

Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

W. P. No.676/2017

Shahzada Sikandar ul Mulk & 4 others

Versus

The Capital Development Authority & 4 others

- Petitioners by : Dr. Muhammad Aslam Khakhi, Advocate.
Syed Asghar Hussain Sabwari, Advocate.
Dr Babar Awan, Advocate.
Mr Sajjar Abbas Hamdani, Advocate.
Mr Qausain Faisal Mufti, Advocate.
Mr Tajammal Hussain Lathi, Advocate.
Malik Zafar Husain, Advocate.
Mr Ishtiaq Ahmed Raja, Advocate.
Ms Kalsoom Rafique, Advocate.
Ms Yasmin Haider, Advocate.
- Respondents by : Mr Fiaz Ahmed Anjum Jandran, Advocate.
Mr Babar Sattar, Advocate.
Mr Sultan Mazhar Sher, Advocate.
Mr Waqar Hassan Janjua, Advocate.
Malik Qamar Afzal, Advocate.
Mr Khurram Mehmood Qureshi, Advocate.
Mr Muhammad Anwar Mughal, Advocate.
Ch. Hafeez Ullah Yaqoob, Advocate.
Mr Muhammad Waqas Malik, Advocate.
Mr Amjad Zaman, Advocate.
Mr Muhammad Khalid Zaman, Advocate.
Mr Mujeeb ur Rehman Kiani, Advocate.
Barrister Jehangir Khan Jadoon, Advocate.
Malik Mazhar Javed, Advocate.
Raja Inam Amin Minhas, Advocate.
Ch. Waqas Zamir, Advocate.
Fazal ur Rehman, Advocate.
Ms Zaitoon Hafeez, Advocate.

Ms Zainab Janjua, Advocate.
Barrister Amna Abbas, Advocate.
Ms Ayesha Ahmed, Advocate.

Mr Kashif Ali Malik, Advocate.
Mr Amir Latif Gill, Advocate.

Mr Tariq Mehmood Jehangiri, Advocate General,
Islamabad Capital Territory.
Mr Awais Haider Malik, State Counsel.

Mr Asad Mehboob Kiyani, Member (P&D), Mr Zafar Iqbal, Director (Master Plan), Mr Faraz Malik, Director (HS), Sh. Ijaz, Director (Urban Planning), Mr Arshad Chohan, Director (Rural Planning), for Capital Development Authority.
Mr Mehrban Ali, & Arbab Ali, Zoologists on behalf of Secretary, M/o Climate Change.

Date of Hearing : 19-04-2018.

ATHAR MINALLAH, J.- Through this consolidated judgment we shall decide the petitions listed in Annexure-A attached hereto. The petitions have been divided into two categories i.e. Category-A and Category-B. The petitions in Category-A relate to the area known as "Bani Gala" while Category-B petitions are in respect of Sector E-11.

2. The facts, in brief, are that in all the petitions the petitioners have challenged the construction of various types of buildings. In the petition listed in Category-A, the petitioner has asserted that the respondent has initiated the construction of a high rise building without obtaining approval from the Capital Development Authority (*hereinafter referred to as the 'Authority'*). The area where this construction is intended to be carried out is

near Kurang Road, Bani Gala, Islamabad. In the petitions listed in Category-B, the respondents have either constructed or are in the process of starting the construction of various types of buildings in Sector E-11. The proposed buildings are mostly of a commercial nature. In one of these petitions the petitioner has challenged the refusal on the part of the Authority to enforce the regulations made under the Capital Development Authority Ordinance, 1960 (*hereinafter referred to as the 'Ordinance of 1960'*) relating to a housing scheme established and managed by a juridical person registered under the Cooperative Societies Act 1925. Both these areas i.e. Bani Gala and Sector E-11 have not been acquired under the Ordinance of 1960. The records relating to the land where the impugned construction has been made or intended to be initiated are maintained by the Revenue officials of the Islamabad Capital Territory and not by the Authority. In some cases the documents relating to the sale and purchase of land have been registered. For Sector E-11 the Authority had approved a policy regarding regulating the construction of buildings in the year 2007 (*hereinafter referred to as the 'Policy of 2007'*). It is the case of the petitioners that high rise buildings and other buildings of a commercial nature cannot be constructed within the area known as "Bani Gala" or in the unacquired areas of Sector E-11. Moreover, the Authority, pursuant to a decision taken by the Federal Cabinet in the year 2004, has restrained the Islamabad Electric Supply Company (*hereinafter referred to as the 'IESCO'*) and Sui Northern

Gas Pipelines Limited (*hereinafter referred to as the 'SNGPL'*) from extending the facility of giving utility connections to owners and occupiers of such buildings which have been constructed in violation of the Ordinance of 1960 and the regulations/rules made there under. In a nutshell, the petitioners have raised the issue regarding the regulation of the construction of buildings outside the acquired lands falling within the area known as the "Islamabad Capital Territory".

3. The learned counsels for the petitioners have been heard at length. Their arguments may be summarized as: the provisions of the Ordinance of 1960 are explicit and they extend to the un acquired areas; the Ordinance of 1960 and the regulations made there under are applicable and enforced not only in areas which have been acquired but extend to the un acquired land falling within the "Islamabad Capital Territory" i.e. the "Specified Area"; through section 22 of the Ordinance of 1960 the legislature has declared that the entire land falling within the "Specified Area" is liable to be acquired at any time; the consequence of section 22 of the Ordinance of 1960, if not more, then at least is the same as that of the issuance of a notice under section 4 of the Land Acquisition Act 1984; the Ordinance of 1960 and the regulations made there under have in fact given statutory backing to the "Master Plan" which was prepared and approved in 1960; the provisions of the Ordinance of 1960 and the regulations made there under are

mandatory in nature and thus binding; not only the petitioners but every citizen of Pakistan has a stake in the Capital of Pakistan and, therefore, enforcement of the statutory provisions and the regulations made there under is a matter of great public importance; various laws enforced in and extended to the Islamabad Capital Territory have been flagrantly violated; refusal on the part of the Authority to fulfill its statutory obligations has exposed the general public to irreparable loss; the environmentally sensitive areas such as Rawal Lake and Kurang river are being used for construction; most of those who have constructed villas and palatial houses are privileged persons; the unregulated construction, besides being a serious violation of the laws enforced within the Islamabad Capital Territory, is also inevitably causing several environmental degradation; the learned counsels have placed reliance on case law which will be discussed later.

4. The learned counsels for the respondents on the other hand have argued that; Sector E-11 was declared as exempt from being acquired, pursuant to a decision of the Federal Cabinet taken in its meeting held on 17-06-1968; the unacquired lands are owned by private persons and, therefore, the provisions of the Ordinance of 1960 are not applicable or extended thereto; the petitioners have no locus standi to raise any objection regarding the construction of buildings on private land owned by the respondents; restricting construction on private land is in violation of fundamental rights

guaranteed under the Constitution, particularly Articles 9, 23 and 24. The jurisdiction and power to regulate the construction of buildings in rural areas vests in the officials under the jurisdiction of the Chief Commissioner, Islamabad Capital Territory or the local bodies established under the Islamabad Capital Territory Local Government Act 2015 (*hereinafter referred to as the 'Local Government Act, 2015'*); the petitioners, without availing remedies under the relevant law, inter alia, under section 133 of the Code of Criminal Procedure, 1898 have directly approached this Court; the ban on giving utility connections is illegal and without lawful authority; under the Martial Law Regulation No.82 (*hereinafter referred to as the 'MLR-82'*) a distinction has been made between areas falling within and outside the Capital Site; in case of areas which are outside the Capital Site, the Commission established under MLR-82 has exclusive jurisdiction and power to regulate construction and no such mandate has been given to the Authority; MLR-82 was not repealed nor was it in any manner amended through the promulgation of the Ordinance of 1960; there is no reference to building control under section 15 of the Ordinance of 1960; by virtue of the insertion of section 15-A under the Ordinance of 1960 some of the municipal functions were entrusted to the Authority; the lands owned by private persons in the rural areas, particularly lands which have not been acquired by the Authority, were regulated under the Capital Territory Local Government Ordinance, 1979 (*hereinafter referred to as the 'Local*

Government Ordinance of 1979); section 47, read with entries 32 and 33 of the First Schedule of the Local Government Ordinance of 1979, explicitly entrusted the power and jurisdiction to regulate the erection and re-erection of buildings in the respective Union Councils; section 15-A of the Ordinance of 1960 and the Ordinance of 1979 were repealed vide section 132 of the Local Government Act 2015; after the repeal of section 15-A and the Local Government Ordinance of 1979, power to regulate the construction of buildings is no more vested in the Authority; even if it is admitted that the Authority is empowered to regulate buildings within the Islamabad Capital Territory still the latter does not have the statutory mandate to regulate land use in Sector E-11; the land upon which the respondents intend to undertake construction work are privately owned and, therefore, outside the scope of jurisdiction of the Authority; reliance has been placed on the case of '*Suo Motu Case No. 13 of 2009*' [PLD 2011 SC 619]; no scheme has been prepared by the Authority under the Ordinance of 1960 for development in Sector E-11; reliance has been placed on '*Suo Motu Case No.10/2007*' [PLD 2008 SC 673], '*Abdul Qadeer Khan and others v. Chairman, Capital Development Authority*' [1999 YLR 247]; the Zoning Control Policy of 2007 explicitly authorizes the Authority to regulate construction in sector E-11; the said policy is *ultra vires* the Ordinance of 1960; reliance has been placed on '*Khawaja Ahmed Hassan v. Government of the Punjab and others*' [2005 SCMR 186], '*Mian Zia ud Din v. Punjab Local Government*

and others' [1985 SCMR 365]; the issuance of a policy for regulating construction in Sector E-11 establishes that even the Authority acknowledges that it was not vested with power and jurisdiction in this regard; the regulatory negligence on the part of the Authority does not entitle the latter to hold the developers responsible; the conduct of the Authority and steps taken by the respondents pursuant thereto falls within the ambit of the expression 'officially induced error'; reliance has been placed on the judgment rendered by the Supreme Court of Canada titled 1995 ; ingredients of 'officially induced error' are fulfilled; regularization policy is required to be introduced because a large number of dwellings and other buildings have been constructed; the competent authority to grant permission in rural areas is the respective Union Council; approvals in several cases were obtained by the respondents from the respective Union Councils; the respondent who is constructing a high rise building in Bani Gala was granted permission by the Union Council Bhara Kahu and its building plans have been duly approved; the Authority is not vested with jurisdiction or power to regulate construction or grant approvals/No Objection Certificates in areas which have not yet been acquired; the registration of a title document entitles the owner of the land to exercise his or her right to construct a building thereon; the Authority had issued No Objection Certificates to builders of high rise buildings in Sector E-11 and, therefore, the same cannot be refused in the case of other similarly placed persons; the requisite

taxes and other fees were duly deposited by some of the respondents who are constructing high rise buildings in Sector E-11; the petitions are frivolous and have been filed merely to blackmail the respondents for ulterior motives; in Sector E-11 more than 70 high rise buildings have been constructed and at no stage did the Authority restrain them from doing so and, therefore, a right has accrued in favour of the respondents; the petitioners have not approached this Court with clean hands since they have also constructed their respective buildings without obtaining permission / No Objection Certificates from the Authority.

5. The learned Advocate General, Islamabad Capital Territory has also placed on record written comments wherein the historical background of establishing the office of the Chief Commissioner, Islamabad Capital Territory has been discussed in detail. Reliance has also been placed on '*Suo Motu Case No. 13 of 2009*' [PLD 2011 SC 619] in support of the contention that the Ordinance of 1960 and the regulations made there under are enforced in Sector E-11.

6. The learned counsel for the Authority has argued that; the Ordinance of 1960 and the Regulations made there under are enforced in the entire area comprising the Islamabad Capital Territory; the Authority is exclusively vested with power and jurisdiction to regulate all matters in respect of the planning and

development of the Islamabad Capital Territory within the framework of a regional development plan; no construction can be made in any area within the Islamabad Capital Territory without obtaining permission from the Authority; the Islamabad Wildlife (Protection, Preservation, Conservation and Management) Ordinance 1979 (*hereinafter referred to as the 'Wildlife Ordinance of 1979'*) prescribes the protection and prohibits construction within the area notified as a National Park; the Islamabad (Preservation of Landscape) Ordinance 1966 (*hereinafter referred to as the 'Ordinance of 1966'*) further prohibits and regulates activities in the Islamabad Capital Territory; the Islamabad Capital Territory (Zoning) Regulation, 1992 (*hereinafter referred to as the 'Zoning Regulations of 1992'*) has been framed so as to give statutory effect to the Master Plan; Rawal Lake and its surrounding area, including most of the land of Bani Gala, has been included in the National Park vide notification dated 27-04-1980; Rawal Lake and an area of two kilometers from the highest water mark was declared part of the National Park; the Islamabad Residential Sectors Zoning (Building Control) Regulations, 2005 (*hereinafter referred to as the 'Building Control Regulations'*) are also applicable and enforced; the judgment rendered by the Lahore High Court in the case titled '*Abdul Qadeer Khan and others v. Chairman, Capital Development Authority*' [1999 YLR 247] has been misinterpreted; the august Supreme Court in the case titled '*Capital Development Authority through Chairman and others versus Dr.*

Abdul Qadeer Khan and others' [1999 SCMR 2636] affirmed the power vested in the Authority to regulate construction under the MLR-82 and the Ordinance of 1960; the Union Councils were not vested with power or jurisdiction to regulate buildings or construction even in areas falling within their respective jurisdictions; the land of Bani Gala comprises the catchment area around Rawal Lake which has been declared as environmentally sensitive.

7. The learned counsels have been heard and the record perused with their able assistance.

8. The adjudication of the instant petitions essentially involves the interpretation of various statutes and the regulations made there under. In a nutshell, this Court has to answer the fundamental question regarding the authority competent to regulate construction in areas which fall within the Islamabad Capital Territory, particularly in Sector E-11, also known as "Golra Revenue Estate", and the area known as "Bani Gala" which is situated on the banks of the man-made water reservoir known as Rawal Lake. Several questions have emerged out of the arguments presented before us. It is, therefore, inevitable to examine the scheme of the relevant laws which are enforced in the Islamabad Capital Territory so as to adjudicate and answer the questions, most of which are in the nature of first impression. The scope of the Ordinance of 1960,

MLR-84, the Ordinance of 1966, the Wildlife Ordinance of 1979 etc, whether the power and jurisdiction of the Authority extends to lands which have not yet been acquired and if the answer is in the affirmative then whether the illegal construction ought to be regularized and at what cost; what would be the fate of those who intend to undertake construction on lands privately owned because they have not been acquired; what is the scope of powers and jurisdiction of the Authority, the Chief Commissioner and the Union Councils in the context of regulation of construction on unacquired land; the status of the Policy of 2007 viz-a-viz the Ordinance of 1960 and the regulations made there under; the Master Plan and its background and its present legal status; if there has been a systemic violation of the enforced statutes and the Master Plan then who is to be held accountable; are there environmental risks involved in ignoring the unregulated construction and adverse consequences ensuing therefrom, particularly in the face of the looming crisis of "Climate Change" and environmental degradation; are the rights of the respondents to enjoy their properties absolute or there is a larger public interest which needs to be protected; in case we reach a conclusion which would lead to allowing these petitions then what should be the way forward. These are some of the crucial questions which we have to answer in the light of the disputes raised through the instant petitions.

