to conduct negotiations with C.D.A. on the construction of the B.K.B. Road.

4. The petitioners in writ petition No.4371/2022 are two members of the teaching faculty in Q.A.U. and have called in question the hearing conducted by the Pakistan Environmental Protection Agency (**"P.E.P.A."**) on 18.11.2022 and notice dated 18.10.2022 issued by P.E.P.A. for the said hearing.

FACTUAL BACKGROUND:-

5. Doxiadis Associates-Consulting Engineers had prepared a Programme and Plan for Islamabad. As per the judgment in the

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case of Prof. Zahid Baig Mirza Vs. The C.D.A. (PLD 2022 Islamabad 398), the Programme and Plan sets out the Master Plan for Islamabad. It provides for educational and research institutions such as National University, National Research Institution, etc. to be built in the area designated as the National Park. It is not disputed that sometime in the 1960s the site of the National University was shifted from the area in the National Park south of Murree Road to its north where Q.A.U. is presently situated.

6. The University of Islamabad was established pursuant to the provisions of the University of Islamabad Act, 1973 enacted on 09.02.1973. This Act was amended by the University of Islamabad (Amendment) Act, 1976 enacted on 02.09.1976 by virtue of which the "University of Islamabad Act, 1973" was renamed as "Quaid-e-Azam University Act, 1973" ("Q.A.U. Act") and the "University of Islamabad" was renamed as the "Quaid-e-Azam University."

7. Section 3(3) provides that Q.A.U. shall be a body corporate and shall have perpetual succession and a common seal, and shall by the said name sue and be sued, whereas Section 3(4) provides that the University shall be competent to acquire and hold property, both movable and immovable, and to lease, sell or otherwise transfer any movable or immovable property which may have become vested in or been acquired by it.

8. The letter dated 04.02.1976 from C.D.A. shows that possession of 1709 *acres*, 04 *kanals* and 12 *marlas* of land in villages *Malpur, Jhang Bagial, Kot Hathial*, and *Noorpur Shahan* had been handed over to the representatives of the University of Islamabad on 09.12.1967 and 30.06.1972. C.D.A. had demanded Rs.39,57,577/- as premium and annual ground rent at the rate of Rs.1 per *acre* with effect from the date of possession. After payment of the said amount, a transfer deed was to be prepared for which the stamp duty and registration fee were to be paid by the allottee.

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9. Vide letter dated 15.12.1988, C.D.A. offered land measuring 1445.10 acres to be leased to Q.A.U. for a period of thirty-three years extendable to two subsequent terms of thirty-three years each for the construction of buildings for Q.A.U. This letter shows that an amount of Rs.33,45,319.70 had already been paid to C.D.A. as premium. This letter also shows that the date of the allotment was 04.02.1976, and that Q.A.U. had to pay annual ground rent at the rate of Rs.1 per acre in advance with effect from the date of the allotment. As per the contents of the said letter, *"proper allotment containing detailed terms and conditions"* was to be issued after handing over possession of the land.

10. Vide letter dated 30.01.1991, C.D.A. demanded payment of Rs.10,80,774.32 for the 1709 acres, 04 *kanals* and 12 *marlas* of land possession whereof had already been taken over by Q.A.U. The receipt dated 13.05.1991 issued by the Estate Management Directorate of C.D.A. shows that Q.A.U. had deposited Rs.10,80,774.32 with C.D.A. as the cost of the land. In C.D.A.'s letter dated 15.01.2019, it has been confirmed that Q.A.U. has made full payment for the 1709 *acres*, 04 *kanals* and 12 *marlas* of land to C.D.A., but the annual ground rent for the said land was still outstanding.

11. In the year 2012 an attempt was made by C.D.A. to construct a road on the land allotted to Q.A.U. On 09.01.2012, Q.A.U. had filed a two-page petition (writ petition No.41/2012) seeking the issuance of a writ of prohibition to C.D.A. restraining it from constructing a road on the land allotted to Q.A.U. Vide order dated 07.06.2022, the said petition was disposed of as having been rendered infructuous. This Court recorded the submission of Q.A.U.'s counsel that he was under instructions not to press the petition as it had become infructuous.

12. It is an admitted position that unchecked, unsupervised, unplanned, and unregulated construction in the Village of *Bhara Kahu* has led to severe traffic congestion on Murree Road passing through the said village. It is also not disputed that the need for

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the construction of a road bypassing the said village is a matter of public need and interest. It was with this intended purpose that C.D.A. decided for the Margalla Road to be extended such that it not just connects with Murree Road through a junction but also to the B.K.B. Road.

13. A presentation on the alignment of Margalla Road (Phase-I and II) was made by the representatives of the Frontier Works Organization (“FWO”) to C.D.A. Board in its 7th meeting held on 17.06.2022. Apparently no summary had been presented before the Board on this matter. The minutes of the said meeting show that Margalla Road is 33 KM long from GT Road to *Bhara Kahu*. Its first Phase is from GT Road to Sector D-12 on which 70% of the work has been completed. In the said meeting, it was decided that 8 KM long B.K.B. Road will be constructed from Murree Road near Q.A.U. to Satra Meel. A stretch of 1.32 KM of this road was to pass through land allotted to Q.A.U. The C.D.A. Board *inter alia* approved the exchange of land owned by C.D.A. with Q.A.U.’s land falling in the alignment of the B.K.B. Road.

14. Vide letter dated 22.09.2022, C.D.A. accepted the bid submitted by the National Logistics Cell (“N.L.C.”) for the award of the contract for the design and construction of the B.K.B. Road for the contract price of Rs.6,515,078,155/-. The letter of commencement was issued by C.D.A. on 05.10.2022. The 5.33 KM *Bhara Kahu* Bypass Project entails the construction of 4 KM *Bhara Kahu* Bypass Road; signage / drainage; an underpass on *Shah Dara* Road; an underpass on *Kayani* Road; and 1.33 KM elevated highway with ramps.

15. Apparently, on 08.10.2022, a meeting between the officials of C.D.A. and Q.A.U. took place to resolve the issues arising from and relating to the construction of the B.K.B. Road including the issue of exchange of land between C.D.A. and Q.A.U. In its letter dated 08.10.2022, C.D.A. expressed its intention to allot 225 *kanals* of land in *Mouza Malpur* free from all encumbrances to Q.A.U. in exchange of Q.A.U.’s land falling under the B.K.B. Road.

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Q.A.U. was asked by C.D.A. to complete the necessary formalities for the exchange of land.

16. Vide letter dated 11.10.2022, C.D.A. offered to Q.A.U. 225 *kanals* of land adjacent to Q.A.U.'s eastern boundary. It was also offered that this land would be levelled through C.D.A.'s indigenous resources so that the same could be utilized by Q.A.U. as and when considered necessary.

17. An emergency meeting of Q.A.U.'s Syndicate was called on 12.10.2022. In this meeting, the matter regarding C.D.A's proposal to allot 225 *kanals* of C.D.A. owned land along the eastern boundary of Q.A.U. to be exchanged with Q.A.U's land to be used for the B.K.B. Road was discussed. Most of the members of the Syndicate endorsed the proposal for the exchange whereas others opposed it. In this meeting, it was *inter alia* resolved as follows:-

> ***"The Syndicate further resolved that for now it conditionally approves the construction of Barakahu Bypass on QAU's land and would hold a subsequent meeting on the next Thursday October 20th, 2022 to give final approval considering the recommendations of the joint working group."***

18. The instant writ petition was filed on 17.10.2022 by some of the faculty members of Q.A.U. and was taken up for hearing on 18.10.2022. After this Court was informed that the construction work on Q.A.U.'s land had been commenced by the contractor engaged by C.D.A. and in this process, several trees had been felled without having obtained an approval of the Environmental Impact Assessment ("E.I.A."**) in terms of Section 12(1) of the Pakistan Environmental Protection Act, 1997 (**"the 1997 Act"**), an ad interim injunction dated 18.10.2022 was issued restraining further construction activity to be undertaken within the boundary of Q.A.U. This Court also directed the Director General, P.E.P.A. to depute a team of inspectors to visit the project site and submit a report as to the status of the construction work and whether construction had been initiated by State controlled organizations without obtaining approval of the E.I.A. from the P.E.P.A.**

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Furthermore, this Court directed the Vice Chancellor of Q.A.U. to depute a representative to tender appearance before this Court and take a position on whether the decision for the exchange of land had been taken by the management of Q.A.U. empowered by the Q.A.U. Act to do so.

19. At this stage, it may be mentioned that Section 22 of the Q.A.U. Act sets out the powers and duties of the Syndicate, which is the Executive Body of Q.A.U. and is mandated to exercise general supervision over the affairs and management of the property of the University. Section 22(2)(a) provides that the Syndicate shall have the power to hold, control and administer the property and funds of Q.A.U. Section 22(2)(d) empowers the Syndicate to transfer and accept transfer of movable and immovable property on behalf of Q.A.U. The composition of the Syndicate is provided for in Section 21 which shows that the Vice-Chancellor of Q.A.U. is the Chairman of the Syndicate.

20. On 24.10.2022, the Director General, P.E.P.A. filed a report according to which, on 05.09.2022, C.D.A. had submitted a report on the E.I.A. pertaining to the construction of the B.K.B. Road to P.E.P.A. After a preliminary scrutiny of the said report under Regulation 9 of the Pakistan Environmental Protection Agency Review of Initial Environmental Examination and Environmental Impact Assessment Regulations, 2000 (“the 2000 Regulations”), P.E.P.A., vide letter dated 11.10.2022, directed C.D.A. to give a detailed presentation on the project. A presentation was given by C.D.A. on 12.10.2022. Thereafter, C.D.A. was directed to submit a revised report on the E.I.A. by incorporating therein the observations of P.E.P.A.’s review committee and the Director General, P.E.P.A. These observations are enumerated in the minutes of the meeting dated 12.10.2022 between C.D.A. and P.E.P.A.

21. C.D.A. submitted a revised report on the E.I.A. to P.E.P.A. on 18.10.2022. While the said report was under consideration, P.E.P.A. on 18.10.2022 published an advertisement for holding a

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public hearing on the E.I.A. report. The public hearing was scheduled to be held on 18.11.2022 in accordance with the requirements of Regulation 10 of the 2000 Regulations.

22. After the order dated 18.10.2022 was passed by this Court, an inspection committee constituted by P.E.P.A. visited the project site on 22.10.2022 and prepared a site inspection report according to which the construction activity already carried out by C.D.A. was in violation of Section 12 of the 1997 Act. For this violation, P.E.P.A. had initiated the process of imposing an administrative penalty under Section 17(7) of the said Act and Rules 6 to 8 of the Compounding of Offences and Administrative Penalty Rules, 2015 (“the 2015 Rules”) by issuing a show cause notice dated 20.10.2022 to the Deputy Director (Roads-II), C.D.A. C.D.A.’s reply dated 21.10.2022 to the said show cause notice shows that the contractor had mobilized at the site and works had commenced in order to meet the deadlines under the construction contract (which is not on the record). Admittedly, works had commenced prior to obtaining approval of the E.I.A. in terms of Section 12 of the 1997 Act. The proceedings pursuant to the said show cause notice culminated in the issuance of notice dated 15.11.2022 from the P.E.P.A. to C.D.A. requiring the latter to deposit an administrative penalty to the tune of Rs.1 million within a period of ten days. I am told by the learned counsel for C.D.A. that the said amount has been deposited under protest and that C.D.A. intends to assail the said notice.

23. The Joint Working Group that had been constituted pursuant to Q.A.U.’s Syndicate’s decision taken in the emergency meeting dated 12.10.2022 had prepared a report which came to be considered by the Syndicate in its emergency meeting held on 21.10.2022. The minutes of the said meeting show that the Syndicate, by majority, accorded an in-principle approval to the construction of the B.K.B. Road on Q.A.U.’s land if Q.A.U.’s demands listed in “Schedule-A” hereto were accepted by C.D.A.

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24. On 04.11.2022, this Court was informed that the demands made by the Syndicate of the Q.A.U. to C.D.A. had not been accepted. Until then, an approval to the E.I.A. report submitted by C.D.A. had not been granted by P.E.P.A. Given the urgency in the matter, this Court expressed the view that the Federal Government ought to play the role of a mediator between Q.A.U. and C.D.A. For this purpose, the matter was adjourned for a week.

25. On 11.11.2022, the learned Additional Attorney-General brought on record a letter dated 10.11.2022 issued by the Prime Minister's office according to which a Cabinet Sub-Committee had been constituted to resolve the dispute regarding the construction of the B.K.B. Road on Q.A.U.'s land. The said Committee comprised of the Federal Minister for Law and Justice and the Federal Minister for Information and Broadcasting. This Court ordered for the outcome of the deliberations of the said Committee to be intimated to the Court on 21.11.2022.

26. The said Committee had meetings with the representatives of C.D.A. and Q.A.U. on 15.11.2022 but the disputes could not be resolved. On 21.11.2022, an adjournment was sought by the learned Additional Attorney-General for a week so that further opportunity could be given to the said Committee to resolve the disputes between Q.A.U. and C.D.A.

27. On 21.11.2022 the Assistant Director, P.E.P.A. tendered appearance and brought on record a report, paragraph 7 whereof is reproduced herein below:-

> ***"7. CDA has submitted the reply on 20.11.2022 against comments/ reviews submitted by expert committee and public during hearing on 18.11.2022, same found acceptable, due to firm commitment of CDA to follow the directions and final decisions for EIA with conditional approval will be issued which is conditional to the submission of Administrative Penalty already imposed, under the Rules, 2015."***

28. On 25.11.2022, the Assistant Director, P.E.P.A brought on record P.E.P.A's approval dated 24.11.2022 to the E.I.A. report submitted by C.D.A. for the *"construction of the Bhara Kahu Bypass at Bhara Kahu Islamabad."* The learned Additional

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Attorney-General after informing the Court that the Cabinet Sub-Committee had afforded an opportunity of a hearing to the petitioners sought an adjournment for a period of one week so that the recommendations / findings of the Cabinet Sub-Committee could be submitted to the Federal Government for a decision.

29. The report of the Cabinet Sub-Committee was brought on record through an application (C.M.No.4450/2022). The said report shows that 199 *kanals* of the land allotted to Q.A.U. would be used for the construction of the B.K.B. Road. After being satisfied that access to Q.A.U. would in no manner be impeded by the construction of the B.K.B. Road, the said Committee recommended that the project is one of public importance and its execution would reduce the suffering of commuters on Murree Road. It was also recommended that the C.D.A. be directed to fulfill obligations and commitments to Q.A.U. mentioned in the Syndicate's meeting dated 21.10.2022 as subsequently modified by the said Committee. The said report was placed before the Cabinet, in its meeting dated 30.11.2022, which approved the recommendations made therein.

30. On 05.12.2022, Q.A.U. filed writ petition No.4543/2022 challenging the decisions taken by C.D.A. Board in its meeting dated 17.06.2022 as well as the Cabinet's decision dated 30.11.2022.

CONTENTIONS OF THE LEARNED COUNSEL FOR THE CONTESTING PARTIES:-

31. Mr. Kashif Ali Malik, learned counsel for the petitioners in writ petition No.3916/2022, after narrating the facts leading to the filing of the instant petition, submitted that the fundamental right of access to education would be impeded with the construction of the B.K.B. Road through land owned by Q.A.U.; that the public interest in the construction of the B.K.B. Road cannot be given priority over the right of access to education; that the decision taken by the C.D.A. Board, in its 7th meeting held on 17.06.2022, to exchange Q.A.U.'s land which was to come under the B.K.B. Road

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with C.D.A.'s land adjacent to Q.A.U. was not based on any summary and amounted to change in Islamabad's Master Plan which could only be made by the Federal Government; that the construction of the B.K.B. Road project is a violation of the Master Plan; that Q.A.U. intends to establish China-Pakistan Joint Research Centre at the location where the B.K.B. Road is to be constructed; that the Syndicate of Q.A.U. cannot take a decision which is to the detriment of the fundamental rights of the students in Q.A.U.; that the respondents have committed a grave illegality by starting construction work without having obtained an approval of the E.I.A. from P.E.P.A.; that C.D.A. ought to have explored options other than making a road through land duly allotted to Q.A.U.; and that since Q.A.U. is located in the National Park area therefore a road cannot be constructed through the said area. In making his submissions, learned counsel for the petitioners placed reliance on the judgments reported as Raja Zahoor Ahmed Vs. C.D.A. (2022 SCMR 1411), Murree Brewery Co. Ltd. Vs. Pakistan (PLD 1971 SC 279), Federal Government Employees Housing Foundation Vs. Ednan Syed (PLD 2022 Islamabad 273), Shahzada Sikandar ul Mulk Vs. C.D.A. (PLD 2019 Islamabad 365), and Park View Enclave (Pvt.) Ltd. Vs. C.D.A. (2018 CLC 947).

32. Mr. Aziz-ul-Haque Nishtar, learned counsel for the petitioner in writ petition No.4077/2022, adopted the arguments of the learned counsel for the petitioners in writ petition No. 3916/2022 and further relied on Quranic verses to lay emphasis on the importance of education.