9. In order to discover the legislative intent in promulgating the Ordinance of 1960 and the other enforced statutes it would be essential to examine the historical events which had preceded their enactment. The Islamic Republic of Pakistan came into existence after a long drawn struggle. On the eve of independence the newly formed nation did not have a capital. The first task of the Government was to search for the most suitable place which could be declared as the country's capital. The Government of Pakistan appointed a consultant company namely MRVP to prepare a master plan for the city of Karachi. The master plan was prepared in 1952 but it could not get official approval. The then President of Pakistan constituted a special Commission for identifying a suitable location for the Capital. The Commission held its first meeting in 1959. Nine Sub-Committees were constituted consisting of experts from various fields to make recommendations. In February 1959, the President of Pakistan appointed a renowned architect and city planner having international repute, namely Dr C. A Doxiadis, as Advisor to the special Commission for location of the Capital. A preliminary report was submitted by the Commission, i.e. DOX-PA 88, to the Government. In June 1959 the special Commission for location of the Capital submitted its report, wherein it was recommended that the city of Karachi was not a suitable site for establishing a Capital and that the area around the city of Rawalpindi was more appropriate. Two sites i.e. A & B were proposed. In June 1959, the President of Pakistan publicly

announced his decision regarding the selection of the proposed area-A as the site for the Capital. Dr. C. A Doxiadis was given the task of preparing the next phase. In September 1959, the President of Pakistan and the Cabinet established the Federal Capital Commission. The renowned international firm of town planning, namely M/S Doxiadis Associates, was appointed as consultant to the Federal Capital Commission. The said Commission constituted fourteen sub committees of experts to carry out surveys and investigations for preparing a Master Plan for the selected area-A, which was to be the Capital of Pakistan. The said sub committees submitted several reports after extensive research and deliberations. They carried in depth studies regarding several important aspects which, inter alia, included topographical survey, hydrological and surface water survey, investigations relating to geological, sub soil and ground water, transportation and communications, economic and financial studies etc. On 24.02.1960, the Cabinet gave the new Capital the name of Islamabad. In May 1960, pursuant to the surveys and studies conducted by the fourteen committees, a preliminary master programme and master plan was prepared and designed by the Greek architect Dr C. A Doxodias and his firm. On 24.05.1960, the first Cabinet meeting was held in Islamabad. On 01.06.1960, the Federal Capital Commission was succeeded by the Capital Development Authority. The Authority was established on 01.06.1960 for planning and developing the Capital i.e. Islamabad,

in accordance with the Master Plan and the phased master programme. The President of Pakistan was pleased to promulgate the Ordinance of 1960. Simultaneously, another crucial legislative instrument i.e. the Pakistan Capital Regulation MLR-82, 1960 (hereinafter referred to as the "**MLR-82**") was also enforced.

10. After extensive surveys and studies the sub committees submitted their final reports. Dr. C. A Doxiadis and his consultant firm submitted a final report titled 'Recapitulative Report DOX-PA 88'. This report consists of three parts and an introduction. The three parts are titled "Towards a new Capital", "Towards Islamabad" and "Programme and plan for Islamabad" respectively. This report is the descriptive part of the Master Plan and programme for the development of the Capital. We have had the privilege of going through this historical document and its detail, comprehensiveness and professional excellence has left us in awe. This document in fact explains and gives the details of the Master Plan (hereinafter referred to as the "Master Plan"). This historic and internationally outstanding work of town planning was the outcome of several months of deliberations and extensive surveys conducted and data collected by various sub committees which had been constituted for this purpose. Constantinos Apostolou Doxiadis was honoured with special awards for this masterpiece of town planning i.e. the Master Plan of Islamabad. The vision of the founding planners of the Capital of Islamabad is recorded in page 160 of the Master Plan as follows:-

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

11. The Master Plan prescribes detailed guidelines for a five year and a twenty year plan. The Master Plan is indeed a comprehensive document giving the details for the planning and development of Islamabad as the Capital of Pakistan. The Master Plan, inter alia, caters to the needs of all the different classes i.e. from the highest to the lowest income groups. The Master Plan has divided the entire territory of the 'Specified Areas' of the Federal Capital into five distinct Zones. The Master Plan is protected and has statutory backing in terms of section 11 and the Zoning Regulations, which would be discussed later. The location of the site and preparation of the Master Plan were based on the fundamental principle of creation of the Capital of Pakistan as a city which would be able to develop freely and naturally along a planned and predetermined course. As explained in the detailed report, the descriptive form of the Master Plan, this master piece was based on

the principle of comprehensive planning which included all social, all income groups and all types of functions. The principle was explicitly described as planning a city "where everybody is provided for, where privileged groups do not exist, and where the inhabitants are considered as entitled to equal treatment". It was further emphasized that "If we are to use our resources to serve all citizens and not a small minority, we must also design for economy in every respect". Based on these fundamental principles the Master Plan was prepared in great detail and its description was recorded in written form in several reports, particularly the final report.

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

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

1042. But even before that point is reached, in fact from now on, CDA will be generally responsible for

coordinating all development within the Metropolitan Area.

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

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

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

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

1047.The same is true of all other types of development within the Metropolitan Area and not only

of buildings and construction. For example, change of cultivation, or cultivation of new areas, will also have to be approved by CDA, as likewise will the opening of new roads, even of minor importance, or the creation of new Cantonments.”

13. The above mentioned events and the background which led to the enactment of the Ordinance of 1960 are a relevant guide in understanding the legislative intent. Its main object was to give statutory backing to the Master Plan. It is also important to note that the Master Plan was prepared and approved for an area consisting of 1,400 sq miles on the Potohar Plateau as described in paragraphs 411 and 412 of the descriptive form thereof. The above discussed background would, therefore, facilitate in appreciating the legislative scheme and intent of the Ordinance of 1960, which was notified in the official gazette on 27.06.1960. The preamble describes the object and purpose for establishing the Authority as making all arrangements for the planning and development of Islamabad within the framework of the Regional Development Plan. Sub-section (2) of Section 1 explicitly provides that it extends to the 'Specified Areas'. Section 2 defines various expressions. Agency and Authority are defined in Clauses (a) and (b) while the Board and the Chairman are defined in Clauses (c) and (f) respectively. Clause (i) defines 'land'. Clause (o) defines a 'Scheme' as meaning a planning scheme or a development scheme made under the Ordinance of 1960. The two other important definitions are that of a 'Capital Site'

and 'Specified Areas'. Capital Site is defined as meaning part or parts of the 'Specified Areas' declared to be the site for the Pakistan Capital under Section 3. Likewise, 'Specified Areas' is defined in Clause (2) (p) as meaning the areas specified in the schedule and any other such area or areas which may from time to time be included therein by notification in the official gazette. Section 3 empowers the Federal Government to declare any part or parts of the 'Specified Areas' to be the site for the Capital of Pakistan. The 'Specified Areas' are described in the schedule of the Ordinance of 1960 and is the same as highlighted in the Master Plan i.e covering almost 1,400 sq miles. Chapter II relates to the constitution of the Authority. Chapter III describes the powers and duties of the Authority. Section 11 provides that the Authority shall prepare a master plan and a phased master programme for the development of the Capital Site and a similar plan and programme for the rest of the 'Specified Areas'. All such plans and programmes are required to be submitted to the Federal Government for approval. As already noted, the Master Plan was prepared and approved at the time of the enactment of the Ordinance of 1960. Section 12 empowers the Authority, pursuant to the master plan and the master programme, to call upon any local body or agency operating in the 'Specified Areas' to prepare in consultation with the Authority a Scheme or Schemes in respect of matters dealt with by such local body or agency. The scope of a scheme has been described in clauses (a) to (i) of sub-section (2) of Section 12. Section 13 vests the power and

jurisdiction in the Authority to prepare on its own a Scheme pursuant to the master programme whenever it considers it desirable to do so in the public interest. It is obvious from a plain reading of these provisions that the Scheme prepared has to be within the framework of the Master Plan and a phased master programme. The language of sections 12 and 13 explicitly provide that the Scheme so prepared has to be pursuant to the Master Plan and the master programme. Section 14 describes the manner and form in respect of the preparation of a Scheme. Section 15 enumerates the powers vested in the Authority, which are expansive and, inter alia, explicitly include acquiring any land in the 'Specified Areas' in accordance with the procedure laid down in the Ordinance of 1960. Section 15A was inserted by the Capital Development Authority (Amendment) Act 1966 and vests in the Authority the power to perform municipal functions. Section 19 provides the procedure for amending a Scheme while section 21 describes how it is to be executed. Chapter IV of the Ordinance of 1960 explicitly relates to acquisition of land in the "Specified Areas". Section 22 unambiguously provides that all land within the 'Specified Areas' shall be liable to be acquired at any time and in accordance with the provisions of Chapter IV of the Ordinance of 1960. It is noted that through this statutory provision the entire land comprising the 'Specified Areas' has been declared as being liable to acquisition. It is a declaration made by the legislature and the use of the expression "shall" instead of "may" is significant.

Section 22, being a provision of primary legislation, has a higher status than a declaration made through the issuance of a notice under section 4 of the Acquisition Act. Sections 23 to section 30 explicitly describe the power vested in the Authority and the procedure for acquiring land within the 'Specified Areas'. Section 32 unequivocally declares that immediately on making of the award under Section 28, the land shall vest in the Authority free from all encumbrances and, subject to reasonable notice, it shall enter and take possession thereof. Section 33 vests the power of acquisition of the land within the 'Specified Area' in cases of urgency. Chapter V of the Ordinance of 1960 empowers the Authority to appoint officers and servants and to determine their terms and conditions of service. Chapter VI is in respect of matters relating to Finance and the powers of the Authority with regard thereto. Chapter VII is in respect of penal provisions. Section 46 explicitly provides that whoever contravenes any provision or any rules or regulations made or sanctioned under the Ordinance of 1960 shall, if no other penalty is provided for such contravention, be punishable with imprisonment. Section 49 describes the power of the Authority in respect of the disposal of land which vests in it. Sections 49-C and 49-D provide for the powers of the Authority in relation to the removal of buildings etc erected or used in contravention of the Ordinance of 1960. Sections 50 and 51 empower the competent authority, as the case may be, to make rules and regulations respectively.

14. A plain reading of the above provisions unambiguously shows that the Ordinance of 1960 is a self contained, comprehensive and special statute enacted for establishing the Authority and having the object and purpose of making all arrangements for the planning and development of Islamabad within the framework of a regional development plan. The Master Plan is the foundation or premise over which the scheme of the Ordinance of 1960 is dependent. As already noted, the Master Plan was prepared by an internationally renowned town planner and approved by the Government. The Authority was and continues to be under a statutory obligation to prepare Schemes and thereafter acquire land within the "Specified Areas" as has been held by the august Supreme Court in the case titled "*Capital Development Authority through Chairman and others versus Dr. Abdul Qadeer Khan and others*" [1999 SCMR 2636]. The Ordinance of 1960 explicitly provides for a complete mechanism for acquisition of land within the "Specified Areas" and describes the powers vested in the Authority in this regard. Section 22 is an unambiguous declaration by the legislature that the entire land shall be liable to acquisition at any time. The scheme of the Ordinance of 1960 has left no room or possibility for any other authority to interfere within the "Specified Area" nor can land be acquired otherwise than in the manner provided there under. The powerful legislative declaration made in section 22 of the Ordinance of 1960 has more legal weight than a

notice under section 4 of the Acquisition Act. The legislative intent is to put a statutory charge or encumbrance on every inch of land which falls within the "Specified Area" described in the schedule of the Ordinance of 1960. Before the land is acquired, the declaration in section 22 of the Ordinance of 1960 does not divest the owner of land of his or her right of disposing of the property. However, any such transfer of land within the 'Specified Area' would expose the transferee to the risks involved, particularly that it can be acquired at any time. It is the same risk which is involved in the case of land in respect whereof notice under section 4 of the Acquisition Act has been issued. In this regard reference is made to "*Haq Nawaz Khan and others versus Rab Nawaz and others*" [1992 SCMR 993]. It is explicit from the provisions of the Ordinance of 1960 that the Federal Government and the Authority are intended to be distinct and independent of each other. The role of the Federal Government has been expressly described in section 5 i.e. to guide the Authority on questions of policy through directions and its accountability in the manner prescribed under sections 43 and 48. The appointment of Members, Chairman, Vice Chairman and Financial Adviser are also made by the Federal Government. The supervision or extent of interference by the Federal Government has been circumscribed and can only be exercised in the manner provided under sections 5, 43 and 48 of the Ordinance of 1960. The Authority is independent in its affairs and administration, which exclusively vests in the Board, constituted under section 6. The intent of the legislature to make

the Authority financially independent and autonomous is obvious from Chapter VI of the Ordinance of 1960. The independence and autonomy of the Authority has been guaranteed by the legislature itself, which is evident from the entire scheme of the Ordinance of 1960. The Authority has been established as one of the most important regulators and as an independent professional body for achieving the onerous task of planning and developing the Capital of Pakistan and protecting the Master Plan and the phased master programme conceived by the founding planners. In terms of its regulatory autonomy, it was intended to be one of those authorities which would definitely fall within the category of statutory bodies referred to by the august Supreme Court in the judgment titled '*Muhammad Yasin Vs. Federation of Pakistan through Secretary, Establishment Division*' [PLD 2012 SC 132] and consequently the law and principles enunciated by the apex Court regarding the exercise of discretion by the Federal Government in making appointments to key positions e.g. Members or Chairman of the Board were attracted even in the case of constituting the Board under section 6 of the Ordinance of 1960. The disqualification of a Member originally legislated under section 8 excluded and had made ineligible a civil servant from being appointed as has been held by this Court in the judgment dated 29-12-2017 rendered in WP No. 3481/2016 titled *Farrukh Nawaz Bhatti versus Federal Government through Prime Minister of Pakistan and others*. However, after the said judgment was delivered, provisions of section 8 were amended

through an Ordinance promulgated under Article 89 of the Constitution so as to enable the Federal Government to appoint members of the bureaucracy and civil servants. It is also relevant to point out at this stage that the Board constituted under section 6 is distinct from the officers etc appointed under section 37. The officers etc appointed under section 37 have been referred to as the Establishment and the latter expression does not include the Board. The Board is, therefore, distinct from the Federal Government or the 'Establishment' envisaged under Chapter V of the Ordinance of 1960. The autonomy of the Authority is manifest from the unambiguous language of the Ordinance of 1960 and the entire scheme thereof. The legislative intent is further affirmed by the enactment of MLR-82.

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

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

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

17. The expression 'Islamabad Capital Territory' has been defined in Regulation 2 (13) of the Islamabad Capital Territory (Zoning) Regulation, 1992 (hereinafter referred to as the "**Zoning Regulations of 1992**") as meaning "Islamabad Capital Territory' defined under the Capital Territory Local Government Ordinance, 1979. Section 2 (d) of the latter statute defines 'Capital Territory' as meaning 'Islamabad Capital Territory' referred to in paragraph (b) clause (1) of Article 1 of the Constitution of the Islamic Republic of Pakistan, 1973. The 'Islamabad Capital Territory', therefore, refers to and consists of the entire land described in the Schedule of the Ordinance of 1960 as the "Specified Areas". The Ordinance of 1960 and the regulations and rules made there under are, therefore, enforced and attracted in the entire land consisting of "Specified Areas", whether acquired or un-acquired.

18. The Zoning Regulations of 1992 were framed and duly notified in the exercise of powers conferred under section 51 of the Ordinance of 1960 read with section 11 thereof. The Zoning Regulations of 1992, in fact, are based on giving effect to the Master Plan approved in 1960, which has been discussed above. This delegated legislation is most crucial because it manifests the basic and fundamental features of the Master Plan. Regulation 2 defines various expressions. The expressions "Existing Village", "Forest", "Illegal Construction", "Layout Plan", "Native Resident",

“Structure” and “Zone” are defined in sub-regulations (10), (12), (14), (16), (20), (24) and (27), respectively. It is pertinent to note that “Existing House”, “Existing Village” and “Native Resident” are most important definitions for appreciating the scheme of law enforced in the Islamabad Capital Territory. According to the Master Plan, the Islamabad Capital Territory has been divided into five distinct Zones and the same are described in Regulation 3. Sector E-11 is covered under Zone-1 while the area of Bani Gala falls within Zone-3 and Zone-4. Regulation 4(1)A prescribes the conditions for development of un-acquired land in Zone-I while Regulation 4(1)B for un acquired portion of right-of-way of Khayaban-i-Sir Syed. For the adjudication of the instant petitions Regulation 4(1)A is relevant in the context of Sector E-11. Regulation 4(1)A(i) explicitly provides that land shall be acquired under a phased programme and developed by the Authority in accordance with the land use pattern spelt out in the Master Plan. Moreover, the construction of houses or buildings have been forbidden. Nevertheless, repair of old houses and expansion of existing houses may be allowed by the Authority to the “Native Residents” subject to the condition that the site is located within the main body of the village. Covered area of construction has been restricted to 1000 sq. ft. Sub clause (iv) provides that no private scheme of any kind whatsoever shall be allowed except in sector E-11. Schemes in E-11 were required to be regulated according to the provisions applicable to private schemes in Zone-2.

19. It is obvious, therefore, from a plain reading of the Master Plan read with the Zoning Regulations of 1992 that in the case of Zone 1, where Sector E-11 is situated, except in case of a person falling within the definition of a "Native Resident", no other person can be allowed by the Authority to construct houses or buildings. Even in case of a 'Native Resident" the Authority is empowered to allow only such repairs and expansion of existing houses which were located in the main body of the village and that too not exceeding 1000 sq feet. In case of a private scheme referred to in Regulation 4(A)(iv) the conditions prescribed under Regulation 4(2) are attracted. In a nutshell, no new building or house can be constructed on any land in Zone 1 whether it be a Native Resident defined under Regulation 2(20) or any other person.