33. Mr. Muhammad Munir Paracha, learned counsel for Q.A.U., the petitioner in writ petition No.4543/2022, submitted that Article 25-A of the Constitution obligates the State to provide free and compulsory education to all children of the age of 05 to 16 years in such a manner as may be determined by law; that Article 38(d) of the Constitution provides *inter alia* that the State shall provide basic necessities of life such as education for all citizens irrespective of sex, caste, creed, or race as are permanently or

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temporarily unable to earn their livelihood on account of infirmity, sickness or unemployment; that C.D.A. was hindering the right to education by constructing a road through land owned by Q.A.U.; that Section 12(1) of the Capital Development Authority Ordinance, 1960 (“the 1960 Ordinance”) empowers C.D.A. to call upon a local body or agency to prepare a scheme, whereas under Section 12(2)(d) of the said Ordinance such a scheme may relate to transportation, communications, highways, roads, streets, and railways etc.; that under Section 13 of the 1960 Ordinance, C.D.A. can itself prepare a scheme for Specified Areas when it considers it desirable to do so in the public interest; that the scheme regarding the B.K.B. Road could not have been undertaken by C.D.A. without fulfilling the prerequisites in Section 13 of C.D.A. Ordinance; that Section 15(2) (ii) of C.D.A. Ordinance empowers the C.D.A. to undertake any work in the Specified Areas in pursuance of a scheme prepared under Section 13; that there is no resolution of C.D.A. to the effect that it was desirable and in the public interest for C.D.A. to undertake the construction of the B.K.B. Road; that at no material stage, was any scheme prepared by C.D.A. for the construction of the B.K.B. Road pursuant to Section 13 of the 1960 Ordinance; that at no material stage did the Syndicate of Q.A.U. grant an unconditional approval for the construction of the B.K.B. Road over land owned by Q.A.U.; that since the Syndicate’s acceptance of C.D.A.’s proposals was qualified and conditional, it cannot be considered that Q.A.U. had acquiesced to the construction of the said road over its land; and that if C.D.A. accepts all the demands made by Q.A.U. then the B.K.B. Road may be constructed on the land owned by Q.A.U. Learned counsel for Q.A.U. prayed for the said writ petition to be allowed in terms of the relief sought therein.

34. Mr. Jalil Akhtar Abbasi, learned counsel for the interveners / residents of *Bhara Kahu* and commuters on Murree Road submitted that the B.K.B. Road project was one of public

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importance since the suffering of the commuters was increasing with time.

35. Messrs Hafiz Arafat Ahmad Chaudhry and Muhammad Nazir Jawad, learned counsel for C.D.A., submitted that Q.A.U.'s Syndicate in its meeting dated 21.10.2022, had accepted the proposals made by C.D.A. in its letter dated 11.10.2022; that the petitioners in writ petitions No.3916/2022 and No.4077/2022 are faculty members in Q.A.U. and cannot take a position different from the one taken by Q.A.U.'s Syndicate; that 1.32 KM of the B.K.B. Road would be passing through Q.A.U's land; that C.D.A. is ready to allot 225 *kanals* of alternate land to Q.A.U. adjacent to its eastern boundary; that Section 49 of the 1960 Ordinance empowers C.D.A. to exchange land; that initially Q.A.U. was planned to be in the National Park area but in the 1960s the Master Plan was amended to relocate Q.A.U. from the National Park area to its present location; that the construction of the B.K.B. Road entails no alteration in the Master Plan; that paragraph 9.61 of the Master Plan document permits the construction of roads in the National Park; that Section 21(3) of the Islamabad Wildlife (Protection, Preservation, Conservation, and Management) Ordinance, 1979 ("the 1979 Ordinance"**) permits the construction of access roads etc. in the National Park; that C.D.A. is constructing the entire B.K.B. Road over land specifically acquired years ago for the purpose of constructing a road; that no new acquisition is being carried out by C.D.A. to construct the B.K.B. Road and not a single dwelling would be demolished in the construction process; that till date, a lease agreement has not been executed between C.D.A. and Q.A.U. with respect to 1709 *acres*, 04 *kanals* and 12 *marlas* of land; that C.D.A. is not vested with the statutory authority to exempt Q.A.U. from paying annual ground rent or to extend the validity of the period for which the allotment was made without payment of any consideration; that if Q.A.U. files an application for the removal of encroachments on its land, the same shall be dealt with in accordance with the law; and**

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that now that P.E.P.A. has granted an approval to the E.I.A. report submitted by C.D.A., there is no reason why C.D.A. should be restrained from resuming the construction work. Learned counsel for C.D.A. prayed for all the writ petitions to be dismissed.

36. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the writ petitions have been set out in sufficient detail in paragraphs 5 to 30 above and need not be recapitulated.

37. I propose in the first instance to deal with the issue regarding the commencement of the construction work on the B.K.B. Road prior to P.E.P.A.'s approval of the E.I.A. report. Before dealing with this issue, it is necessary to give a conspectus of the relevant provisions of the 1997 Act which prohibit the execution of works without having obtained an approval of the E.I.A. report from P.E.P.A. and the provisions that provide consequences for failure to show compliance with the said requirements.

RELEVANT PROVISIONS OF 1997 ACT and REGULATIONS MADE THEREUNDER:-

38. The 1997 Act was enacted with the avowed purpose of protection, conservation, rehabilitation, and improvement of the environment, prevention and control of pollution, promotion of sustainable development, and for matters connected therewith and incidental thereto. "Environmental Impact Assessment" is defined in Section 2(xi) of the said Act to mean an environmental study comprising collection of data, prediction of qualitative and quantitative impacts, comparison of alternatives, evaluation of preventive, mitigatory and compensatory measures, formulation of environmental management and training plans and monitoring arrangements, and framing of recommendations and such other components as may be prescribed.

39. Where a project is likely to cause an adverse environmental effect, Section 12(1) of the 1997 Act prevents the proponent of the

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project from commencing construction or operation unless he has filed with P.E.P.A. an initial environmental examination and has obtained its approval. For the purposes of clarity, Section 12(1) is reproduced herein below:-

> ***"12. Initial environmental examination and environmental impact assessment.—(1) No proponent of a project shall commence construction or operation unless he has filed with the Federal Agency an initial environmental examination or, where the project is likely to cause an adverse environmental effect an environmental impact assessment, and has obtained from the Federal Agency approval in respect thereof."***

40. Section 17(1) of the 1997 Act provides *inter alia* that whoever contravenes or fails to comply with the provisions of Section 12 or any order issued thereunder shall be punishable with fine which may extend to Rs.1 million and in case of a continuing contravention or failure, with an additional fine which may extend to Rs.100,000/- for every day during which such contravention or failure continues.

41. Section 19 of the 1997 Act captioned "Offences by Government Agencies, local authorities or local councils" provides that where any contravention of the 1997 Act has been committed by any Government Agency, Local Authority or Local Council, and it is proved that such contravention has been committed with the consent or connivance of, or is attributable to any negligence on the part of the Head or any other officer of the Government Agency, Local Authority or Local Council, such Head or other officer shall be deemed guilty of such contravention along with the Government Agency, Local Authority, or Local Council and shall be liable to be proceeded against and punished accordingly.

42. Section 20 of the 1997 Act provides for the establishment of Environmental Tribunals whereas the manner in which such Tribunals are to exercise jurisdiction is provided for in Section 21. Section 21(1) provides that an Environmental Tribunal shall exercise such powers and perform such functions as are, or may be, conferred upon or assigned to it by or under the said Act or

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the Rules or the Regulations made thereunder. Section 21(2) provides that all contravention punishable under Section 17(1) shall be exclusively triable by an Environmental Tribunal. Section 21(3) provides that an Environmental Tribunal shall not take cognizance of any offence triable under Section 21(2) except on a complaint in writing by (a) P.E.P.A. or any Government agency or local council; and (b) any aggrieved person who has given notice of not less than thirty days to P.E.P.A. or the Provincial Agency concerned of the alleged contravention and of his intention to make a complaint to the Environmental Tribunal.