20. The conditions relating to Zone-3 are prescribed in sub-regulation (3) of Regulation 4. In this Zone no private residential, farming, orchard, poultry and dairy farming scheme is allowed nor change in land use is permissible except for such projects as may be related to conservation, preservation, forestation and recreation or in accordance with the Margalla Hills National Park Management Plan. Moreover, sale/purchase of land which entails change in land use has been specifically forbidden i.e. agricultural land cannot be sold or purchased for construction of a commercial or residential

building. Clause (d) of sub-regulation (3) of Regulation 4 contemplates that some of the existing rural settlements, being central and important villages, are allowed to stay under a controlled programme. Clause (e) provides that no residential scheme can be floated in this zone, nor construction of houses are allowed. It is, therefore, obvious that there was and continues to be a complete ban on the sale or purchase of land which would involve change in land use and construction of buildings for residential purposes. Sub regulation (4) of Regulation 4 prescribes the conditions for Zone-4 and the same are separately provided under clause (a) and clause (b) respectively. Clause (a) is in respect of acquired area while clause (b) applies to un acquired land. A plain reading of clause (b) in respect of un acquired area shows that the Master Plan acknowledged this entire area to be environmentally sensitive and, therefore, special conditions have been prescribed. This area was to be preserved and only restricted buildings could be constructed which have been described therein. The relevant conditions are reproduced as follows.

(dd) Subject to grant of NOC by the Authority private educational institutions of minimum two and a half acres size may be allowed in the Zone-4, on the following conditions:

(i) That no such project shall be located in "environmentally sensitive areas" as listed below:

- (a) *The water shed area upstream of Kurang river including 2000 Feet reservation of Kurang River (1000 feet on either side from the center of the river), starting from the southern edge of Murree Road up to the southern boundary of Banni Gala Reserve Forest/Hills and of Maira Reserve Forest up to the Islamabad Capital Territory limits in the east.*
- (b) *The negative area falling in this zone as prescribed by the Ministry of Defence.*
- (c) *2000 feet reservation (1000 feet on either side) of river Gumrah Kas.*
- (d) *1000 feet on either side from the centre of River Soan and its tributary Khad Nullah.*
- (e) *All the buildings to be constructed in the zone shall be subject to the Islamabad Building Regulations, 1963, and the Islamabad Residential Sectors Zoning Regulation, 1985.*
- (g) *No private housing scheme shall be permissible. However, repair of old houses and expansion of existing houses may be allowed by the Authority to the native residents subject to the conditions that the site*

is located within the main body of the village as defined in the revenue record. The covered area of such construction shall not exceed 1000 square feet including expansion and such permission shall not in any way impede the right of the Authority to acquire the property whenever needed. All such requests shall be routed through the concerned Union Council.

- (h) No construction of houses and expansion of settlements shall be allowed in the areas adjoining all water bodies lakes and reservoirs. The extent of such areas shall be determined after proper hydrological surveys and will be notified.*

21. It would be pertinent to refer to the judgment of the august Supreme Court in the case of "Suo Motu Case No. 10 of 2007" [PLD 2008 SC 673] wherein some of the provisions relating to Zone 4 were declared as ultra vires. The said judgment is binding on this Court, but with great reverence, it appears that the august Supreme Court had not been properly assisted, nor for reasons best known to the Authority was a review filed by the latter. The matter before the august Supreme Court was regarding increased prices of daily commodities and not the vires of Regulation 4 of the Zoning Regulations of 1992. Pursuant to this judgment the Zoning

Regulations of 1992 to the extent of allowing restricted private housing schemes in Zone 4 were amended and notified vide SRO 1105(I)2014, dated 10-12-2014 and consequently Zone 4 was subdivided into four Zones. There is nothing on record to show that a transparent process had been adopted or that an exercise was undertaken by expert town planners having regard to principles of development and town planning. This amendment, which was made in disregard to the legal framework, inter alia, relating to environmental management essentially had the effect of bringing about major alterations in the Master Plan which has the statutory backing of section 11 of the Ordinance of 1960 besides having serious consequences for environmental concerns. Nonetheless, we feel, with utmost reverence, that the apex Court may consider revisiting the aforementioned judgment.

22. The Islamabad Building Regulations, 1963 (*hereinafter referred to as the 'Building Regulations of 1963'*) extends to the Capital Site. The Capital Site has been defined in section 2(e) of the Ordinance of 1960 as meaning that part of the Specified Areas declared to be the site for the Pakistan Capital under section 3 *ibid.* Sector E-11 as well as the area of Bani Gala falls within the Capital Site. Moreover, as noted above, the Zoning Regulations of 1992 explicitly provides that the Buildings Regulations of 1963 have been made applicable to construction in Zone-4. Regulation 2 defines various expressions. Regulation 3 makes it mandatory for every

person who intends to carry out building work, and if not otherwise barred from building on the land in his possession, to comply with the provisions thereof and the relevant provisions of the Zoning Regulations of 1992. The procedure and conditions for grant of permission have been provided under the relevant regulations of the Building Regulations of 1963. Regulation 13 unambiguously provides for the consequences of failure to comply with Building Regulations and, inter alia, empowers the Authority to remove such building works or alteration or any part thereof at the cost of the owner or a person in possession thereof. Regulation 22 provides that no one shall occupy or permit any other person to occupy any building or to use or permit to be used any part thereof until permission has been granted by the Authority.

23. The next relevant legislation is the Islamabad Residential Sectors Zoning (Building Control) Regulations, 2005 (hereinafter referred to as the '**Building Control Regulations**') which were framed by the Authority in exercise of powers vested under section 51 of the Ordinance of 1960. Regulation 1.1.02 provides that it shall extend to all private and public /land/plots in the Islamabad Capital Territory, except those in the Diplomatic Enclave or specifically excluded. Chapter 2 describes various types of buildings and their permissible use. Regulation 2.2 makes it mandatory for every owner of private land to seek permission before construction of a building or structure or any

addition/alteration thereto. Any construction which has started or is being carried out without approval of the Authority is liable to be removed at the risk and cost of the owner/allottee, occupant and in addition such person will be liable to payment of penalty. The Building Control Regulations empowers the Authority to inspect the constructed buildings. Regulation 3.12.11 renders it as a mandatory obligation of the owner to obtain a completion certificate from the Authority, failing which the building or part thereof can neither be occupied nor put to use.

24. The Ordinance of 1966 has been enacted to preserve the landscape of Islamabad and extends to the entire area falling within the Islamabad Capital Territory. The expression "landscape" has been defined in clause (a) of section 2. Section 3 provides that the Ordinance of 1966 and the rules made there under shall be in addition to and not in derogation of the provisions of the Ordinance of 1960 and the MLR-82. Section 4 provides that no person shall remove, destroy, damage or alter anything, or commit any other act if such removal, destruction, damage, alteration or act affects or is likely to affect a landscape injuriously. Sub section (2) of section 4 makes it mandatory to seek permission from the Authority so as to avoid the consequences mentioned in section 5. Section 5 makes it a criminal offence to contravene the provisions of the Ordinance of 1966 and such a person is liable to be punished with imprisonment for a term which may extend to six months or a fine

upto five thousand rupees. The power to arrest without warrant for contravention of the Ordinance of 1966 has been provided under section 6 *ibid*. In exercise of powers vested under section 15 of the Ordinance of 1966, the Islamabad (Preservation of Landscape) Rules, 1967 have been made and duly notified.

25. The Islamabad Wildlife (Protection, Preservation, Conservation and Management) Ordinance 1979 (hereinafter referred to as the '**Wildlife Ordinance of 1979**') was promulgated to provide for the protection, preservation, conservation and management of wildlife and setting up of a National Park in the Islamabad Capital Territory. The Wildlife Ordinance of 1979 extends to the entire area of the Islamabad Capital Territory. Section 2 defines various expressions. Clause (l) of section 2 defines "National Park" as meaning an area declared as such under section 21. Section 4 provides for the constitution of the Board of Wildlife Management. Section 20 provides for the declaration of a wildlife sanctuary. The Federal Government, in exercise of its powers vested under section 20, has issued Notification No.3(15)/76-Capital Development Authority.III(3), dated 27th April, 1980 (*hereinafter referred to as the '**Wildlife Sanctuary Notification**'*). The said notification is reproduced as follows.-

"No.3(15)/76-Capital Development Authority. III(3), dated 27th April, 1980. In exercise of the

powers conferred by sub-section (1) of section 20 of the Islamabad Wildlife (Protection, Preservation, Conservation and Management Ordinance, 1979) (LXX of 1979), the Federal Government is pleased to declare the following areas of the Islamabad Capital Territory to be the Wildlife sanctuaries namely:

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

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

(3) C.D.A. Nursery at Chak Shahzad."

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

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

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

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

(3) Lands falling in villages Mangial, Malach Dakhli, Phulgran, Mandla, Jhang Bagial, Malpur (Bijran), Rumli, Narias, Padoh Dakhli, Noorpur Shahan, Ratta Hottar, Saidpur, Dhoke Jiwan, Gandiar, Kalinjar and Saniari.

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

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

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

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

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

26. Section 15-A was inserted in the Ordinance of 1960 through an amendment made vide the Capital Development Authority (Amendment) Act, 1966. S.R.O. 805(I)/91, dated 20-08-1991 was issued pursuant to powers vested in the Federal Government under sub section (1) of section 15A. The powers vested in a Municipal Committee under sections 77, 78 and 79 of the Municipal Administration Ordinance, 1960 were also entrusted to the Authority in addition to its inherent powers of regulating construction under the Ordinance of 1960 and the Regulations made there under. The Local Government Ordinance of 1979 was promulgated and notified in the official gazette on 20-08-1979 with the object and purpose to provide for the constitution of local government institutions for the Islamabad Capital Territory and to provide for matters connected therewith. Union Council was defined as meaning a Union Council constituted under the Local Government Ordinance of 1979. Section 47 provided that a Union Council may and if the Federal Government so directs shall perform all or any of the functions specified in the First Schedule. Clauses 32

and 33 of the First Schedule described the functions as regulation of erection and re-erection of buildings in the local areas and regulation of dangerous building structures respectively. The Local Government Act 2015 was enacted and notified on 15-08-2015. The Local Government Ordinance of 1979 and sections 15A of the Ordinance of 1960 were repealed through section 132 of the Local Government Act 2015. The Local Government Act 2015 does not provide for any power relating to regulation of erection or re-erection of buildings. The learned counsels for the respondents have laid great stress regarding powers vested in the respective Union Councils to grant approval in the rural areas of the Islamabad Capital Territory relating to construction of buildings. It is their case that the power to regulate construction exclusively vested in the respective Union Councils under the Local Government Ordinance of 1979. We are afraid that this argument is misconceived. As discussed above, the Master Plan and the master program prepared and approved in 1960 had led to the promulgation of the Ordinance of 1960, MLR 82, the Ordinance of 1966 and the Ordinance of 1979. All these primary legislations are special laws exclusively enacted for the creation and development of a new city, the Capital of Pakistan i.e Islamabad. They exclusively deal with all matters relating to making arrangements for the planning and development of Islamabad and the obvious intention was to give effect to and execute the Master Plan. Moreover, by framing the Zoning Regulations of 1992 the essential features of the Master Plan were

explicitly recognized. The Ordinance of 1960, read with the regulations made there under, are self contained comprehensive special legislations. Moreover, through the insertion of section 15A even municipal powers were vested in the Authority. It is settled law that special law inevitably prevails over a general law. It has been held by the august Supreme Court in the case titled 2017 SCMR 1999 that the provisions of special law overrides the provisions of the general law to the extent of any conflict or inconsistency between the two. Reliance is also placed on the judgment rendered in the case of '*Hafeez Ahmed and others v. Civil Judge, Lahore and others*' [PLD 2012 SC 400]. In case the argument advanced by the learned counsels for the respondents is accepted then it would render the Master Plan, the Ordinance of 1960, the Ordinance of 1966 and the Wildlife Ordinance of 1979 as redundant. This was obviously not the intent of the legislature in enacting the Local Government Ordinance of 1979. In any case, the Ordinance of 1960 read with the Ordinance of 1966 and the Wildlife Ordinance of 1979, being special laws, definitely overrides the provisions of the Local Government Ordinance of 1979. The Union Council, therefore, was not vested with power or jurisdiction to render special laws as redundant and, therefore. any purported approval granted by a Union Council in violation of the Ordinance of 1960, the Ordinance of 1966, the Wildlife Ordinance of 1979 and other subordinate legislation made there under was illegal, without lawful authority and jurisdiction. The aforementioned legal

framework was binding on the Union Councils established under the Local Government Ordinance of 1979.

27. During the course of lengthy arguments advanced by the learned counsels it has emerged that there appears to be confusion regarding the status, jurisdiction and role of the Chief Commissioner in the context of the Ordinance of 1960. It is, therefore, pertinent to briefly discuss the role and powers of the Chief Commissioner. Prior to the dissolution of the West Pakistan Province pursuant to the President's Order No. 1 of 1970, the management and control relating to the Islamabad Capital Territory vested in the Government of Punjab till 1979. The President's Order No. 18 of 1980 titled 'The Islamabad Capital Territory (Administration) Order, 1980 provided that the executive authority of the Federation in respect of the 'Islamabad Capital Territory' shall be exercised by the President either directly or to such extent as he thinks fit through an Administrator to be appointed by him. On the date on which the President's Order No. 18/1980 was promulgated S.R.O. No. 1316(1)/80 dated 31.12.1980 was also issued wherein it was provided that the Administrator shall have, in respect of the 'Islamabad Capital Territory', all the powers and duties conferred or imposed on the Provincial Government under any law for the time being in force in the 'Islamabad Capital Territory'. Through President's Order No. 2 of 1987, a proviso was added to Article 2 of the President's Order No. 18 of 1980, whereby it was provided that

the President may, at any time, by order in writing direct that the executive authority of the Federation in respect of 'Islamabad Capital Territory', in so far as it relates to any matter specified in the order, shall be exercised by such authority, established by or under any law, as may be so specified. The expression 'Administrator' was amended by substituting "Chief Commissioner" vide President's Order No.2 of 1980. The Chief Commissioner, therefore, exercises the authority of the Provincial Government in respect of the 'Islamabad Capital Territory' in the context of powers and duties conferred or imposed on the Provincial Government under any law for the time being in force in the 'Islamabad Capital Territory'. The Chief Commissioner has no power or jurisdiction under the Ordinance of 1960 or in matters relating thereto. However, it is an obligation of the Chief Commissioner as an Executive head to aid and assist the Authority in giving effect to the statutory provisions of the Ordinance of 1960. The argument raised by the learned counsels for the respondents that the Chief Commissioner and not the Authority established under the Ordinance of 1960, is vested with power and jurisdiction in relation to the un-acquired areas of Islamabad Capital Territory is misconceived. As already noted, the Ordinance of 1960 is a special self contained law and it extends to and is enforced in the entire area falling within the Islamabad Capital Territory. Other than aiding and assisting the Authority in enforcing the legislative intent in enacting the Ordinance of 1960, the Chief Commissioner has no role

nor is vested with power or jurisdiction in matters relating to planning and development of the 'Islamabad Capital Territory' as the 'Capital of Pakistan'. Needless to mention that the Chief Commissioner and all functionaries within his jurisdiction owe a fiduciary duty to the people of Pakistan in general and to the residents of the Islamabad Capital Territory to ensure, through the administrative machinery under their control, that the Authority is enabled to implement and give effect to the Ordinance of 1960 and the regulations and rules made there under.

28. Before proceeding further it would be pertinent to discuss another most crucial dimension relating to the dispute agitated before us in these petitions. 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 raises a red flag for the policy makers and every citizen to declare an environmental emergency before the damage becomes irreversible. Availability of clean water and keeping the environment free from pollution has a direct nexus with the fundamental right guaranteed to every person under Article 9 of the Constitution. Life is inextricably dependent on safeguarding atmospheric green house. Environmental degradation and adverse impacts of climatic changes inevitably causes loss of lives, diseases 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.

29. One of us (*Mr Justice Athar Minallah, J.*) in petitions which had raised the question of serious and irreversible environmental damage in the Islamabad Capital Territory, had constituted a Commission chaired by one of the most eminent environmental experts in order to examine 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. Initially, besides the latter, the members of the Commission included the then Cabinet Secretary, namely, Babar Yaqoob Fateh Mohammad who was later succeeded by Raja Hassan Abbas, Mr Mehmood Akhtar Cheema, Country Representative of the International Union for Conservation of Nature (IUCN) Pakistan, Mr Hamad Naqi Khan, D.G./CEO World Wide Fund for Nature Pakistan and Ms Saima Amin Khawaja. Later the Commission co-opted the Chairman, Capital Development Authority, Director General Pakistan Environmental Protection Agency, Chief Commissioner Islamabad Capital Territory, Dr M. A. Baig, Chairman Environmental Sciences NUST, Mr Arif Ahmed Khan, Secretary Climate Change, public representatives i.e members of the Majlis-e-Shoora (Parliament), members of civil society organizations and representatives of media, academic and scientific entities. The Secretary Ministry of Climate Change, namely, Arif Ahmed Khan was appointed as Vice Chairman of the Commission. The Commission constituted six committees and held several meetings. The Members of the Commission visited various sites and held public hearings after inviting the general public through the issuance of public notices. After extensive deliberations the Commission submitted its detailed report, dated 19-10-2015. 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. Moreover, the Chair and the Members had selflessly and voluntarily devoted their time and expertise in the public interest. It is indeed the first public document of this nature which is forthright and open in acknowledging the failures which have led to serious environmental degradation. The composition of the Commission and the unanimous recommendations adopted by all the Members, including representatives of the Federal Government and the Capital Development Authority, is of great significance. This report further reaffirms the need for adopting the preventive principle. The report of the Commission, dated 19th October, 2015 was made part of the instant petition vide order dated 16-04-2018 and the learned counsels were asked to assist this Court. No one raised any objection, rather its findings and recommendations were endorsed. As the report, dated 19-10-2015, is directly related to the lis raised in the petitions at hand, therefore, we make the same an integral part of this judgment. The report and recommendations have been attached as 'Annexure-B' hereto. 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, the non functioning of Environmental Tribunals and Environmental Magistrates, and a lack of an adequate and well trained capacity for environmental governance". Regarding clean drinking water the Commission has, 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."

30. The report of the Commission is 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 has become inevitable because the right to life guaranteed under Article 9 is being flagrantly violated, not only that of the petitioners but of every resident of the Islamabad Capital Territory and citizen of Pakistan. 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 allowing illegal construction and unregulated urban sprawl in violation of the Master Plan and the laws discussed above is surely a death knell for the efforts to protect the environment and guard against the devastating effects of climate change. It would be apt to refer to the case of "*Ali Sarwar and others versus Syed Shujat Ali Naqvi and others*" [PLD 2011 SC 519] wherein the august Supreme Court has held.-

"The CDA, which is a statutory body, established by law, is mandated not only to make arrangements for the planning and development of the Capital City, but is to be authorized/compelled to perform functions of a Municipal Committee, inter alia, to promote interests of different sections of the society including taxpayers. Any transaction, which is not transparent, and goes against the interests of the general public constitutes violation of Article 9 of the Constitution, which guarantees right to life to all persons."

31. The sanctity of the functions entrusted to the Authority have been highlighted by the august Supreme Court in various judgments. It has been held in "*Muhammad Ikhtlaq Memon versus*

Capital Development Authority through Chairman” [2015 SCMR 294] that the Authority, as a statutory organization, has to act in the public interest. In *“Suo Motu Case No. 13 of 2009” [PLD 2011 SC 619]* the apex Court has observed in the context of the importance of the statutory duties and obligations of the Authority that Islamabad, being the Capital of the country, every inch of its land belongs to the entire public of Pakistan. In *“Human Rights Cases No. 4668 of 2006, 1111 of 2007 and 15283-G of 2010” [PLD 2010 SC 759]* the august Supreme Court has declared and held that the provisions of the Ordinance of 1960 and the rules and regulations made there under are of mandatory nature and binding, so much so that a liberal construction thereof is not permissible. Reference may also be made to the judgments rendered in *“Capital Development Authority through Chairman and others versus Dr Abdul Qadeer Khan and others” [1999 SCMR 2636]*, *“Saad Mazhar and others versus CDA, etc” [2005 SCMR 1973]* and *“Moulvi Iqbal Haider versus CDA, etc” [PLD 2006 SC 394]*. As a sequel, no construction can be justified or allowed to exist if it is in violation of the scheme of the Ordinance of 1960 and the subordinate legislation made there under by way of rules or regulations.

32. The above discussion makes it obvious that after the creation of Pakistan the site for establishing its Capital was carefully selected. It was decided that the Capital of Pakistan, Islamabad, was to be created and developed as a planned city. After extensive

deliberations and carrying out detailed surveys, studies and research, an internationally renowned town planner had prepared the Master Plan which received recognition globally. The said Master Plan had also described the manner in which it was to be executed. In order to implement the Master Plan, the Authority was established by promulgating the Ordinance of 1960. This was a self contained and comprehensive special law and section 11 thereof gave statutory backing to the Master Plan. The legislative intent was exclusively based on the premise of executing the Master Plan. The Authority was intended to be an independent statutory entity, so much so that no civil servant or bureaucrat was eligible to be appointed as its Member or Chairman. It was intended that it would function as a professional regulatory authority. The entire land falling within the Islamabad Capital Territory has been declared as being liable to be acquired. The mechanism and machinery for acquiring the entire land falling in the Islamabad Capital Territory has been specifically provided in the Ordinance of 1960. A charge or encumbrance has been created on every inch of the 1,400 square miles of land in the Islamabad Capital Territory through primary legislation, which has far greater legal effect than a notification issued under section 4 of the Land Acquisition Act 1894. As a special law, the provisions of the Ordinance of 1960 have an overriding effect on the general law, including the Land Acquisition Act 1894. According to the Master Plan, new construction was banned in the entire area of the Islamabad Capital Territory and even the Native

Residents were required to obtain permission for carrying out repairs or extending the existing buildings. In order to achieve this purpose MLR-82 was promulgated. The Zoning Regulations of 1992 were framed so as to protect and safeguard the Master Plan. Moreover, the Master Plan explicitly took care of preserving the landscape and to protect the environmentally sensitive areas, particularly the area around the Kurang river and the Rawal Lake. It was, therefore, necessary to achieve this object and purpose to enact the Ordinance of 1966 and the Wildlife Ordinance of 1979.

33. The prohibitions, restrictions and conditions relating to construction in each Zone have been explicitly provided under the Zoning Regulations of 1992. Sector E-11 falls in Zone-1. As noted above, construction of houses or buildings has been completely forbidden in Zone-1 except that the Native Residents may seek permission for repair and expansion of old and existing houses. A private scheme is allowed but the same is subject to regulations relating to a private scheme and as prescribed under Regulation 4(2) of the Zoning Regulations of 1992. Furthermore, even in case of an approved private scheme, regulation of construction of buildings and houses exclusively vests in the Authority attracting the Buildings Regulations, 1963.

34. There is no force in the argument advanced by the learned counsels that the area comprising Sector E-11 has been

declared as exempt and, therefore, the provisions of the Ordinance of 1960 are not attracted. This area is referred to as "Golra Revenue Estate". Pursuant to recommendations made by a committee, which was headed by one of the Advisors to then President of Pakistan, the Cabinet had decided to delay acquisition proceedings of land falling in the "Golra Revenue Estate". However, the Master Plan, the Ordinance of 1960, particularly section 22 thereof, and the regulations made there under have not been amended till date so as to exempt the area falling within the "Golra Revenue Estate". It is settled law that in case of conflict the statutory provisions would override an Executive order or a policy even if it has been approved by the Cabinet. Nonetheless, unregulated construction in "Golra Revenue Estate" or Sector E-11, in violation of the Ordinance of 1960 read with the Zoning Regulations of 1992, is illegal. We are afraid that the framing of the Policy of 2007 by the Authority to regulate construction in Sector E-11 is ultra vires the Master Plan and the mandatory provisions of the Ordinance of 1960 read with the Zoning Regulations of 1992. The Authority, as trustee of the Master Plan, is not vested with power or jurisdiction to arbitrarily alter or amend the Master Plan which is indeed an instrument of national importance. Likewise, the Chief Commissioner, Islamabad Capital Territory or the Union Councils were also not vested with the power or jurisdiction to override the provisions of the Ordinance of 1960 and the regulations made there under by purportedly regulating construction in violation thereof. We, therefore, declare

that construction made or intended to be made in sector E-11 i.e. the "Golra Revenue Estate" in violation of the Master Plan, the Ordinance of 1960 and the Regulations made there under is illegal and liable to be removed as mandated under section 49-C of the Ordinance of 1960 and the relevant regulations.

35. We now advert to the land falling in the area known as "Bani Gala". This poses a far more serious challenge because of the consequences of illegal urban sprawl. It has serious consequences for every resident of District Rawalpindi and Islamabad which inevitably effects their fundamental rights guaranteed under Article 9 of the Constitution. While preparing the Master Plan, most of this area was rightly identified and acknowledged as an environmentally sensitive zone. The experts engaged for conceiving and preparing the Master Plan had taken extraordinary care because it comprises a catchment area, the Kurang river and the man made reservoir i.e. the Rawal Lake. In the Master Plan most of this area has been earmarked and protected as part of the "National Park". The concept of the "National Park" has been dealt with in detail in the written descriptive form of the Master Plan. Some of this area falls in Zone-3 and some in Zone-4. The amendment made to the extent of Zone-4 pursuant to the judgment rendered by the august Supreme Court in the case titled "*Suo Motu Case No.10 of 2007*" [PLD 2008 SC 673] only allows private schemes in one of the portions of the said Zone. However, the other provisions of the

Wildlife Ordinance of 1979 and the Zoning Regulations of 1992 continue to remain in conformity with the Master Plan and enforced. The august Supreme Court had not exempted while making amendments in the Master Plan or the regulations made there under from compliance with the mandatory provisions of the relevant laws, particularly the Pakistan Environmental Protection Act 1997. Moreover, as noted above, with utmost respect, the august Supreme Court was not properly assisted and it appears that the Authority had not informed the apex Court regarding the applicable and enforced laws, particularly the impact of interference with the scheme of the Master Plan. It has profound consequences viz-a-viz the environmental concerns and climatic changes. A plain reading of the Master Plan, the Ordinance of 1960 read with the Zoning Regulations of 1992 unambiguously shows that there is complete ban on construction, change in land use and sale/purchase of land which may entail changing land use. As a consequence, the purchase or sale of land entailing change in land use and any construction made thereon is illegal, without lawful authority and jurisdiction. Moreover, in case of buildings constructed in Zone 4 in violation of Regulation 4(4) of the Zoning Regulations of 1992 are also illegal. The Authority is also not vested with power or jurisdiction to allow, directly or indirectly, any construction in Zone-4 in violation of the aforesaid Regulation. There is no force in the argument advanced by the learned counsels that the concerned Union Councils were empowered to regulate construction in this

area. As discussed above, such approvals were illegal and without lawful authority and jurisdiction because they were given in violation of the Master Plan, the Ordinance of 1960 read with the Zoning Regulations of 1992. Any such approval was without legal effect. In the titled petition, the respondent intends to construct a high rise apartment building in Bani Gala which is strictly forbidden under the Master Plan, the Ordinance of 1960 read with the Zoning Regulations of 1992.

36. The learned counsels have laid great stress on the judgment of the Lahore High Court rendered in the case titled '*Abdul Qadeer Khan and others v. Chairman, Capital Development Authority*' [1999 YLR 247] in support of the contention that it has been held therein that construction on privately owned land in Bani Gala was permissible. The facts and circumstances of the said case were altogether distinguishable. The grievance related to acquisition of land in village Mohra Noor in Bani Gala. However, when the case went to the august Supreme Court, leave was refused through a short order and the same is reproduced as follows.-

"For the reasons to be recorded later on, leave is refused subject to the following clarifications:--

- (i) The petitioner will be entitled to initiate acquisition proceedings of the suit property or any other property after framing a proper scheme.*

(ii) *That if Martial Law Regulations No.82, or any provision under the C.D.A. Ordinance, or any other law, authorize the C.D.A. to regulate the construction of the building in the disputed area, it will be open to the C.D.A. to take action according to law for enforcing the above law or regulations."*

37. The above judgment is reported as "*Capital Development Authority through its Chairman and others v. Dr. Abdul Qadeer Khan and others*" [1999 SCMR 2636]. Paragraph (ii) of the short order reproduced above explicitly acknowledges MLR-82, the Ordinance of 1960 and the regulations made there under. It was left open to the Authority to proceed against those who had carried out construction in violation of the aforementioned legal and regulatory framework. We have been informed that no proceedings were initiated pursuant to the above observations of the august Supreme Court. We are afraid that the short order passed by the august Supreme Court leaves the argument advanced by the learned counsels as without force.

38. We have been informed that in the past several years numerous buildings have been constructed both in the "Golra Revenue Estate" i.e. Sector E-11 (Zone 1) and Bani Gala, falling in Zone-3 and 4, as the case may be, in violation of the Ordinance of 1960, the Master Plan and the Zoning Regulations of 1992. It has

been argued on behalf of the respondents that they cannot be treated differently. We are afraid that this argument is fallacious. It tantamounts to pleading that they may also be allowed to perpetuate the illegalities committed by others. It is settled law that Article 25 of the Constitution cannot be pleaded as a ground for justifying illegalities committed by others. Reliance is placed on the cases of '*Khalid Saeed v. Shamim Rizvan and others*' [2003 SCMR 1505] and '*Mst. Mukhtar Begum and others v. Ala-ud-Din and others*' [1999 SCMR 914]. The learned counsels have also argued that since the Federal Government is in the process of regularizing illegally constructed buildings and houses in Bani Gala, therefore, they may also be treated alike. We asked the learned Member who had appeared before us whether the regularization will extend to every illegally constructed building in the Islamabad Capital Territory. He answered that a Committee constituted by the Federal Government was for construction in Bani Gala. In response to our query he stated that the Committee is mostly composed of senior civil servants. As we have already held that the construction in Sector E-11 and Bani Gala in violation of the Master Plan, the Ordinance of 1960 read with the Zoning Regulation of 1992, the Ordinance of 1966 and the Wildlife Ordinance of 1979, as the case may be, is illegal and without lawful authority, thus it attracts the provisions of section 49-C of the Ordinance of 1960 and liable to be demolished so as to uphold the rule of law. Nonetheless, we have also been informed that systematic and prolonged violations in

many areas of the Islamabad Capital Territory has virtually rendered the Master Plan as unworkable and unenforceable.

39. What then is the way forward? As noted, we were informed on behalf of the Authority that a committee was constituted to consider regularizing of the illegal construction of houses and buildings in Bani Gala, which have been raised in violation of the above discussed statutes and regulations made there under. We were initially informed that some order in this regard was passed by the august Supreme Court. However, no such order was placed before us. It has been candidly conceded that experts in town planning, environmental management and finance have not been engaged in this regard. We asked the learned Members of the Authority whether before taking such a decision its impact viz-a-viz environmental degradation and adverse climate changes have been assessed. If the buildings illegally constructed are intended to be regularized in Bani Gala then what about other such construction in the rest of the Islamabad Capital Territory. Moreover, if such illegal urban spread is to be regularized then who is to pay the cost for the related development works e.g. laying down sewerage systems and providing other municipal services. Will these illegally constructed buildings and houses, mostly by members of the privileged classes, be regularized on payment of a nominal fee while the burden of carrying out development works and repairing environmental damage caused thereby be borne by

other law abiding taxpayers of the Islamabad Capital Territory who contribute to its exchequer? The learned Member had no answer to these crucial questions. Indeed ignorance of law is no excuse. Those who preferred to build houses and buildings in violation of the enforced legal framework thus causing severe damage, some being irreversible, and by doing so severely undermining the Master Plan and having created life threatening environmental consequences for all other residents are entitled to be rewarded through a policy of regularization, particularly when the criminal offence, inter alia, under section 46 of the Ordinance of 1960 has been committed? Is it justified to regularize such buildings which would continue to remain a threat to the environment? Islamabad is not just any other city, it is the Capital of Pakistan and, therefore, every citizen is a stakeholder. The Master Plan was no less than an asset of the nation. Should persons, most of whom belong to the privileged class, be allowed to benefit from causing irreversible damage to the Master Plan and the environment and remain unaccountable? Would it uphold rule of law if such serious lapses are condoned and the perpetrators of illegalities causing irreparable damage to the Master Plan and the environment escape accountability? Should the illegal construction be regularized without assessment of the future risks relating to environmental degradation? Who is to pay the cost involved in repairing the damage already caused? These questions can only be answered by professional experts, inter alia, in the field of town planning, environmental management and finance.