43. In exercise of the powers conferred by Section 33 of the 1997 Act, P.E.P.A., with the approval of the Federal Government, made the 2000 Regulations. Regulation 4 of the 2000 Regulations provides that a proponent of a project falling in any category listed in Schedule-II shall file an E.I.A. with P.E.P.A. and the provisions of Section 12 of the 1997 Act shall apply to such project. Entry No.2 in paragraph D of Schedule-II to the 2000 Regulations is *"Federal or Provincial highways or major roads (except maintenance, rebuilding or reconstruction of existing roads) with total cost of Rs.50 million and above."*

PROCESS FOR APPROVAL OF E.I.A. UNDER SECTION 12 OF THE 1997 ACT FOR THE B.K.B. ROAD:-

44. C.D.A., being cognizant that the project for the construction of the B.K.B Road was likely to cause an adverse environmental effect, and also being well aware of the requirements of Section 12 of the 1997 Act read with Regulation 4 of the 2000 Regulations, applied on 05.09.2022 to P.E.P.A. for the approval of the E.I.A. with respect to the said project. It is an admitted position that without waiting for the approval of the E.I.A. by P.E.P.A. in terms of Section 12 of the 1997 Act, C.D.A., being the proponent of the said project, issued an order dated 05.10.2022 for the commencement of the works to the contractor / National Logistics Cell ("N.L.C."). It was not denied by C.D.A. that works had

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commenced and several trees were felled prior to the approval of the E.I.A.

45. Apparently, the Prime Minister had inaugurated the construction of the B.K.B. Road on 30.09.2022, but as mentioned above the construction work had begun well before this. The ad interim injunction dated 18.10.2022 issued by this Court was only with respect to the construction activity undertaken within the boundary of Q.A.U. It is an admitted position that C.D.A. and its contractor continued with construction on the B.K.B. Road *albeit* outside the boundary of Q.A.U. All this was being done prior to the approval of the E.I.A. Had this Court not issued an injunction, C.D.A. and its contractor would have continued with the construction work within the boundary of Q.A.U. I say this because the learned counsel for C.D.A. resisted the issuance of the injunction and once issued had strived to have it vacated.

46. It may well have been the desire of the Prime Minister for the construction of the B.K.B. Road to have been completed at the earliest but it was the obligation of the officials serving in C.D.A. and N.L.C., all of whom are public functionaries or in the service of Pakistan, to have made it known to him that obtaining the approval of the E.I.A. in terms of Section 12(1) of the 1997 Act was mandatory and that the commencement of the construction work prior to an approval of the E.I.A. by P.E.P.A. was an illegality.

47. Section 12(1) of the 1997 Act is worded in negative and prohibitory terms. It opens with the words *"no proponent of a project shall commence construction or operation."* The strong language in which Section 12(1) is worded is indicative of legislative command that construction work shall not be carried out on a project which is likely to cause an adverse environmental effect prior to the approval of the E.I.A. When statutory conditions are couched in negative terms they are almost invariably held to be mandatory. Negative words compel an imperative construction. The whole aim and object of the legislature would be plainly defeated if the command to do the thing in the particular

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manner is not obeyed. Whenever the intent of a statute is mandatory, it is clothed with a negative command. Section 12 of the 1997 Act couched in negative terms is a mandatory provision and an act, as in this case in disobedience of the same, cannot be countenanced. In holding so, reliance is placed on the following case law:-

(i) In the case of Atta Muhammad Qureshi Vs. Settlement Commissioner (PLD 1971 SC 61), the Supreme Court held as follows:-

> ***"It is not possible to lay down a general rule of universal application in this behalf, but the one which is suggested be reported authorities in this connection is the affirmative or negative character of the language in which the provision is couched. If it is negative, that is to say, if the statute enacts that certain action shall be taken in a certain manner and in no other manner, it has been held that the requirements are absolute and that neglect to attend them will invalidate the whole procedure. If, on the other hand, the language is affirmative, it may be considered as a directory provision."***

(ii) In the case of Chaudhry Shujat Hussain Vs. The State (1995 SCMR 1249), it was held as follows:-

> ***"8. ... It is well-settled principle of interpretation of statute that where any provision couched in negative language requires an act to be done in a particular manner then it should be done in the manner as required by the statute otherwise such act will be illegal."***

(iii) In the case of Saadat Khiyali Vs. City Coordination Officer (PLD 2005 Lahore 190), it was held as follows:-

> ***"10. A provision of law expressed in the negative terms is generally to be considered as mandatory unless the intention of the legislature appears to the contrary."***

(iv) This Hon'ble Court has also dilated upon the interpretation of a provision couched in negative / prohibitory language, in the case of National Institutional Facilitation Technologies (Pvt.) Limited Versus Federal Board of Revenue and others (PLD 2020 Islamabad 378), in the following terms:-

> ***"78. The use of the negative words in Rule 31(1) of the P.P.R. viz "no bidder shall be allowed to alter or modify his bid after the bids have been opened" plainly make the requirements of the said Rule imperative. It is a settled***

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> ***principle of interpretation that when a statute is couched in negative language, it is all the more mandatory and peremptory. Reference in this regard may be made to the law laid down in the cases of Shujat Hussain Vs. The State (1995 SCMR 1249), Allied Bank of Pakistan Vs. Khalid Farooq (1991 SCMR 599), Mukhtar Hussain Shah Vs. Wasim Sajjad (PLD 1986 SC 178), Atta Muhammad Qureshi Vs. Settlement Commissioner (PLD 1971 SC 61), Muhammad Hanif Vs. Karachi Building Control Authority (2007 CLC 315), Muhammad Khalid Vs. K.A.S.B. Bank Ltd. (2007 CLD 232), Tariq Irshad Vs. The State (PLD 2006 Karachi 25), Haji Sheikh Noor Din Vs. Muhammad Intizar (2006 PLC 606), Saadat Khiyali Vs. City Coordination Officer (PLD 2005 Lahore 190), and Inder Lal Vs. The State (1996 MLD 464).”***

48. It is, however, no longer *res integra* that the requirement in Section 12(1) of the 1997 Act to obtain an approval of an E.I.A. from P.E.P.A. is mandatory. In the case of Imrana Tiwana Vs. Lahore Development Authority (PLD 2015 Lahore 522), a petition in the nature of *pro bono publico* was filed before the Hon'ble Lahore High Court calling in question the execution of the Signal Free Corridor Project from Qartaba Roundabout to Liberty Market Roundabout. Paragraph 38 of the said report shows that the proponent of the said project had commenced construction work without obtaining the approval of the E.I.A. In the said case, interim relief regarding the execution of the works was granted by the Hon'ble High Court for the reason that works had been commenced prior to the approval of the E.I.A. After referring to Section 12 of the Punjab Environmental Protection Act, 1997, which unambiguously states that a project cannot commence without an approval of the E.I.A., the Hon’ble High Court held *inter alia* that the Environmental Protection Agency had failed to take action against the proponent of the project for unlawfully allowing the construction to continue without obtaining the approval of the E.I.A. Additionally, in the case of Muhammad Shahid Vs. Punjab Environmental Tribunal (PLD 2018 Lahore 356), the Hon'ble Lahore High Court observed that the requirement in Section 12 of the Punjab Environmental Protection Act, 1997, which is in *pari materia* to Section 12 of the 1997 Act, being mandatory in nature, cannot be avoided.

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49. It would not be out of place to refer to the judgment by the Environmental Tribunal Punjab in the case of Sumaira Awan Vs. Government of Pakistan (2008 CLD 1185), where the proponent of the Mall-Canal Crossing Underpass had commenced construction without an approval of the E.I.A. by the Provincial Environmental Protection Agency. The Environmental Tribunal Punjab held *inter alia* that the requirements of Section 12 of the 1997 Act were obligatory in nature and that the proponent of the project and the contractor could not be absolved from liability by executing the project without approval of the E.I.A. Furthermore, it was held as follows:-

> ***"22. With regard to objection raised by respondents No.4 and 5 (the contractor) pertaining to his alleged no liability for obtaining NOC under section 12 PEPA, 1997, it is observed that no one can absolve on his own from the liability of executing an unlawful work/project on the plea that the contract awarding Agency was primarily obliged to comply with the provisions of law. Every executant of an unlawful work is considered equally responsible for the penalty as a co-offender as the original proponent of that unlawful work is considered as an offender. An unlawful work to be accomplished by third party cannot be considered lawful for him either on the basis of absence of knowledge about law or any legal flaw in the assigned work to him by his master/contract assignee authority."***

50. Politicians are not expected to be well-versed with the niceties of law. This places a corresponding obligation on civil servants / public functionaries to make the requirements of law well known to them. This is more so when compliance with a direction issued by a Prime Minister would entail violation of the law. For instance in the case at hand, was it not obligatory on the officials in C.D.A. as well as the contractor, both being public sector organizations manned by officials in the service of Pakistan, to have explicitly informed the Prime Minister that his direction to complete the B.K.B. Road within a certain time span was not possible as an E.I.A. approval had not been obtained from P.E.P.A.? Silence on the part of the officials in C.D.A. and the contractor is nothing but pure dereliction of duty. Reference in this regard may be made to the following case laws:-

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(i) In the case of Zahid Akhtar Vs. Government of Punjab (PLD 1995 SC 530), it was held as follows:-