40. What emerged from the proceedings in these petitions and highlighted above is that the Authority admits that in many areas of the Islamabad Capital territory, particularly in Bani Gala and the Golra Revenue Estate i.e Sector E-11, it may not be possible to implement the Master Plan due to the enormous damage caused due to tacitly allowing the illegal construction to take place. The Master Plan, a document of national importance, therefore, requires review and resultantly the legal and regulatory framework as well. The most alarming and horrific consequence is the exposure to the imminent risk of irreversible environmental degradation and climatic change which definitely affects the fundamental rights of every citizen. The interests of a few thousand individuals e.g in Bani Gala, many of whom belong to the privileged classes cannot be given preference over larger public interests. There can't be a more important larger public interest than protecting the environment and repairing the damage already caused, some of which may have already become irreversible. It is settled law that the interest of the public at large is always given preference over the interest of a few individuals. Reliance is placed on the cases of '*H.R.C. No.40927-S of 2012 – Applicationi by Abdul Rehman Farooq Pirzada*' [PLD 2013 SC 829] and '*Ghazala Tehsin Zohra v. Mehr Ghulam Dastagir Khan and another*' [PLD 2015 SC 327]. There must be no hesitation in demolishing illegal construction of buildings and houses if they are a

threat to the larger public interest. The Federal Government and the Authority have undoubtedly failed in their onerous duty to protect and safeguard the larger public interest by looking the other way and thus tacitly allowing serious violations of the Master Plan and in enforcing the legal and regulatory framework. They were trustees on behalf of the people of Pakistan to jealously guard against any violation of the Master Plan and the legislation enacted to ensure that the rights of every citizen are protected. The august Supreme Court, in the case titled '*Saad Mazhar and others v. Capital Development Authority through Chairman, Islamabad and others*' [2005 SCMR 1973], has acknowledged the fiduciary status of the Authority. They have definitely breached their fiduciary duties and obligations. Through their acts and omissions, which can't be attributed to ignorance, they have already caused irreparable damage. It appears that the created vested interests by having a share in the largess at the expense of the people of Pakistan raises the question of conflict of interest. No one has ever been held accountable for the devastation caused by the actions and omissions of public functionaries. The vested interests of the privileged classes appears to have made Islamabad, the Capital of Pakistan, beyond the reach of the less privileged who are forced to take refuge in the illegally established private societies. It is ironic that the Master Plan, which has been ruthlessly abused and damaged, was built on the mission statement of planning a city where everybody is provided for, where privileged classes do not

exist, and where the inhabitants are considered as entitled to "equal treatment". The founder planners had carefully designed the Master Plan with the object of using resources to serve all citizens and not a small minority. The founders, while planning, had explicitly kept the lower income groups in focus. The policy makers and public functionaries who were entrusted with the task of executing the Master Plan appear to have developed their own interests and the results are obvious. It appears that the Authority seems to serve only the privileged classes while the rule of law is for the less privileged. In allowing the Master Plan to become ineffective, the actual victims are the less privileged class and those who are from lower income groups. They are evicted and their houses are demolished while the privileged classes are extended the extraordinary benefit of regularization. The lack of respect for the sanctity of the Master Plan is a serious violation of the fundamental rights of the less privileged. Those who had a duty to protect the rights of the citizens and protect the environment were themselves engaged in its destruction. In the face of environmental concerns and the looming crisis of shortage of water, particularly when there is evidence that the man made reservoir, Rawal Lake, the main source of drinking water for the general public, is receiving untreated sewage and other waste, it has become inevitable to err on the side of caution. Before taking any decision regarding regularization of the illegal constructions, particularly in the environmentally sensitive areas such as Bani Gala, every possible

step needs to be taken to ensure that it will not lead to environmental degradation. The onus is obviously on the State. It is, therefore, inevitable to adopt the precautionary principle lest it leads to irreversible damage. This necessitates examining the status of the existing Master Plan, whether its implementation or restoration is possible anymore. If not then it needs to be revised in a professional manner. This onerous task cannot be left in the hands of the bureaucracy who are neither experts nor have they demonstrated a will to ensure the protection of the existing Master Plan. The status of the Authority also needs to be probed as it has become obvious that it has deviated from the object and purpose for which it was established. It lacks the capacity to achieve the goals to justify its existence and is showing obvious signs of regulatory capture. It has, therefore, become inevitable to take urgent steps. Most of all there is a grave urgency to prevent the environmentally sensitive area of Bani Gala from further destruction. In a nut shell, an exercise similar to that which was undertaken at the time of planning the existing Master Plan is urgently required before it is too late. We owe this to our future generations and posterity. The starting point is having zero toleration for any violation of the existing Master Plan and the legal framework.

41. For what has been discussed above, we allow these petitions and declare that construction of houses or buildings of any nature, whether in the "Golra Revenue Estate" or the area comprising "Bani Gala" which have been or are intended to be constructed in violation of the Master Plan, the Ordinance of 1960, the Zoning Regulations of 1992, the Ordinance of 1966 and the Wildlife Ordinance of 1979, as the case may be, are illegal, without lawful authority and jurisdiction and thus liable to be demolished as mandated under the Ordinance of 1960 and the regulations made there under. None of the respondents have been able to place on record any document which would establish the legality of their building. The Authority is the sole and exclusive regulator and the Union Councils were not vested with authority to grant any approval contrary to or in violation of the Ordinance of 1960 and the regulations made there under. We also declare that in case of any violation the Chairman and each Member of the Authority shall be jointly and severally liable for breach of duties and obligations imposed under the Ordinance of 1960. The Chief Commissioner, Islamabad Capital Territory shall be equally responsible if the legal framework in the unacquired areas is violated. We also declare that the Authority is the exclusive and sole regulator and the provisions of the Ordinance of 1960 and the regulations made there under are attracted in the case of a private housing authority established in any part of the Islamabad Capital Territory.

42. Keeping in view the imminent danger and risk, particularly in the context of environmental degradation and climatic change, we feel compelled to direct as follows.-

- (i) As it has become inevitable to review the existing Master Plan and assess its efficacy, we direct the Federal Government to forthwith take steps of constituting a Commission, inter alia, of professional experts, preferably of international repute, in the field of town planning, environmental management and finance. The Commission shall make recommendations to the Federal Government. The terms of reference shall also be formulated by experts. The Federal Government is expected to complete the proceedings within six months from the date of receiving a certified copy of this judgment.
- (ii) The Federal Government is directed to forthwith constitute the Commission under MLR-82.
- (iii) The Chief Commissioner is directed to aid and assist the Authority in ensuring that no building or house is constructed in any area of Islamabad

- (iv) The recommendations made by the Commission on the Environmental status of Islamabad Capital Territory, in its report dated 19-10-2015, are to be read as an integral part of this judgment having direct nexus with the controversy at hand. The implementation of the recommendations has become inevitable for controlling the damage and risks due to illegal construction, particularly in the environmentally sensitive areas. We, therefore, appoint Dr Pervaiz Hassan, who had chaired the said Commission and who had successfully brought all the stakeholders together, as Committee for implementing the recommendations. The existing Committee notified by the Federal Government, pursuant to directions given by this Court, shall be chaired by Dr Pervaiz Hassan. The Federal Government is, therefore, directed to forthwith amend the notification of the Implementation Committee. We are guided in this appointment by the judgment rendered by the Lahore High Court in the case titled '*Syed Mansoor Ali Shah and 4 others v. Government of Punjab, through Housing, Physical and Environmental Planning Department, and 3 others*' [PLD 2007 Lahore 403].

- (v) No illegal building or construction shall be regularized unless the Federal Government certifies, pursuant to recommendations made by the Commission which has been directed to be constituted in clause (i) above, that it shall not in any manner adversely affect the environment or have adverse effects relating to climate change.
- (vi) The Federal Government is further directed to forthwith take steps to make the Environmental Tribunals functional, preferably within ninety (90) days from the date receiving a certified copy of this judgment.

43. Before parting we cannot hold ourselves from recording our observations regarding the alarming and abysmal state of the rule of law in the Islamabad Capital Territory, which is the Capital of Pakistan. Several laws, despite being on the statute books, are not being enforced. The Master Plan which had taken care of all the essential factors, particularly preservation of the landscape and protection of the environment, has been ruthlessly damaged and destroyed by the public functionaries entrusted with the onerous task to hold it as a trust on behalf of the people of Pakistan. So much so that the Authority, which was its custodian, brazenly

acknowledges that in many areas it can no longer be implemented. The victims of this destruction have been none other than the lower income groups and, most serious of all, the landscape and environment. It is an inexcusable failure of the State and its institutions to fulfill its fiduciary duties and obligations to ensure that all citizens of the country are treated equally. The destruction and damage caused to the Master Plan has solely benefited the privileged classes which is exactly the opposite to the vision of the founding planners of Islamabad. The larger public interest ought to prevail. We have been consistently observing and reiterating that Islamabad, the Capital of Pakistan, has become a classic example of the rule of men rather than the rule of law. The looming imminent environmental crisis on account of unregulated urbanization and illegal construction can neither be taken lightly nor ignored. All those who have allowed this to happen ought to be held accountable because they have endangered lives and have not been fair to the future generations. The doctrine of necessity is alien to the rule of law. Saving the environment from further destruction and degradation must take precedence over the interests of a few. There must not be any hesitation in bringing down any illegal structure if there exists even the remotest possibility of damage to the environment. It is the larger public interest that must prevail. If urgent steps are not taken then posterity will never forgive those who today are in a position to enforce and implement the spirit and essence of laws which have been flagrantly and mercilessly violated

for more than seven decades. Laws which were supposed to protect the rights of the citizens have been used as tools to abuse those very rights. Justice delayed is justice denied and it is never too late to put an end to the perpetuation of injustice. "*Fiat justitia ruat caelum*"; Let justice be done though the heavens fall".

(ATHAR MINALLAH)
JUDGE

(AAMER FAROOQ)
JUDGE

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in the open Court on **09-07-2018.**

JUDGE

JUDGE

JUDGE

Approved for reporting.

ANNEXURE – A

S.No.	W.P. No.	Title
CATEGORY "A"		
1.	1949/2017	Muhammad Riaz Abbasi, etc. v. Capital Development Authority, etc.
2.	3705/2017	Abdul Rauf Khan v. Secretary Ministry of Climate Change, etc.
CATEGORY "B"		
3.	4841/2014	Muhammad Raza, etc. v. Chief Commissioner, etc.
4.	4958/2014	Malik Babar Rabbani, etc. v. Chief Commissioner, etc.
5.	2958/2015	Residents Welfare Society, NPF, etc. v. Messrs City School, etc.
6.	2708/2015	Treasurer National Police Foundation v. The Capital Development Authority, etc.
7.	2316/2015	Qasim Ashraf, etc. v. Chief Commissioner, Islamabad Capital Territory, etc.
8.	2959/2015	Insaaf Welfare Trust, etc. v. Capital Development Authority, etc.
9.	368/2016	Nausheen Zubair v. Chief Commissioner, ICT, etc.
10.	468/2016	Ghulam Idris Khan, etc. v. Chief Commissioner, etc.
11.	3028/2017	Muhammad Iqbal v. Capital Development Authority, etc.
12.	4062/2017	Israr Hussain Shah Naqvi, etc. v. Capital Development Authority, etc.
13.	214/2015	Insaaf Welfare Trust, etc. v. Chief Commissioner, ICT, etc.

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ANNEXURE-B

**(Report of the Islamabad
Environmental Commission)**

(75)

ANNEXURE-B

IN THE ISLAMABAD HIGH COURT

Writ Petition No. 1276/2011

Shiraz Shakeel

versus

Capital Development Authority *

Report of the Islamabad Environmental Commission*

19 October 2015

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

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GLOSSARY

1997 Act	Pakistan Environment Protection Act, 1997
CADD	Capital Administration and Development Division
CDA	Capital Development Authority
Constitution	The Constitution of Pakistan, 1973
EIA	Environmental Impact Assessment
ICT	Islamabad Capital Territory
ICTA	Islamabad Capital Territory Administration
ICTLGA	Islamabad Capital Territory Local Government Act, 2015
ICT Zoning Regulations	Islamabad Capital Territory (Zoning) Regulations, 1992
IEE	Initial Environmental Examination
IPAB	Islamabad Planning Advisory Board
Islamabad Wildlife Ordinance	Islamabad Wildlife (Protection, Preservation, Conservation and Management) Ordinance, 1979
IWMB	Islamabad Wildlife Management Board
Hospital Rules	Hospital Waste Management Rules, 2005
Master Plan	Master Plan of Islamabad
MHNP	Margallah Hills National Park
NEQS	National Environmental Quality Standards
NIH	National Institute of Health
NUST	National University of Sciences and Technology
Order	Order of the Islamabad High Court dated 20 February 2015
Ordinance	Capital Development Authority Ordinance, 1960
PCRWR	Pakistan Council of Research in Water Resources
PEC	Public Engagement Committee
PEPA	Pakistan Environmental Protection Agency
PEPC	Pakistan Environment Protection Council
PIMS	Pakistan Institute of Medical Sciences
SDPI	Sustainable Development Policy Institute
TOR	Terms of Reference

Report of the Islamabad Environmental Commission

A. Introductory Note

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

By its order dated 20 February 2015 (the "Order") (Annexure A) in Shiraz Shakeel vs. CDA, Writ Petition No. 1276/2011, Mr. Justice Athar Minallah constituted a commission (the "Commission") and appointed Dr. Parvez Hassan as the Chair of the Commission to investigate the grievances raised in the Petitions and make recommendations to prevent the further "destruction" and "degradation" of the environment of Islamabad.

B. The Commission

1. Terms of Reference

The Terms of Reference (the "TOR") of the Commission as per the Order are:

- (1) To investigate and address the issues of implementation and enforcement of CDA and Environmental Laws, Rules and Regulations in general and in particular development projects with reference to change in land use.
- (2) To carry out a review of the Rules and Regulations made or issued under Capital Development Authority Ordinance, 1960 (the "Ordinance") and the Pakistan Environment Protection Act, 1997 (the "1997 Act").
- (3) Law and procedure for land use and master plan changes.
- (4) Role of public participation in land use change.
- (5) Assess the enforcement of such Rules and Regulations, identify policy gaps and practice omissions, if any.
- (6) Make recommendations, if necessary, on amendment of any law, rule or regulation or in policy or enforcement.
- (7) Collection of data of illegal projects in prohibited zones.
- (8) Cost effective and practical solutions to deal with the existing illegal constructions.
- (9) Proposals regarding appropriate governance and management systems.
- (10) Related institutional changes and financial strategy.
- (11) How to ensure individual or institutional accountability.

2. Membership

The original membership of the Commission as per the Order was Dr. Parvez Hassan, Mr. Raja Hasan Abbas, Mr. Mahmood Akhtar Cheema, Mr. Hammad Naqi Khan and Ms. Saima Amin Khawaja. The Order enabled the Commission to co-opt other members. The Commission did do this to draw from the governmental ministries and agencies dealing with environmental matters.

civil society organizations, public representatives, representatives from the media and the academic/scientific community. The complete membership of the Commission, in the order of its appointment, is:

- (1) Dr. Parvez Hassan, Senior Advocate, Supreme Court of Pakistan
- (2) Mr. Raja Hasan Abbas, Secretary, Cabinet
- (3) Mr. Mahmood Akhtar Cheema, Country Representative, IUCN Pakistan
- (4) Mr. Hammad Naqi Khan, Director General/CEO, World Wide Fund for Nature Pakistan
- (5) Ms. Saima Amin Khawaja, Advocate, High Court
- (6) Dr. Abid Qaiyum Suleri, Executive Director, Sustainable Development Policy Institute ("SDPI")
- (7) Mr. Arif Ahmed Khan, Secretary, Climate Change
- (8) Mr. Maroof Afzal, Chairman, CDA
- (9) Dr. Muhammad Khurshid, DG, PEPA*
- (10) Mr. Asad Umar, Member, National Assembly
- (11) Mr. Zulfikar Haider, Chief Commissioner, Islamabad Capital Territory ("ICT")
- (12) Syed Talat Hussain, Geo News, Islamabad
- (13) Dr. M. A. Baig, Chairman, Environmental Sciences, National University of Sciences and Technology ("NUST"), Islamabad

In recommending the co-opted representation of the heads of CDA, Islamabad Capital Territory Administration (the "ICTA") and PEPA on the Commission, the Chair was seeking an effective implementation by them of the recommendations of the Commission as may be approved by the Islamabad High Court.

Mr. Arif Ahmed Khan was appointed the Vice Chairman of the Commission at its first meeting.