> ***"We need not stress here that a tamed and subservient bureaucracy can neither be helpful to Government nor it is expected to inspire public confidence in the administration. Good governance is largely dependent on an upright, honest and strong bureaucracy. Therefore, mere submission to the will of superior is not a commendable trait in a bureaucrat. Elected representatives placed as Incharge of administrative departments of Government are not expected to carry with them a deep insight in the complexities of administration. The duty of a bureaucrat, therefore, is to apprise these elected representatives the nicety of administration and provide them correct guidance in discharge of their functions in accordance with the law. Succumbing to each and every order of direction of such elected functionaries without bringing to their notice, the legal infirmities in such orders/directions may sometimes amount to an act of indiscretion on the part of bureaucrats which may not be justifiable on the plane of hierarchical discipline. A Government servant is expected to comply only those orders/directions of his superior which are legal and within his competence. Compliance of an illegal or an incompetent direction/order can neither be justified on the plea that it came from a superior authority nor it could be defended on the ground that its non-compliance would have exposed the concerned Government servant to the risk of disciplinary action."***

(ii) In the case of Province of Punjab Vs. Muhammad Afzal (2004 SCMR 49), it was held as follows:-

> ***"The bureaucracy should be courageous enough to disobey illegal orders irrespective of the fact who is who including politicians/MNAs/MPAs having no authority to pass such order or give such arbitrary directions so that no illegal appointment could be made in oblivion of law and under political influence or for any other extraneous considerations."***

(iii) In the case of Muhammad Akhtar Shirani Vs. Punjab Text Book Board (2004 SCMR 1077), it was held as follows:-

> ***"7. We have noted with pain that departmental authorities responsible to run its affairs do submit to whims and wishes of their superiors and never feel hesitation in implementing even an illegal order, knowing well that it has no legal sanction and if such order is implemented it is bound to give rise to a number of complications in the future. This Court time and again has emphasized that the departmental functionaries are only obliged to carry out lawful orders oil their superiors and if they are being pressurized to implement an illegal order they should have put on record their dissenting note and if such practice is***

followed chances of issuing/passing illegal orders shall be minimized."

(iv) In the case reported as PLD 2005 SC 873 (Reference No.2 of 2005 by the President of Pakistan), a nine-member bench of the Hon'ble Supreme Court held that *"a Government functionary is bound to obey and carry out only lawful orders and acts and is not bound to become a party to the acts, which are not in accordance with law."*

(v) In the case of Secretary, Education, N.-W.F.P Vs. Mustamir Khan (2005 SCMR 17), it was held that a public functionary cannot be punished merely for the reason that he had refused to act illegally rather his moral courage should be appreciated.

(vi) In the case of Muhammad Akram Vs. Member, Board of Revenue (2007 SCMR 289), it was held that *"[i]t is the duty and obligation of the public functionaries to act in accordance with the law in view of Article 4 of the Constitution."*

(vii) In Human Rights Cases No.4668 of 2006, 1111 of 2017 and 15283-G of 2010 (PLD 2010 SC 759), the Hon'ble Supreme Court emphasized that *"departmental functionaries are only obliged to carry out lawful orders of their superiors and if they are being pressurized to implement an illegal order, they should have put on record their dissenting note."*

(viii) Furthermore, the Hon'ble Supreme Court of Pakistan in the case of Government of Pakistan Vs. Farheen Rashid (2011 SCMR 1) has also held as follows:-

> *"It is the duty and obligation of the public functionaries to act within the four corners of the mandate of the Constitution and Law. Even the Chief Executive of the Country is not above the Constitution and is bound to obey the command of the Constitution as envisaged under Article 5(2) of the Constitution and law laid down by the Court in various pronouncements."*

(ix) The remarks of the Hon'ble Supreme Court of Pakistan in the case of Watan Party Vs. Federation of Pakistan (PLD 2011 SC 997) are also instructive:-

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> ***"At this juncture, reference to Article 5 of the Constitution is relevant and appropriate, which commands that loyalty to State is the basic duty of every citizen and obedience to the Constitution and law is the inviolable obligation of every citizen wherever he may be, and of every other person for the time being within Pakistan. Thus, the Executive/public functionaries are bound to enforce the Constitution while protecting the Fundamental Rights of the citizens without any fear or favour or compromise for subjective purpose."***

Law to the said effect is also laid down in the cases of Zahid Akhtar Vs. Government of Punjab (PLD 1995 SC 530), Yaqoob Shah Vs. XEN PESCO (PLD 2002 SC 667), Ramesh M. Udeshi Vs. The State (2005 SCMR 648), and Ghulam Sakina Vs. Member Board of Revenue (PLD 2004 Karachi 391).

51. The execution of works prior to the approval of an E.I.A. exposed C.D.A. to the imposition of a penalty under Section 17(1) of the 1997 Act. P.E.P.A. issued a notice dated 20.10.2022 to C.D.A. calling upon the latter to show cause as to why an administrative penalty in the amount of Rs.1 million *"and for each day the contravention continues"* should not be imposed on C.D.A. under Section 17(7) of the 1997 Act for contravening Section 12 of the said Act. In the said notice, it is also mentioned that if C.D.A. pays the administrative penalty, it will not be charged with an offence under the 1997 Act. The issuance of the said show cause notice implies that C.D.A. had commenced the construction works prior to its formal inauguration by the Prime Minister on 30.09.2022. The effect of the interim order issued by this Court on 18.10.2022 was that construction work only within the boundary of Q.A.U. was stopped. But it is an admitted position that the construction work continued unabated despite the receipt by C.D.A. of the said show cause notice. Hence, this was *"a case of a continuing contravention or failure"* for which P.E.P.A. was obliged to impose *"an additional fine which [could] extend to Rs.100,000/- for every day during which such contravention or failure continued."*

52. A penalty to the tune of Rs.1 million has been imposed by P.E.P.A. on C.D.A. through order dated 15.11.2022 for having

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commenced construction without the E.I.A. having been approved in terms of Section 12(1) of the 1997 Act. Now P.E.P.A., while imposing the said penalty, decided not to impose an additional fine of Rs.1,00,000/- for every day during which the contravention or failure (i.e. carrying out construction works prior to the approval of the E.I.A.) continued after the issuance of the show cause notice. The said order dated 15.11.2022 is silent as to the reasons why the additional fine was not imposed. Even during the hearing no plausible reason was put forth by P.E.P.A. for not imposing a penalty of Rs.100,000/- on C.D.A. for every day that it contravened Section 12(1) of the 1997 Act. Had C.D.A. stopped the construction work immediately on receipt of the show cause notice, the imposition of the administrative penalty to the tune of Rs.1 million would have been plausible. In the face of the continued defiance by C.D.A. of the requirements of Section 12 of the 1997 Act, I am of the view that P.E.P.A. failed to exercise the jurisdiction vested in it by issuing order dated 15.11.2022 whereby it confined itself to imposing a fine of only Rs.1 million on C.D.A. This omission on the part of P.E.P.A., to me, casts a doubt on its ability to regulate or admonish statutory bodies that violate the provisions of the 1997 Act.

53. The total project cost of the B.K.B. Road is Rs.6,515 million. The imposition of a penalty for a paltry sum of Rs.10,00,000/- is an impetus for proponents of mega projects to violate with impunity the mandatory requirement in Section 12(1) of the 1997 Act as they would know that the toothless regulator would let them off by requiring them to pay a meager amount.

54. P.E.P.A. not only opted not to make C.D.A. and/or the contractor liable for the additional fine envisaged by Section 17(1) of the 1997 Act but also chose not to submit a complaint in writing to the Environmental Tribunal under Section 21(3) of the said Act. At this stage, it is appropriate to mention that in the case of Lahore Development Authority Vs. Imrana Tiwana (2015 SCMR 1739), it was held *inter alia* that an Environmental Protection

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Agency must act fairly and free from governmental interference and must also record prudent reasons for both granting or refusing an E.I.A. It was also held that the duty to record reasons was mandatory and where no reasons are recorded, the Court would be justified in concluding that no good reasons exist and would render the administrative or regulatory order void.

55. Since the Environmental Tribunal cannot take cognizance of any offence except on a complaint in writing by P.E.P.A. or any Government Agency or Local Council or any aggrieved person, the inaction on the part of P.E.P.A. to submit a complaint to the Environmental Tribunal against C.D.A. and/or the contractor for contravening the requirements of Section 12(1) not just deserves condemnation in the strongest terms but would also negate the contention made on behalf of C.D.A. that this Court cannot take cognizance of such contravention due to the alternative remedy provided by Section 21. The abdication of powers by P.E.P.A. by not submitting a complaint against the delinquent officials of C.D.A. and/or the contractor to the Environmental Tribunal cannot operate as a fetter on the Constitutional jurisdiction of this Court in taking notice of such contravention. Given the omission on the part of P.E.P.A. to submit a complaint under Section 21(3) of the 1997 Act to the Environmental Tribunal with respect to the contravention by C.D.A. of the requirements of Section 12(1) of the said Act, the contention of the learned counsel for C.D.A. that this Court ought not to delve into such contravention as there was an alternative forum provided by law to deal with such contraventions, is rendered devoid of force.

56. The E.I.A.'s report submitted by C.D.A. on 05.09.2022 was approved by P.E.P.A. on 24.11.2022. The conditions on which the said approval is granted do not specifically refer to the project in question. These are standardized conditions and it appears that P.E.P.A. is issuing approvals to different projects on the same conditions. I say so because P.E.P.A. had issued an undated approval of the E.I.A. for the *"Construction of 4 Lane Flyover at*

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Bhara Kahu N-75 (3.5 Km), Islamabad" **on similar conditions on which the E.I.A. was issued for the B.K.B. Road. The approval of the E.I.A. is, in my view, totally devoid of reasons. In issuing the approval, P.E.P.A. appears to have been oblivious of the dictum in the case of Imrana Tiwana Vs. Lahore Development Authority (PLD 2015 Lahore 522) wherein the Hon'ble Lahore High Court enunciated the manner in which an Environmental Protection Agency is to accord approval to an E.I.A. In this regard, paragraph 46 of the said case is reproduced herein below:-**

> ***46. The decision of the EPA must be communicated to the proponent in the form prescribed in Schedule VI of the Regulations. This does not mean that the EPA is relieved from passing a speaking order after considering all the material as described in Regulation 11(4). EPA is bound to pass a speaking order and the reasons must be clearly specified in item No. 5(a) of the said Schedule. These reasons shall also be retained in the EIA register under section 12(7) of the Act. Anything short of a speaking order offends Articles 4 and 10A of the Constitution.***

57. Section 19 of the 1997 Act makes the head or any other officer of a government agency, local authority or local council to be considered guilty of a contravention of a provision of the said Act committed by such government agency, local authority or local council. In the case at hand, it is an admitted position that C.D.A., being the proponent of the B.K.B. Road and its contractor, fall within the meaning of *"Government Agency"* as defined in Section 2(xvii) of the 1997 Act. The execution of the works and the felling of the trees prior to the approval of the E.I.A. is not disputed. Such construction and the felling of trees prior to the approval of an E.I.A. is a clear contravention of the mandatory requirements of Section 12 of the 1997 Act exposing the officers responsible for such contravention to be proceeded against and punished in terms of Section 19 of the said Act. P.E.P.A. chose to ignore the mandate of Section 19 while imposing a penalty of Rs.10,00,000/- on C.D.A. for contravening the requirements of Section 12(1). In the case of Zeenat Salim Vs. Pakistan Naval Farms (PLD 2022 Islamabad 138), the Sailing Club in Rawal Lake at Islamabad had been constructed by the Pakistan Navy without

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having obtained an approval of an E.I.A. by P.E.P.A. This Court held that for the violation of Section 12 of the 1997 Act, the Chief of the Naval Staff had exposed himself to criminal proceedings under Section 19 of the said Act.

58. The commencement of the construction work by C.D.A. and/or its contractor prior to the approval of the E.I.A. was grossly illegal and also a culpable offence under the 1997 Act. The learned counsel for C.D.A. did not think much about C.D.A. and/or its contractor commencing works without obtaining an approval of the E.I.A. and thereby contravening the requirements of Section 12 of the 1997 Act and took the position that in terms of Section 17(6) of the 1997 Act, the offence committed by C.D.A. was compoundable. For the purposes of clarity, sub-sections (6), (7) and (8) of Section 17 of the 1997 Act are reproduced herein below:-

> ***"(6) The Director-General of the Federal Agency or of a Provincial Agency or an officer generally or specially authorized by him in this behalf may, on the application of the accused compound an offence under this Act with the permission of the Environmental Tribunal or Environmental Magistrate in accordance with such procedure as may be prescribed.***
>
> ***(7) Where the Director-General of the Federal Agency or of a Provincial Agency is of the opinion that a person has contravened any provision of this Act, he may, subject to the rules, by notice in writing to that person require him to pay to the Federal Agency or, as the case may be, Provincial Agency an administrative penalty in the amount set out in the notice for each day the contravention continues; and a person who pays an administrative penalty for a contravention shall not be charged under this Act with an offence in respect of such contravention.***
>
> ***(8) The provisions of sub-sections (6) and (7) shall not apply to a person who has been previously convicted of offence or who has compounded an offence under this Act or who has paid an administrative penalty for a contravention of any provision of this Act."***

59. To begin with, the said contention made on behalf of C.D.A. smacks of bigotry and highhandedness. It is unfortunate for a statutory body to downplay the contravention of a mandatory provision of the 1997 Act by asserting that the contravention was compoundable. Indeed, Section 17(6) empowers the Director

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General, P.E.P.A. or an officer authorized by him to compound an offence under the said Act with the permission of the Environmental Tribunal or Environmental Magistrate, but such power can only be exercised on an application of the accused for compounding the offence. There is nothing on the record to show that C.D.A. had applied to the Director General, P.E.P.A. for compounding the contravention of the requirements of Section 12(1) of the 1997 Act. Where the Director General, P.E.P.A. forms an opinion that a person had contravened any provision of the 1997 Act, Section 17(7) empowers the Director General, P.E.P.A. to require that person to pay an administrative penalty in the amount set out in the notice *"for each day the contravention continues."* A person who pays the administrative penalty for a contravention is insulated from being charged with an offence in respect of the contravention. In the instant case, the undue favour extended by P.E.P.A. to C.D.A. was that it omitted to set an amount in its order dated 15.11.2022 for each day that C.D.A. contravened Section 12(1) of the 1997 Act.

60. The Provincial Assembly of Punjab has, through the Punjab Environmental Protection (Amendment) Act, 2012, amended Section 17 by raising the maximum limit of the fine from Rs.1 million to Rs.5 million. The Provincial Assemblies of Khyber Pakhtunkhwa and Sindh, through legislation in 2014, have also enhanced the said limit to Rs.5 million. *Alas* in Islamabad, the maximum fine that can be imposed under Section 17 continues to be Rs.1 million. It is essential for the quantum of a fine to be a deterrent for the wrongdoers and therefore it has to be in the amount which is commensurate to the economic realities of the present day. The rupee has lost its value several times over from the date when the 1997 Act was enacted. An amendment in Section 17 of the said Act is therefore imperative. For this purpose, I deem it appropriate to direct for the matter to be placed before the Law and Justice Division to consider proposing necessary amendments in Section 17 to the Federal Legislature.

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61. This Court cannot ascribe to itself the role of P.E.P.A. by referring the matter regarding the contravention by C.D.A. of Section 12 of the 1997 Act to the Environmental Tribunal. However, Section 2(2) of the Establishment of the Office of Wafaqi Mohtasib Order, 1983 (“the 1983 Order”) defines *“maladministration”* to include a decision, process, recommendation, act of omission or commission which is contrary to law, rules or regulations or is a departure from established practice or procedure, unless it is *bonafide* and for valid reasons. The continuation of the construction activity by C.D.A. and / or the contractor without having obtained an approval of the E.I.A. is a clear violation of the law i.e., Section 12 of the 1997 Act. Since the construction activity continued despite the issuance of show cause notice dated 20.10.2022 by P.E.P.A., the continuation of such activity cannot be termed as *bonafide*. P.E.P.A. had adequately put C.D.A. to notice that the continuation of the construction activity was a contravention of Section 12 of the 1997 Act.

62. Now Section 9 of the 1983 Order empowers the *Wafaqi Mohtasib* (Ombudsman) to undertake any investigation into any allegation of maladministration on the part of any Agency or any of its officers or employees on a motion of the High Court made during the course of any proceedings before it. *“Agency”* as defined in Section 2(1) of the 1983 Order includes a statutory body like C.D.A. It would be most unjust if this Court were to shut its eyes to the brazen violation by C.D.A. of the mandatory requirements of Section 12 of the 1997 Act. Given the fact that from the date of the issuance of show cause notice dated 20.10.2022 until the approval of the E.I.A. by P.E.P.A., C.D.A. continued with the construction activity and thereby contravened the mandatory requirements of Section 12 of the 1997 Act, this Court is referring the maladministration committed by the officials of C.D.A. to the *Wafaqi Mohtasib* for investigation and proceedings

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in accordance with the law. The Office is directed to transmit a copy of this judgment to the *Wafaqi Mohtasib* (Ombudsman).