3. Special Invitees

The Commission invited the following as "Special Invitees" to its meetings:

- (1) Mr. Arif Hasan, Urban Planner, Karachi
- (2) Dr. Javed Akram, Vice Chancellor, Pakistan Institute of Medical Sciences ("PIMS"), Islamabad
- (3) Mr. Shafqat Kakakhel, Chairman, SDPI

4. Meetings

The Commission held its first, second, fourth and fifth meetings at the Cabinet Division, Islamabad on 29 April 2015, 18 May 2015, 29 July 2015 and 14 September 2015, respectively. The third meeting of the Commission was held at the offices of SDPI on 17 June 2015. The

* Following his attendance of three (3) meetings, Dr. Muhammad Khurshid was appointed, in July 2015, as Director General, South Asia Co-operative Environment Programme (SACEP), Sri Lanka. PEPA was subsequently represented by Mr. Zia Ul Islam.

sixth, and final, meeting of the Commission was held on 19 October 2015 at the offices of the CDA in Islamabad.

The minutes of the meetings of the Commission on 29 April 2015, 18 May 2015, 17 June 2015, 29 July 2015, 14 September 2015, and on 19 October 2015 are attached as Annexures B/1 to B/6. Copies of the presentations and submissions made at these meetings are attached as Annexures C/1 to C/3.

In the very first meeting, the Chair expressed the hope and expectation that the Commission will develop a consensus in its recommendations to the Islamabad High Court and that its work would be solution-oriented and not confrontational or adversarial in any way.

5. Committees

The Commission appointed the following Committees (the "Committees") to look at the different environmental and regulatory issues specifically:

(1) Air and Water Pollution

- (a) Dr. Abid Q. Suleri
- (b) Mr. Mahmood A. Cheema

(2) Solid Waste Management (including Hospital Waste)

- (a) Dr. M. A. Baig
- (b) Mr. Arif A. Khan

(3) Encroachments (including Margallah Hills and Rawal Dam)

- (a) Ms. Saima A. Khawaja
- (b) Mr. Hammad Naqi Khan

(4) Legal and Regulatory Framework

- (a) Mr. Maroof Afzal
- (b) Dr. Muhammad Khurshid

(5) Enforcement/Implementation and Capacity Building for Enforcement

- (a) Mr. Raja Hasan Abbas
- (b) Mr. Zulfikar Haider

(6) Public Participation and Accountability

- (a) Mr. Asad Umar
- (b) Syed Talat Hussain

The Chair had suggested that each Report, or "Concept Paper", of the Committee deal briefly (5-10 pages) with the problems, challenges in implementation and compliance, and, most important, recommended solutions. The recommendations could be time-sequenced:

- (1) for immediate implementation, within 3-6 months
- (2) mid-term, implementation within 1-2 years
- (3) long-term, within 3-5 years.

The Chair provided each member with a Compilation that included, for the assistance of each member, the work and Reports of four (4) previous Commissions of which the Chair was the head:

- (1) Report of the Lahore Canal Road (Tree Cutting) Mediation Committee (2011)¹
- (2) Report of the Lahore Clean Air Commission (2005)²
- (3) Report of the Lahore Solid Waste Management Committee (2004)³
- (4) Report of the Commission on Water Quality and Khewra Coal Mines (1996)⁴

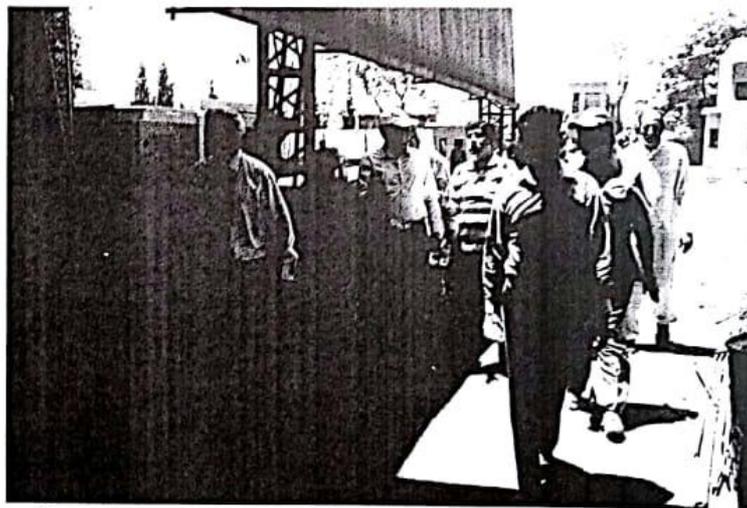
These would give a general idea of the end product, the Final Report of the Commission which will incorporate the work of the Committees.

Some of the Committees submitted their Reports to the Commission along with their findings and recommendations. The submitted Reports are attached as Annexures D/1 to D/2. Other Committees made oral or informal presentations to the Commission.

6. Site Visit

The Commission visited certain sites in Islamabad on 1 June 2015 which was arranged by the CDA. The sites visited by the Commission included:

- (1) F/9 Park
- (2) Steel Industry
- (3) Marble Industry wastes/effluents
- (4) Site for dumping of solid wastes in E-12
- (5) Hospital waste - PIMS



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

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

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

³ Considered and approved by the Lahore High Court in City District Government vs. Muhammad Yousaf, I.C.A. No. 798/2002.

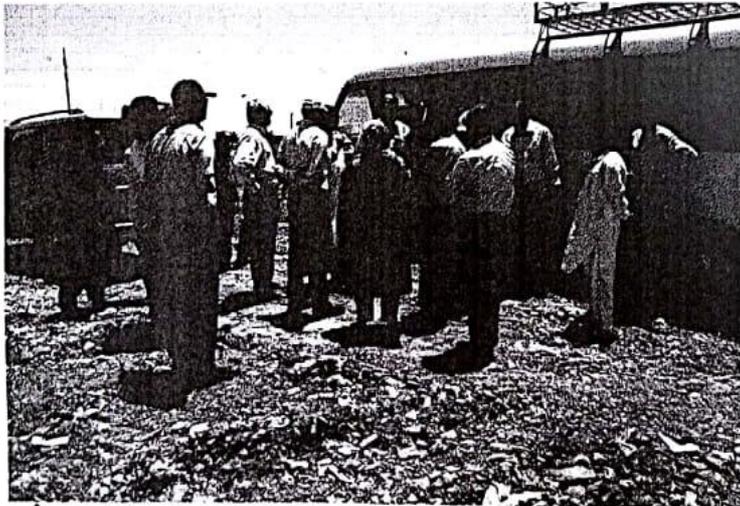
⁴ Considered and approved in the Order of the Supreme Court dated 8 September 2002 in General Secretary, West Pakistan Salt Miners' Labour Union (CBA), Khewra, Jhelum vs. Director, Industries and Mineral Development, Punjab, Lahore (Human Rights Case No. 120 of 1993); see, also, the order of appointment of the Commission in General Secretary, West Pakistan Salt Miners' Labour Union (CBA), Khewra, Jhelum vs. Director, Industries and Mineral Development, Punjab, Lahore (Human Rights Case No. 120 of 1993), 1994 SCMR 2061.



Commission visit to F/9 Park



Commission visit to F/9 Park



Commission visit to dumping site at Sector I-12

7. Public Participation

(1) Public Notice

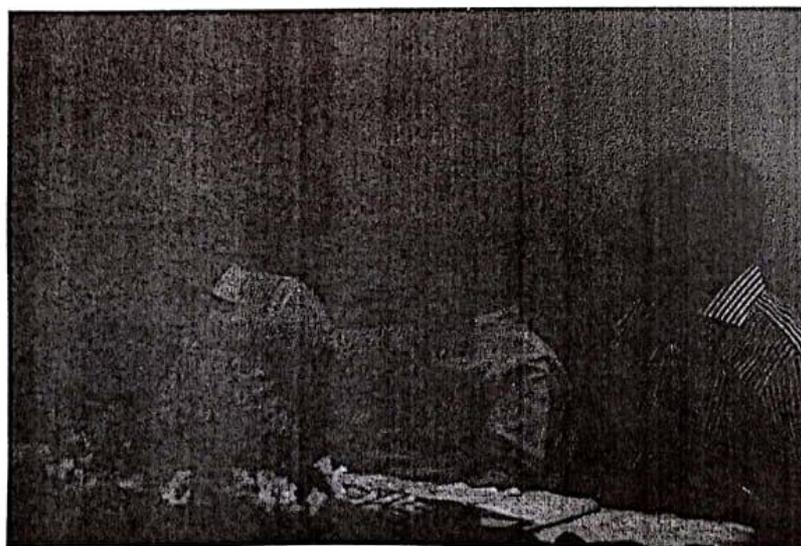
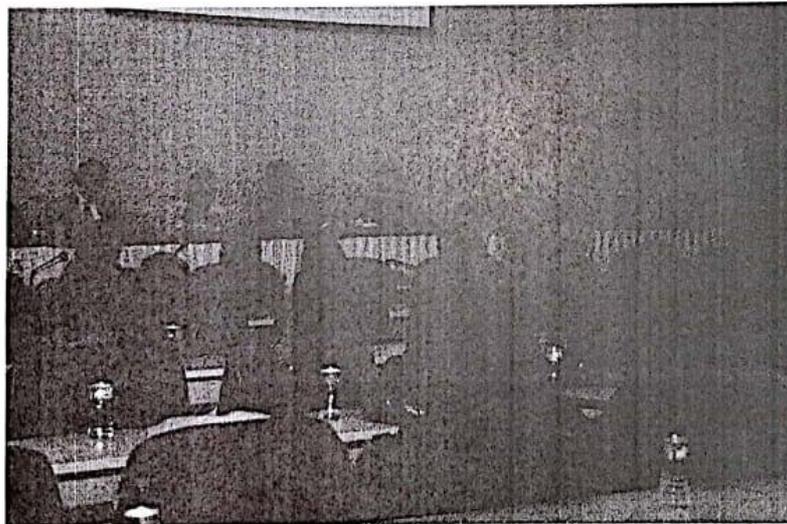
The Commission requested the comments of the public and announced a public hearing at the Pak-China Cultural Central, Shakarparian, on 17 June 2015. The earlier meeting fixed for 2 June 2015 was rescheduled to 17 June 2015. The notices for the comments of the public and the hearing (and the rescheduling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

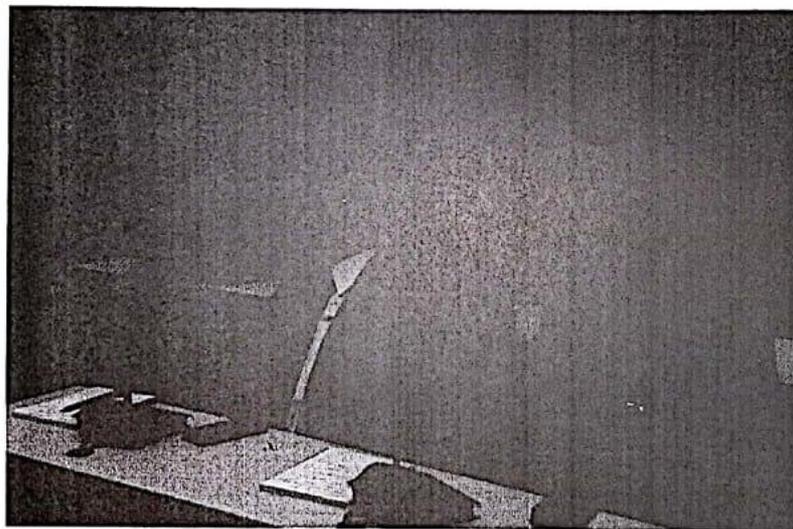
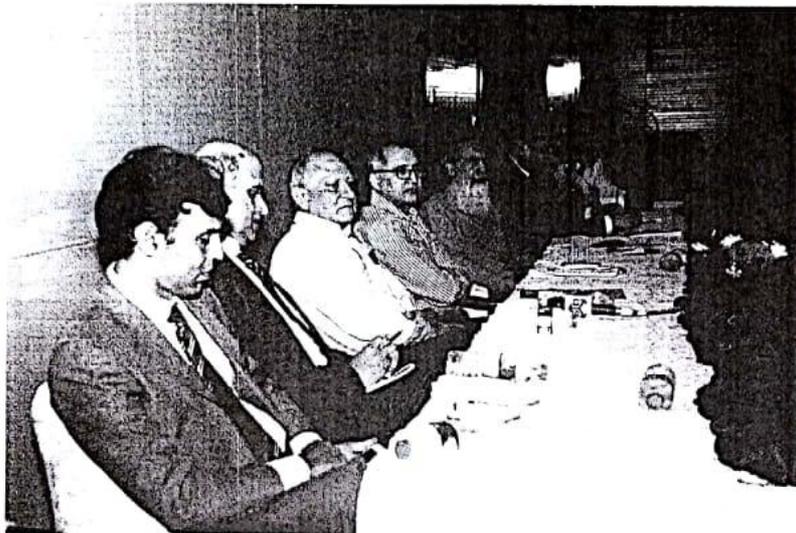
(2) Comments from the Public

The Commission received various comments and suggestions from the public in response to the public notice for such comments. These are summarized, subject wise, in Annexure F/1.

(3) Public Hearing

At the public hearing held at the Pak China Center, Shakarparian, Islamabad, on 17 June 2015 from 4.00 p.m. to 6.30 p.m., attended by over 150 persons, the matters raised included the implementation of laws, encroachments, housing societies, including public participation in decision making and safeguarding the sanctity of the Master Plan. The Commission also received specific recommendations of Green Force through Dr. Dushka H. Saiyid, who attended the public hearing. These recommendations are attached as Annexure F/2. The Commission also received recommendations from Dr. Anis-ur-Rahman, Chairman, Islamabad Wildlife Management Board (the "IWMB"), which are attached as Annexure F/3.





Members of the Commission at the Public Hearing

8. Report of the Commission

(1) The Commission has particularly benefited from two (2) documents pertaining to the environmental challenges in Islamabad:

(a) PEPA (Ministry of Environment), Islamabad, Proposal: Islamabad – The Green City Program (January 2008)

(b) UNHABITAT – Climate Change Vulnerability Assessment of Islamabad (2014)

(2) The maps in this Report were provided by the CDA and the Commission, gratefully, acknowledges this support. The photographs in this Report were provided by the CDA, and Ms. Saima Khawaja and are similarly, gratefully, acknowledged.

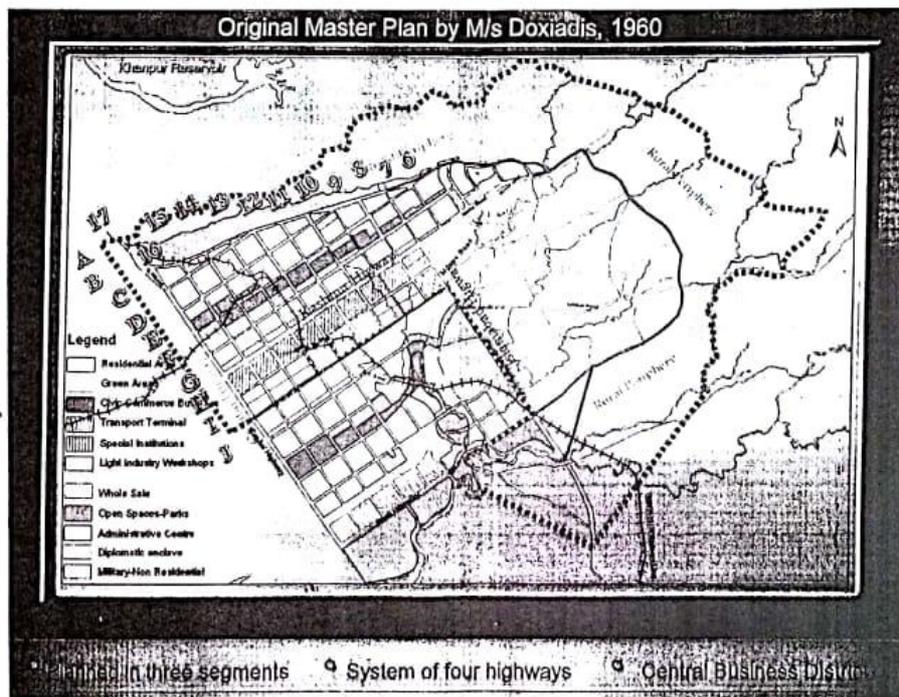
(3) An earlier draft of this Report was circulated to all the members. The comments and suggestions, received, and, particularly, the detailed comments of CDA, are reflected in this Report.

C. Islamabad

1. Founding⁵

Islamabad is the capital city of Pakistan situated within the ICT. It is located in the northeast of the country, on the Potohar Plateau, and ranges of between 457-610 meters above sea level.

Unlike the other cities in Pakistan, Islamabad is a planned city. The site for the city was designated in 1959 and the master plan (the "Master Plan") of the city was developed by a Greek firm, Doxiadis Associates. This Master Plan divided the metropolitan region into three zones: Islamabad itself (Zone 1); the national park area (Zone 2); and Rawalpindi and its surrounding cantonment (Zone 3).