WHETHER THIS COURT OUGHT TO DIRECT C.D.A. TO ACCEPT Q.A.U.'s DEMANDS FOR ALLOWING CONSTRUCTION OF THE B.K.B.ROAD ON ITS LAND:-

63. The minutes of the Q.A.U. Syndicate's meeting dated 12.10.2022 show that the Syndicate had resolved to conditionally approve the B.K.B. Road on Q.A.U.'s land. Final approval was to be given after taking into consideration the recommendations of the joint working group constituted by Q.A.U.'s Syndicate. Subsequently the Syndicate, in its meeting dated 21.10.2022, by majority resolved to accord approval for the construction of the B.K.B. Road through Q.A.U.'s land if C.D.A. fulfilled the "assurances" listed in "Schedule-A" hereto. I have gone through the list of the demands made by Q.A.U., none of which demonstrate a principled stand by Q.A.U. to oppose the construction of the road on its land. For instance, Q.A.U. wanted C.D.A. to extend its lease for a period of 33 years free of charge and have encroachments on its land removed. Another demand was that C.D.A. should allow Q.A.U. to use a certain portion of its land for mixed use such as the construction of Community Centre, Petrol Pump, Residential Complex, Education City, etc. Learned counsel for Q.A.U. took an unequivocal position that if C.D.A. were to give an assurance of accepting Q.A.U.'s demands listed in the minutes of Q.A.U.'s Syndicate's meeting dated 21.10.2022, Q.A.U. would not object to the construction of the B.K.B. Road on its land. Q.A.U. was inclined on a *quid pro quo* with C.D.A. rather than opposing the construction of the said road on its land as a matter of principle.

64. C.D.A., being a creature of a statute, its powers and functions are circumscribed by the 1960 Ordinance and the rules and regulations made thereunder. Indeed, it is C.D.A.'s statutory obligation to remove all encroachments on the land allotted to Q.A.U. and to consider Q.A.U.'s application for extension of lease

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strictly in accordance with the law. Q.A.U.'s demand for the construction of further buildings on the land allotted to it can also be only in accordance with the applicable building regulations. Q.A.U.'s demand for the allotment of 225 *kanals* free from all encroachments and encumbrances towards the eastern boundary of Q.A.U. as compensation for Q.A.U.'s land which is to come under the B.K.B. Road has already been accepted by C.D.A. It is not for this Court to determine the adequacy of the compensation. For Q.A.U. to insist upon C.D.A. to agree to those demands which are not within its jurisdictional domain is unreasonable. It goes without saying that the construction of the B.K.B. Road shall be carried out in a manner that free and uninterrupted access of the faculty, students and staff to Q.A.U. and the process of imparting education is not impeded or interrupted in any manner.

WHETHER THE ALIGNMENT OF THE B.K.B.ROAD IS IN THE NATIONAL PARK:-

65. Much stress was laid by the learned counsel for the petitioners that the B.K.B. Road has been constructed through the National Park and rigorous construction activity cannot be permitted to be carried out in such area in violation of the provisions of the 1979 Ordinance.

66. Learned counsel for the petitioners in writ petition No.3916/2022 had asserted that the construction of the B.K.B. Road was not lawful as it was being carried out in the National Park by violating the Master Plan of Islamabad. He brought on record the master plan documents to show that instead of the Margalla Road joining the Murree Road at Village *Malpur*, a kink in the road was made causing it to go through the land owned by Q.A.U. It was not denied that the construction of the B.K.B. Road was in the public interest yet the petitioners did not come with any alternative suggestion to address the woes of commuters on Murree Road. In other words, the petitioners' stance was that the Margalla Road should run along with the boundary of Q.A.U. and

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join Murree Road even though this would exacerbate the volume of traffic going through village *Bhara Kahu*.

67. Paragraph 957 of the Master Plan for the Metropolitan Area provides *inter alia* that a National University is to be built within the National Park area. The map of the Master Plan of Islamabad originally issued by C.D.A. was brought on record through an application (C.M.No.4497/2022) which shows the National Park to be to the south of the present Srinagar Highway and Murree Road. It is not disputed that at some point in time in 1960, the location of the National University was changed to the north of Murree Road. The documents on the record do not enable me to definitely hold that the present location of Q.A.U. is in the National Park but even if it were to be so, paragraph 961 of the Master Plan for the Metropolitan Area permits the construction of roads in the National Park. Additionally, Section 21(3) of the 1979 Ordinance also permits the construction of access roads in the National Park.

WHETHER THIS COURT SHOULD ISSUE A WRIT TO UNDO THE CONSTRUCITON CARRIED OUT THUS FAR:-

68. The present scenario is that even though the construction activity that had been carried out on the B.K.B. Road up to 24.11.2022 (when P.E.P.A. approved the E.I.A.) was in violation of Section 12 of the 1997 Act, the report submitted by the Deputy Director, Roads Division-II, C.D.A. shows that the construction work was started on 11.10.2022 and out of the project cost of Rs.1653.277 million, the expenditure incurred so far was Rs.1,653.277 million. The payment that was in the process of being made to the contractor for work done was Rs.1,645 million leaving a balance of Rs.3,216.723 million. A total manpower of 1,017 managers, engineers, staff, and labour are deployed at the site and 32% of the works have been completed. It is well settled that the exercise of jurisdiction under Article 199 of the Constitution is purely discretionary. Seldom can a petitioner ask for it as of right. Writs are not issued as a matter of course. While deciding a writ petition, this Court can see which way justice lies.

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This Court is not obliged or bound to interfere in writ jurisdiction in every case where the order of the authorities may be unlawful. In equitable jurisdiction, it is the duty of the Court to preserve public good. This Court, in its discretionary jurisdiction, would only exercise judicial discretion in favour of or against the authorities according to the facts and circumstances of each case. In the instant case, an order to further restrain C.D.A. from proceeding with the construction work or to undo the construction work carried out prior to the approval of the E.I.A. would result in injustice to the society. In the instant matter, the petitioners do not take the position that the construction of the B.K.B. Road is not for a public purpose. Given the progress of the works on a project which is in the public interest, this Court is not inclined to issue a writ. In holding so, reliance is placed on the following case law:-

(i) In suo moto case No.25/2009 (In the matter of cutting of trees for canal widening project, Lahore) (2011 SCMR 1743), the Hon'ble Supreme Court observed that the green belt along both sides of the canal in Lahore was a public trust resource and could not be converted into private or any other use other than a public purpose. Furthermore, it was held that the widening of the road along the canal was a public purpose.

(ii) In the case of Lahore Conservation Society Vs. Chief Minister of Punjab (PLD 2011 Lahore 344), public interest litigants had called in question the construction of *Kalma Chowk* Flyover Project at Lahore on the ground that certain rules and regulations had been violated in obtaining approvals and that the construction work would cause damage to plants and trees in the vicinity. The petition was dismissed by the Hon'ble Lahore High Court by holding as follows:-

> ***Now the question is when a project has been launched for the welfare of the public can it be halted on the basis that some of its aspects would cause certain damage to the public at large. There is no doubt that for construction of such a huge Flyover, cutting of trees on both sides and***

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demolishing of certain infrastructure already available on the site is sine qua non. However, it is equally true that while undertaking said exercise the unhealthy impact of such work can be minimized by adopting precautionary and safety measures. Not only in this country but all over the world at the time of construction of a road etc. certain discomforts are to be faced by the inhabitants. Further, there is no denying the fact that by cutting of the trees and plants, the beauty of the site is bound to go dim, however, the same can be reinvigorated by planting new trees etc. after completion of the project the present view of recently completed Shalamar Flyover and Underpass can be quoted as precedent. For better future, one has to lose something in the present. If the public at large would suffer some inconvenience during completion of the said project, the same would also be a blessing for them in future as they would get rid of undue traffic blockage and wastage of precious time while standing on traffic signals.

(iii) In the case of Muhammad Khan Vs. Federation of Pakistan (2012 CLC 101), the petitioner had challenged the change in the design of the *Larkana Mohenjodaro* Road to the extent it passed through land acquired from the petitioner. The Hon'ble High Court of Sindh dismissed the petition by holding as follows:-

"It goes without axiom that the concern of an individual cannot be paramount to the interest of general public and therefore, the interest of general public should reign over the interest of an individual. We are therefore of the view, for the most part, keeping in mind the fact that the Land has been acquired for public purpose and that germane Notification under section 4 of the Act has been issued when still the petition was pending to which admittedly objections before now had been preferred by the petitioner, which shall take their own course, this petition has lost its efficacy on this ground."

(iv) In the case of Muhammad Jahangir Vs. Government of Punjab (2000 MLD 1196), it was held that if a project or a scheme is actuated by laudable consideration of public welfare, and if it leads to general convenience of the public, and if it engenders commercial activity to the benefit of the public at large, and if its impact on the environment is considered to be positive then the project must have precedence over individual rights.

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69. Section 12 of the 1960 Ordinance provides *inter alia* that C.D.A. may, pursuant to a master plan and master-programme, call upon a local body or agency operating in the specified area to prepare, in consultation with C.D.A., schemes in respect of matters ordinarily dealt with by such local body or agency and thereupon the local body or agency shall be responsible for the preparation of the schemes within a reasonable time. The schemes that C.D.A. may call upon a local body or agency to prepare may relate to transportation, communications, highways, roads, and streets. Section 12 deals with the schemes that C.D.A. may call upon a local body or agency to prepare whereas Section 13 deals with the preparation of schemes by C.D.A. itself. Section 13 provides that C.D.A. may, pursuant to the master-programme, itself prepare, when it considers it desirable to do so in the public interest, schemes for specified area relating to matters enumerated in Section 12(2) which includes transportation, communications, highways, roads, and streets.

70. Learned counsel for Q.A.U. had submitted that if the master-programme provided for the construction of the B.K.B. Road, C.D.A. should have required a local body or agency to prepare a scheme for such road and that C.D.A. could have itself prepared a scheme for the road only if it considered it to be desirable to do so in the public interest. He further submitted that the decision of C.D.A. Board dated 17.06.2022 does not show that it had been considered to be desirable and in the public interest for C.D.A. itself to have prepared a scheme for the construction of the B.K.B. Road. The decision dated 17.06.2022 taken by C.D.A. Board shows that after due deliberations, C.D.A. had approved the present alignment of the Margalla Road Phase-I and Phase-II. It cannot be asserted that the decision to construct the B.K.B. Road was not in the public interest. Learned counsel for Q.A.U. could not identify the local body or agency which according to him should have prepared the scheme for the said road. Now all schemes under Sections 12 and 13 of the 1960 Ordinance are

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required to be prepared in such manner and form as the Federal Government may specify. This is explicitly provided in Section 14 of the 1960 Ordinance. Although there is nothing on the record to show that the scheme for the B.K.B. Road had been prepared in the manner and form specified by the Federal Government, but this Court vide order dated 04.11.2022 had referred the matter to the Federal Government to play the role of mediator in resolving the dispute between C.D.A. and Q.A.U. The Committee constituted by the Prime Minister after hearing the petitioners in writ petition No.3916/2022, as well as the representatives of the Q.A.U. and C.D.A. submitted their recommendations to the Cabinet, including the recommendation for the B.K.B Road project to be executed as it was a project of public importance. The Committee had also recommended that C.D.A. should be directed to fulfill its obligations / commitments to Q.A.U. listed in the minutes of Q.A.U.'s Syndicate's meeting dated 21.10.2022. The said Committee's report and recommendations were placed before the Cabinet in its meeting dated 30.11.2022. The Cabinet approved the recommendations of the said Committee. Given the details of the B.K.B. Road project contained in the Committee's report, the Cabinet would be deemed to be cognizant of all the implications and ramifications of the said project. Now that the Cabinet has approved the said project *albeit* after the commencement of construction, this Court cannot interfere with the same.

71. The documents brought on record by C.D.A. show that during the 1960s land had been acquired by C.D.A. for the construction of this road. Through application (C.M. No.4087/2022), C.D.A. brought on record documents showing that on 19.06.1962, 462 *acres* and 06 *kanals* of land had been acquired in Village *Malpur* for the construction of "Murree Highway." Documents showing the acquisition of land by C.D.A. in Villages *Shah Pur* and *Kot Hathyal* for the same purpose had also been brought on record. C.D.A. has assured this Court that the construction of the B.K.B. Road is to be carried out on land

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already acquired by C.D.A. and in this process, no building whether inside or outside the boundary of Q.A.U. is to be demolished. The counsel for the petitioners in writ petitions No.3916/2022, 4077/2022, 4371/2022 and 4543/2022 did not controvert the assertion made by the learned counsel for C.D.A. that not a single building of Q.A.U. would be demolished or damaged due to the construction of the B.K.B. Road. Therefore, I am of the view that the right to education of the students at Q.A.U. is not being restricted or curtailed by the construction of the said road. Bearing all this in mind, this Court will not exercise its discretionary jurisdiction in stopping the construction activity.

72. As mentioned above, a public hearing pursuant to Regulation 10 of the 2000 Regulations was conducted by P.E.P.A. on 18.11.2022. This hearing was also attended by the petitioners in writ petition No.4371/2022 who are members of the teaching faculty in Q.A.U. They asserted that the public hearing conducted on 18.11.2022 was unlawful. Now, after the public hearing, P.E.P.A. issued an approval of the E.I.A. report submitted by C.D.A. on the B.K.B. Road. Against the said approval, the petitioners can prefer an appeal under Section 22(1) of the 1997 Act to the Environmental Tribunal. Due to the availability of the alternative remedy provided by law the said writ petition is dismissed as not maintainable.

73. The above are the reasons for the short order dated 12.12.2022 whereby all the petitions were dismissed. These reasons are being issued on Saturday 31.12.2022. No costs.

74. Before parting with this judgment, I must mark my appreciation of the research and assistance rendered by Umar Farooq, Research Officer / Deputy Registrar and Barrister Muhammad Usama Rauf, Law Clerk assigned to my Court.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Qamar Khan*

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SCHEDULE-A

"1) The land allocated for Bharakahu Bypass will not be transferred to CDA and shall remain the property QAU hence the right of way shall also remain with QAU.

2) The letter of allotment for the promised 225 Kanals of land (free from all encroachments and encumbrances) towards eastern boundary will be issued within 24 hours of the confirmation of the minutes. The leveling and fencing of the said land will be done within three days.

3) The bypass shall pass under the current Shahdra road and a service road of 24 feet wide on either side of the bypass shall be built and a mini underpass will be given to QAU directly from Murree Road.

4) Construction of a new road stretching 600 meters linking main Murree Road to QAU, which will provide a dedicated main approach/entrance to QAU. The same road will be connected to the third avenue. The construction of the said road will be completed before the completion of the bypass project.

5) CDA Board will consider a dedicated "Green Line Route" from Bharakahu to QAU to Bari Imam and to the Secretariat Metro Station subject to feasibility. Additionally, a shuttle service will run from Bharakahu's main terminal to QAU. The students of QAU will be entitled for 50% discount on the "Green Line" and Metro.

6) On Ground Demarcation will be conducted in pursuance of the decision of the hon'ble Islamabad High Court and the shortfall of 152 Acres will be handed over to QAU within three months.

7) CDA will remove all encroachments on QAU's land subject to detailed information and maps shared by QAU, after the demarcation of the complete land.

8) Land lease of QAU for 33 years will be extended without any charges from the relevant forum.

9) MOFEPT will facilitate the waiver of the outstanding amount against the land lease, Annual Ground Rent and Property Tax of QAU from the federal cabinet.

10) One hostel for students will be constructed through the Higher Education Commission Pakistan's Umbrella Project.

11) Ministry of Education and Professional Training will facilitate the fund allocation for construction of academic block at QAU through PSDP.

12) The service road of QAU from the main barrier till botanical garden will be widened and recarpeted.

13) QAU will be allowed to use a certain portion of its land for mixed use i.e., (Community Centre, Petrol Pump, Residential Complex, Education City etc). QAU will also be allowed to undertake the projects of Public Private Partnership.

14) QAU will submit its revised master plan and it will be approved by CDA within due course of time.

15) Environmental impact of the bypass project such as noise will be mitigated with all necessary measures.

16) One against 10 trees will be planted by CDA for a tree cut for construction purpose.

17) The Ministry of Education and Professional Training will facilitate resolution of financial needs of QAU. In this regards a bail out of 500 million for the university in consultation with HEC

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will be worked upon. Considering the fact that QAU is the only university in the top 500 universities of the world, a summary will be moved to the Hon'ble Prime Minister of Pakistan for a package of 5 billion for pension/endowment needs of the university.

18) MOFEPT will continue to monitor and implement all the decisions taken during Joint Working Group and approved by the Syndicate.

19) The Joint Working Group will remain intact and continue its working till all outstanding issues between QAU and CDA are resolved.

20) A tripartite agreement on a legal paper with all necessary formalities will be signed between QAU, CDA and MOFEPT so that all parties remain legally bind to all the commitments and assurances documented in the minutes of the Syndicate."

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