Original Master Plan of Islamabad

Islamabad is an ethnically diverse metropolis in the country with communities from all of Pakistan's major ethnic groups. The city has the highest literacy rate in Pakistan at 73%.

Moreover, Islamabad has the largest foreign population in the country. The city is also growing as a business and commercial center, attracting highly-skilled workforce from all over the country. Also, all of the country's diplomatic ties are maintained and exercised from Islamabad, as all major embassies, consulates, missions and Pakistan's Foreign Office operate from the city.

2. Population

In 1998, the year of the last census, Islamabad's population was 805,235 with 434,239 men and 370,996 women. The urban population of the city was 529,180 while the rural population was 276,055. The average annual population growth rate from 1981-1989 was 5.2%. In 2011, the population was projected to have reached 1.7 million. This demographic surge has, undoubtedly, overwhelmed the planning and management agencies.

⁵ This Section and the succeeding Sections on Population and Administrative Handling have drawn, generally, from UNHABITAT - Climate Change Vulnerability Assessment of Islamabad (2014). An Abridged Version of this Report is also available, UNHABITAT, Cities and Climate Change Initiative: Islamabad, Pakistan - Climate Change Vulnerability Assessment (2014).

3. Administrative and Regulatory Handling

The administrative boundaries of the city and district are established by the Ordinance. The Ordinance also assigned the management of the capital area, including the nearby city of Rawalpindi, to the CDA. However, subsequent legislation has seen the creation of new managing institutions and as a result of which there are currently three (3) main agencies charged with some aspect of development and administration in Islamabad. Each of these is discussed below. The PEPA is also mandated an important role in the environmental management of Islamabad.

(1) Capital Development Authority

Under the Ordinance, the CDA has the power to perform all functions required to implement the Master Plan. The CDA works under the Cabinet Division of the Federal Government and is mainly tasked with land management, development, control and the provision of municipal services.

(2) Islamabad Capital Territory Administration

The Islamabad Capital Territory Order, 1980, created the ICTA and in 1981 conferred on it all the powers and duties for the administration of the overall ICT areas including Islamabad. The management of rural areas was transferred from CDA to the ICTA. In this way, ICTA manages the majority of the rural areas and CDA continues to manage the urban area. However, there is still substantial jurisdictional overlap and as a result, policy implementation and zoning enforcements have deteriorated and illegal encroachments and incompatible land-uses proliferated. The ICTA is mandated to administer matters relating to land, revenues, food, law and order, civil defence, co-operatives, transportation, population, housing, women's development, labour, social security and some infrastructure, mainly in rural areas.

(3) Capital Administration and Development Division

The Constitution (Eighteenth Amendment) Act, 2010 (the "2010 Amendment Act") deleted the Concurrent Legislative List. Resultantly, several subjects were transferred to the exclusive competence of the provinces. This led to the abolition of several federal ministries for the transfer of their functions to the provinces. To deal with the functions and activities of the devolved ministries specific to Islamabad, a new division named the Capital Administration and Development Division (the "CADD") was created in March 2011. The CADD was vested with the mandate to execute, within the jurisdiction of ICT, all such functions handled by the abolished ministries and divisions and such other functions as allocated to it from time to time. As such, CADD was conceived to be the sole administrative agency for service delivery in education, health and special education sectors within the ICT. However, the Federal Government subsequently "revived" some old Ministries under a new nomenclature such as the Ministry of Education and Professional Training and Ministry of National Health Services. The Ministry of Climate Change was also a result of this decision of the Federal Government in areas where overall federal co-ordination is required. The Federal Government has recently recommended abolishing CADD as the Ministry of Education and Professional Training as well as the Ministry of National Health Services have been revived and made functional.

(4) Pakistan Environmental Protection Agency

In addition to the above three (3) Ministries/agencies handling the administrative matters in respect of Islamabad, PEPA also has direct responsibilities under the 1997 Act to protect the environment in Islamabad.

4. Zoning Distribution of ICT⁶

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

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

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

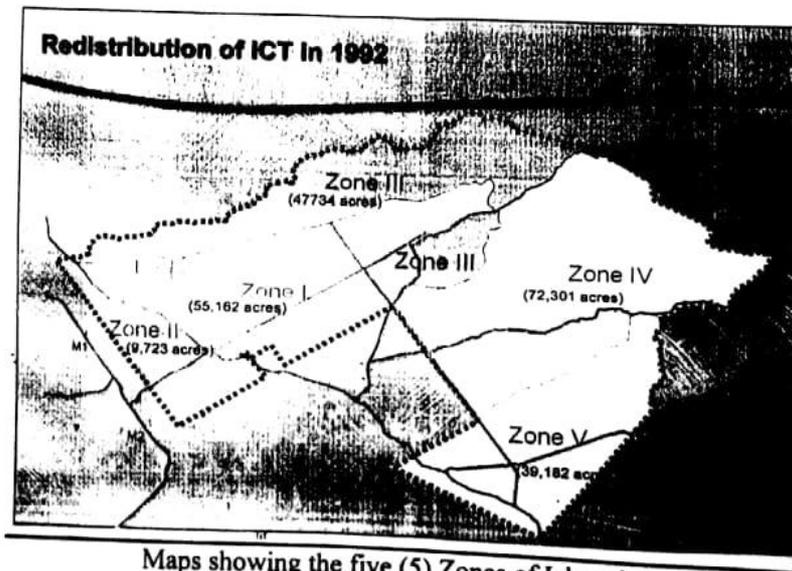
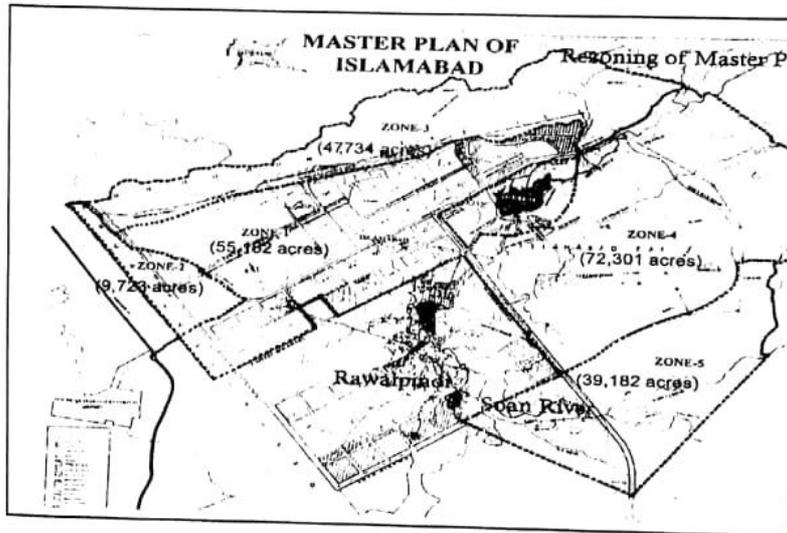
e-Kashmir to the point of Nicholson Monument near B-17 in the west, inclusive of sector H-14, G-15, G-16, G-17, I-14, I-15, I-16 and I-17. It is the most organized and well-developed part of Islamabad.

Zone 2: With an area of 3,936.43 ha (9,723 acres), is connected with Zone 1 and enjoys a prime location. This zone consists of area bounded by G-T road in the north and north-east, north of Shahrah-e- Kashmir and capital limits in the west, comprising of residential sectors G-15 (part), G-16, G-17, F-15 (part), F-16, F-17, E-15 (Part), E-16, E-17, D-16, D-17, C-17 and B-17.

Zone 3: It covers an area of 19,325.5 ha (47,734 acres) and is one of the most beautiful areas of Islamabad. Margallah Hills National Park as notified under Section 21 of Islamabad Wildlife (Protection, Preservation, Conservation and Management) Ordinance, 1979 (the "Islamabad Wildlife Ordinance"), other protected ranges, forest areas and un-acquired land falling between the Margallah Hills and north of Murree Road are parts of this zone. Tourist attractions like Daman-e-Koh, Peer Sohawa, Rawal Lake and Shakarparian are located in this Zone.

Zone 4: It spreads over an area of 29,271.65 ha (72,301 acres) and is the largest zone of Islamabad. This Zone comprises of Islamabad Park and the rural periphery wedged between Murree Road towards north and Lehtrar Road towards south and extending beyond Simly Road up to the ICT limits in the northeast. This Zone excludes the part of Margallah Hills National Park and Rawal Lake.

Zone 5: With 15,863.15 ha area (39,182 acres), this Zone comprises areas falling south of Islamabad Park and extending up to outer limits of ICT towards south, southwest and southeast.



Maps showing the five (5) Zones of Islamabad

D. Legal and Regulatory Framework

1. Legal Framework

The 1997 Act is the basic legislation that dealt with environmental protection in Pakistan. The subject of "environment" is now within the domain of the provinces after the passing of the 2010 Amendment Act. However, the 1997 Act, with its regulatory regime and the institutional framework of PEPA, continues to apply to Islamabad.⁷

The 1997 Act is a comprehensive legislative document and its salient features include:

(1) establishment of the PEPA (Section 5) and the Pakistan Environmental Protection Council (the "PEPC") (Section 3);

(2) prohibition on discharges and/or emissions in excess of the National Environmental Quality Standards (the "NEQS") established by the PEPC or other standards established by the PEPA (Section 11(1)) and levying a pollution charge by the Federal Government on persons not complying with the NEQS (Section 11(2));

(3) introducing a two-stage environmental screening process for proposed projects involving the filing of either an Initial Environmental Examination ("IEE") or, for projects likely to cause an adverse environmental effect, a comprehensive Environmental Impact Assessment ("EIA") (Section 12);

(4) prohibition on the import of hazardous waste (Section 13);

(5) handling of hazardous substances has been prohibited except under license (Section 14);

(6) authorizing PEPA to give directions that motor vehicles shall install such pollution control devices or use such fuels or undergo such maintenance or testing as may be prescribed in order to ensure compliance with the NEQS (Section 15);

(7) empowering PEPA to issue an Environmental Protection Order (the "EPO") to deal with an actual or potential adverse environmental effect in violation of the provisions of the 1997 Act (Section 16);

(8) imposition of penalty on the contravention or failure of complying with the substantive provisions of the 1997 Act (Section 17);

(9) constitution of Environmental Tribunals with exclusive jurisdiction to try serious offences under the 1997 Act (Section 20) while minor offences relating to pollution by motor vehicles, littering and waste disposal and violation of rules and regulations to be tried by Environmental Magistrates (Section 24); and

(10) provision of a comprehensive appeal process (Sections 22, 23 and 25).

Beyond the 1997 Act, the Forest Act, 1927, is another legislation that "protects" the forests. Even though forestry is purely a provincial subject under the Constitution of Pakistan, 1973 (the "Constitution"), the provisions of the Forest Act, 1927, however, continue to apply to Islamabad under Article 142(d) of the Constitution.

2. Regulatory Framework

A regulatory framework has also been developed to complement the legal framework. The regulatory framework evolved under the 1997 Act includes:

⁷ Article 142(d) of the Constitution provides that the Parliament shall have exclusive powers to make laws regarding all matters pertaining to those areas that do not fall under any of the provinces. As ICT does not fall in any province, all the federal legislations continue to apply to ICT.

(1) the Pakistan Environmental Protection Agency (Review of IEE and EIA) Regulations, 2000, which govern the granting of approval of projects, including the projects in Islamabad;

(2) the Environmental Samples Rules, 2001, which empower PEPA, and the other provincial Environmental Protection Agencies (the "EPAs"), to enter and inspect any place, machinery or equipment, take samples and have them analyzed for ensuring that the limits and procedures set by the 1997 Act are adhered to;

(3) the NEQS, including the National Environmental Quality Standards for Ambient Air (Ministry of Environment's SRO 1062(I)/2010), which restricts the air emissions and effluents of the industrial facilities, and the National Environmental Quality Standards (Self-Monitoring and Reporting by Industry) Rules, 2001, which require the industrial units to submit self-monitoring reports regarding compliance with the NEQS for liquid effluents and gaseous emissions; and

(4) the Pollution Charge for Industry (Calculation & Collection) Rules, 2001, which empower PEPA to levy a pollution charge as per Section 11 of the 1997 Act.

The regulatory framework also includes the Hospital Waste Management Rules, 2005 (the "Hospital Rules"), which provide that the hospitals shall be responsible for the proper management of the wastes generated by them till the final disposal as per the provisions of the 1997 Act and the Hospital Rules.

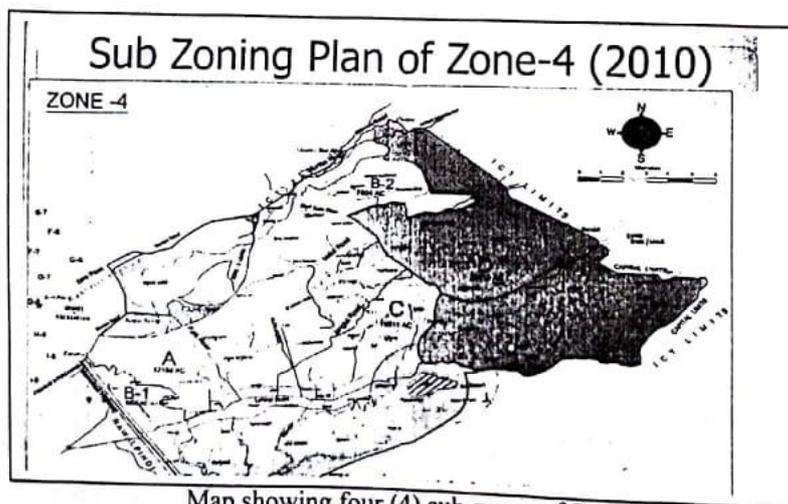
3. Islamabad-specific Legislation and Policies

Beyond the comprehensive legal and regulatory framework, there are several Islamabad-specific legislations and policies that seek to protect and promote environmental efforts in Islamabad. These include:

(1) the Islamabad (Preservation of Landscape) Ordinance, 1966, which provides that no act of removal, alteration, damage or destruction shall be done that adversely affects the landscape of Islamabad;

(2) the Islamabad Wildlife Ordinance and the Islamabad Wildlife (Protection, Preservation, Conservation and Management) Rules, 1983, which provide the details of the lands constituting the Margallah Hills National Park and prohibits the disturbance of wildlife habitat including soil disturbance;

(3) the Islamabad Capital Territory (Zoning) Regulations, 1992 (the "ICT Zoning Regulations"), which provide for the delineation of the different zones in Islamabad and control the development projects in them, and CDA's SRO 1105(I)/2014 dated 10 December 2014 amending the ICT Zoning Regulations for Zone 4 and sub-dividing it into four (4) sub-zones, namely, A, B, C and D. This notification defines the land use in each sub-zone;



Map showing four (4) sub-zones of Zone 4

(4) the Islamabad Residential Sectors Zoning (Building Control) Regulations, 1993, which govern the construction of buildings and houses in Islamabad; and

(5) the Capital Development Authority (Environmental Protection) Regulation, 2008, which provide for the formation of a CDA Environmental Protection Committee to enforce and implement these regulations for the protection of the environment of Islamabad.

4. Other Islamabad-specific Directives and Notifications

The following directives and notifications have also been issued specifically for the protection of Islamabad's environment:

(1) Prime Minister's Directive on Preservation of the Margallah Hills National Park, Islamabad dated 20 April 1991.

(2) Government of Punjab's notification No. V(I&MD)8-11/91 dated 22 June 2001 declaring an area of one thousand (1,000) yards from ICT boundaries extending into Rawalpindi district of Punjab as buffer zone/prohibited area for mining and crushing of minerals of any kind for preservation of the environment.

(3) PEPA's notification No. 4(16)/2001-Dir (EIA) dated 26 September 2001 highlighting the quarrying and crushing activities in the Margallah Hills National Park.

5. Non-Implementation of Laws and Policies

The Commission found that, generally, a satisfactory legal and regulatory framework exists for the protection of the environment of Islamabad. It presently provides an adequate basis to proceed. The challenge has been that these laws and regulations are not properly implemented or enforced by the Federal Government, CDA, PEPA and ICTA. Other reasons for the ineffective implementation include the lack of public awareness, the non-functioning of some of the Environmental Tribunals and Environmental Magistrate, and a lack of an adequate and well-trained capacity for environmental governance.

The Commission resisted the attempt to propose new legislation(s) and regulations when the existing laws and policies are generally not implemented. It recommends "implementation" as its most important recommendation for the future of Islamabad.

Implementation requires the commitment to developing a capacity and the political will. This will need capacity building and resource allocation. The backbone of an appropriate architecture for environmental protection is the EIA. This basic environmental tool has not been used effectively. Government projects routinely ignore this requirement and when compliance is contested, it turns out that the whole exercise of approval did not comply with the essential requirements of transparency and public participation. Instead, as pointed out in a recent judgment of the Lahore High Court in Imrana Tiwana vs. Province of Punjab⁸, such approvals are not professionally handled but are an extension of government policy dictated to the approving EPA.

That the Federal Government and the agencies continually disregard the letter and spirit of the laws and policies with respect to Islamabad can be shown by the following examples:

(1) The Master Plan of Islamabad is a solemn document that should have been respected and followed. Although the Master Plan is and should be a living document, the Governments from time to time amended/modified/breached it without providing a transparent process for its

⁸ PLD 2015 Lahore 522; Although the decision of the Lahore High Court has been reversed, on appeal, by the Supreme Court of Pakistan in Lahore Development Authority vs. Imrana Tiwana, C.A. Nos. 545-550 of 2015, the analytical formulation of "environmental justice" by the Lahore High Court will resonate for a long time in the jurisprudence of Pakistan.

changes/modifications. Some of the major violations of the Master Plan are listed in Annexure G.

(2) Major projects are developed and approved in Islamabad without an IEE and EIA. Even the IEE/EIA approvals are tainted by the doctrine of "regulatory capture" as per the decision of the Lahore High Court in Imrana Tiwana vs. Province of Punjab.

(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)(c) of the ICT Zoning Regulations that states "no construction of house shall be allowed".
- (e) Development of hotels along Murree Road including Best Western, Hotel Embassy lodges, Islamabad Club, Golf Course, Grand Regency, Dreamland and Park Palace.
- (f) Prominent development of Housing schemes in Zone 3 near Rawal Lake, that is Rawal Town, Orchard Scheme and part of Bannigala and new project of Chairlift from Daman-e-Koh to Pir Sohawa (violation of Regulation 4(3)(a-e)) of the ICT Zoning Regulations.
- (g) Expansion of rural settlements in Margallah Hills National Park is evident and violates Regulation 4(3)(d) of the ICT Zoning Regulations that restricts the expansion of rural settlements.
- (h) Setting up of FECTO Cement plant near Margallah Hills National Park in 1985 is also a violation of the original Master Plan.

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

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

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

⁹ Id.

¹⁰ PLD 2008 Supreme Court 673.

- (b) The building bye-laws of CDA shall be made applicable to Zone 4 with necessary and suitable amendment as per need of the area and shall be published in the Electronic and Print Media for information of public in general within one month.
- (c) The existing abadies and construction in Zone 4 either residential or commercial, raised in violation of bye-laws and rules referred to above shall be regulated in a proper manner by the CDA with the consultation of Rural Development Department of ICT and representatives of union councils.
- (d) Subject to the bye-laws and building regulations and approved site plan by the CDA, the private land owners in Zone 4 Islamabad shall be allowed to raise residential and commercial construction like other areas and Zones of Islamabad.
- (e) The land which is surrendered by abadies or which cannot be utilized for Farming shall be allowed for the construction of housing colonies and commercial buildings by preparing regular Scheme to avoid irregular construction of houses, plazas and shops in the area.
- (f) The provision in respect of the size of farm houses of 20 kanals shall apply only to the CDA owned land and shall have no application to private land. The private land-owners in Zone 4 shall be entitled to establish Agro Farm of minimum size of 4 kanal and can also utilize/develop their land for any lawful purpose including the construction of houses and commercial buildings subject to the bye-laws and regulations as well as approved site plan from CDA.
- (g) In the light of the above directions, the CDA shall amend the rules accordingly to bring the same in consonance to the purpose of CDA Ordinance and to the spirit of law and Constitution.

The CDA, in light of the order of the Supreme Court in in Suo Motu Case No. 10/2007 (Increased Prices of Daily Commodities)¹¹, amended the ICT Zoning Regulations but these amendments were not notified in the official Gazette at that time. This was done in 2014 by SRO 1105(1)/2014 dated 10 December 2014 to result in the sub-division of Zone 4 into four (4) sub-zones with each sub-zone having defined parameters and land uses. However, many unauthorized housing and agro farming schemes still exist in Zone 4. List of unauthorized housing and agro farming schemes is attached as Annexure H.

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

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

E. Recommendations

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

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

¹¹ PLD 2008 Supreme Court 673.

- (b) The approval of such EIAs by the PEPA should be independent and fully comply with the requirements of access to information, public hearings, due process as laid down in the Lahore High Court Judgment in Imrana Tiwana vs. Province of Punjab¹².
- (c) Immediate steps, including budgetary allocations, need to be made for building the capacity of the PEPA to undertake and approve EIAs. Such capacity building may be considered with the EPA/Agencies of a country such as the U.S. or U.K. that has a well-developed regime of EIA evaluation. Or, the EU may be approached for such technical support.

(3) Landfill Site

It is not believable that Islamabad should, in its fifty (50) years, not have a proper landfill. All the solid waste of Islamabad is dumped on an ad hoc site in E-12 visited by the Commission. Disposal is also being done in I-12 on I.J.P. Road by CDA and at various places along Korang River, Swan River, Bara Khau, Tarlai and many more dumping sites of non-Municipal Service residential area (Zones 2, 3, 4 and 5).

For the selection of a proper landfill, the Commission supports the determination by CDA of the following two (2) sites:

- (a) Site 1 measures approximately 200 acres and is located 2-3 km from the G.T. Road on Kallar Rawat Road approximately 3 km short of proposed Rawalpindi dumping site.
- (b) Site 2 is located on Kallar Sydan Road, at approximately 4-5 km.

One (1) of the above may be decided by the CDA after an EIA. The process and the time schedule for such determination must be submitted by the CDA to the Islamabad High Court within three (3) months of this Report.

(4) Complete Ban on Encroachments of Green Belts/Parks

The Islamabad High Court should impose a complete ban on encroachments of the green belts and parks of Islamabad included in the Master Plan. CDA should also be directed to remove all the encroachments from the green belts and parks.¹³

(5) Margallah Hills National Park ("MHNP")

To protect MHNP and the "nature" of Islamabad, the Commission recommends the following:

- (a) Implement the management plan of MHNP along with a ban on development of housing schemes and other construction works in MHNP, in particular, and Zone 3, in general, and cancel NOCs, if any. However, to the extent of privately-owned lands, strict building regulations are to be enforced and restrict the land use in the area. The sale/purchase of land should also be regulated to prevent change in land use.
- (b) Re-demarcate Zone 3 (MHNP Buffer Zone) with the inclusion of all forested lands (Government, reserved and private lands). Protection of buffer zone is essential for protection and preservation of the Margallah Hills. The CDA has conducted a study which recommends a five (5) km buffer zone all around the hills.
- (c) No services, that is electricity, gas or water supply, should be provided to those projects/housing schemes that do not obtain a prior approval of the CDA for such projects/housing schemes.

¹² See supra note 8.

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

- (d) Include all villages in the MNHP a part of the MHNP through legislation after which the boundaries of the MHNP should be clearly demarcated and such map made public.
- (e) Manage and regulate tourism in MHNP. Uncontrolled traffic through the MHNP is adversely affecting the ecosystem of MHNP. Steps should be taken to control pollution caused by vehicles by charging a heavy toll on private vehicles. Income from the collection of such toll can be used for the better maintenance of the MHNP. Also, a sightseeing bus should be introduced which runs at regular intervals through MHNP to discourage the use of private vehicles.
- (f) Stop construction of new roads and repair existing roads. Efforts should also be made for the recovery of vegetation in the western section of the MHNP.
- (g) The ICT Zoning Regulations should be displayed and publicized widely. Heavy penalties should be imposed on the violations of the ICT Zoning Regulations.¹⁴

(6) Building Capacity for Enforcement for Environmental Compliance

The protection of the environment and the promotion of sustainable development require more than writing laws. A provision in the laws about IEEs/EIAs is of no use if we do not have the professional and technical ability to conduct and evaluate such assessments. Setting environmental quality standards for industrial emissions and effluents can make a difference only if the EPAs have the laboratories and equipment and technical administrators to police such standards. There is also an urgent need to particularly build the requisite capacity for the monitoring of the hospital wastes.

In order to ensure effective implementation, there must be present the requisite capacity to undertake such implementation. Therefore, the Commission recommends that immediate steps, including budgetary allocations, should be taken to increase the present capacity of the institutions tasked with ensuring environmental compliance and its monitoring.

Another major recommendation in this Report is about the empowerment/independence/capacity building for environmental compliance, particularly of the PEPA, and the independence of its Director General. In this respect, PEPA needs to be effectively upgraded and be made fully autonomous. Its Director General should be empowered to act independent of the Government; this may be done, among others, by his/her appointment with the concurrence of a body such as IPAB or a Parliamentary Committee (see Recommendations (b) and (c) of (1) Sanctity of the Master Plan of Islamabad: Safeguards against "arbitrary" changes and encroachments under I. Priority Recommendations requiring Immediate Action) for fixed terms of four (4) or five (5) years.

(7) Effective use of EPO by PEPA

Section 16 of the 1997 Act empowers PEPA to issue an EPO to prohibit an actual or potential adverse environmental effect, to prevent the violation of the rules and regulations or the violation of any of the substantive provisions of the 1997 Act. By issuing an EPO, PEPA has the power to prevent, stop or lessen the harm done to the environment of Islamabad by directing the persons/industries to stop/remove/dispose of the effluent, waste, air pollutant, noise, or hazardous substances and/or restore the environment to the condition prior to such removal or disposal as may be reasonable in the circumstances. PEPA has exercised this power and issued only three (3) EPOs to polluting industries; however, this power should be used frequently and effectively by PEPA to enforce NEQS and regulate persons/industries to prevent further harm to the environment.

(8) Housing Societies to develop their own waste management system

The housing societies must develop their own waste management regimes and in no case allowed to dump their wastes on public grounds or public waters. To eliminate the degradation of water quality in the F/9 Park, the housing societies and housing colonies in Sectors E-8 and E-9 should, particularly, be given three (3) months to make satisfactory wastewater treatment and disposal arrangements. Strict action must be taken against the violations after the said three (3) months.

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

(9) Implementation Committee

The Islamabad High Court may consider the setting up of a small Implementation Committee to oversee the implementations of the recommendations of the Commission. Such a committee was formed in the Lahore Clean Air Commission in Syed Mansoor Ali Shah vs. Government of Punjab, PLD 2007 Lahore 403.

(10) Allocation of Financial Resources

Some or most of these recommendations would be possible only if, amongst others, appropriate financial resources are allocated. Meaningful implementation of any environmental protection plan in any city or country requires political will and the resourcing of the agenda of the environmental protection and development.

Without the supporting resource allocation, the recommendations of the Commission will merely become a wish list. It is, therefore, recommended that the concerned Ministries, like the Ministry of Finance and the Ministry of Planning, Development and Reforms, allocate appropriate budgets for the implementation of the recommendations of the Commission. Particular attention is drawn to:

- (a) Recommendation (6) Building Capacity for Enforcement for Environmental Compliance under 1. Priority Recommendations requiring Immediate Action for the capacity building;
- (b) Recommendation (a) of (1) Clean Drinking Water under 2. Other Recommendations for the approval of the project for sourcing clean drinking water from Rawal Lake; and
- (c) Recommendation (a) of (3) Hospital Waste Management under 2. Other Recommendations for the procurement and installation of incinerator for PIMS Hospital in Islamabad.

It was the expectation of the Chair to invite the Minister of Finance and the Minister of Planning, Development and Reforms to the final meeting of the Commission to sensitize the importance of the proposals made in this Report. If the Islamabad High Court were to appoint an Implementation Committee to monitor the implementations of the recommendations of the Commissions, such Implementation Committee should seek the support of the Ministry of Finance and the Ministry of Planning, Development and Reforms.

2. Other Recommendations

The Commission also recommends the following, which can, preferably, be time bound:

(1) Clean Drinking Water

In the rural areas of ICT, almost sixty (60) water supply schemes are being operated by the Department of Local Government and Rural Development, ICT, through water user committees. To ensure continuous supply of clean drinking water, the chlorinators are required to be timely replaced. However, due to paucity of funds, timely installation and replacement of chlorinators suffers which, in turn, affects the supply of clean drinking water to the rural areas.

Similarly, water supply in the urban areas of ICT is the responsibility of CDA. Even though CDA has set up a number of water filtration plants in the sectoral areas, filtration facility is provided only to some of the areas. Further, no chemical and biological processes/reverse process/osmosis process/ion exchange is being done, which affects the quality of the drinking water.

Further, Rawal Lake, which is a source of drinking water for Rawalpindi, is receiving untreated sewage and other wastes from the irregularly growing population of Barakaho, Bari Imam, Shadara, Banigala and other adjoining populations making the water highly polluted and toxic. Similarly, Simli Lake, that provides a source of drinking water for Islamabad, is receiving untreated sewage and other waste from Murree and newly developed colonies along the Murree Expressway which are polluting the water and rendering it unfit for human consumption.

To overcome these impediments, the CDA, ICTA and the Cabinet Division have jointly prepared a project envisaging the construction of five (5) decentralized sewerage treatment plants upstream of Rawal Lake at the cost of Rs. 2,258 million in the catchment area of Rawal Lake (the "Project") to ensure the supply of clean drinking water from Rawal Lake. The Project was

submitted to the Ministry of Planning, Development and Reforms. However, funding is still awaited. Additional water resourcing from Tarbela may also be considered.

The Commission recommends:

- (a) Urgent approval and the necessary funding of the Project be given by the Ministry of Planning Development and Reforms.
- (b) CDA to immediately implement or outsource the maintenance of the filtration plants and chlorinators and also repair/replace water pipes and sewer drains that are contaminating the drinking water lines. The water quality of such water lines should be checked by the Pakistan Council of Research in Water Resources ("PCRWR") or the National Institute of Health ("NIH").
- (c) Promote rainwater harvesting in buildings, watershed management (through physical and biological measures), recharge wells, and undertaking of water audits.
- (d) Install water meters and fix nominal water use charges.

(2) Solid Waste Management¹⁵

The total amount of solid waste generated within the municipal limits of Islamabad ranges between 500- 550 metric tons per day and for the ICT is approximately 750 tons (based on 0.5 kg/c/d). Due to lack of proper landfill site, the solid waste is dumped at open sites. Such unattended and openly dumped waste (particularly organic waste), especially under warm and moist conditions, becomes an ideal breeding place for disease causing organisms. These badly managed heaps of wastes are time bombs, which may not explode, but can cause serious public health hazards.

Moreover, the management of solid waste, including hospital and other hazardous wastes, on scientific grounds is non-existent in both the CDA and ICT jurisdictions resulting in the dumping of waste in the open without any treatment, recycling or proper landfill.

Currently, CDA provides door to door collection service to Zone 1 only while the waste from the remaining Zones is not regulated by it. This results in dumping of the waste by these Zones in the different nallas and rivers.

To prevent any health hazard and ensure the proper disposal of the solid wastes, the Commission proposes:

- (a) Introduce an Integrated Waste Management program for sustainable management and further improvement of waste management.
- (b) Door to door collection service should be provided by the CDA on daily basis to all the Zones of ICT.
- (c) Segregation of solid waste at source (household and street level). Waste to be collected in three (3) bins/bags, that is, food/biodegradable, recyclable and hazardous waste. This collection, monitored and transferred with proper tracking system, should be made mandatory to avoid any theft.
- (d) Remove open waste storage and other un-hygienic street bins placed and replacing them with new bins at all public places.
- (e) Clean up of all nallas and ditches where the garbage has been dumped in the past.
- (f) A system of energy recovery from waste needs to be introduced including conversion of non-recyclable waste materials into useable heat, electricity, or fuel through a variety of

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

processes, including combustion, gasification, pyrolysis, anaerobic digestion, and landfill gas (LFG) recovery.

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

(3) Hospital Waste Management

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

The Vice Chancellor, PIMS, Dr. Javed Akram, pointed out during his attendance of the third meeting of the Commission as a Special Invitee that there is a long-standing request of PIMS with the Economic Affairs Division for the procurement of an incinerator for PIMS. The French Government had indicated an interest in this. During a meeting on 6 October 2015 at the Ministry of Climate Change requested by the Chair, representatives of several hospitals in Islamabad¹⁶ joined to confirm that if PIMS gets the incinerator, 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.

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 (PM_{2.5}) (45 to 95 $\mu\text{g m}^{-3}$) and nitric oxide (NO) (41 to 120 $\mu\text{g m}^{-3}$) exceed the standard set by the NEQS. The major contributors of air pollution in Islamabad are the motor vehicles and the emissions from the industries in Sectors I-9 and I-10.

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

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

- (c) Compulsory emission limits must be set and the "self-monitoring and reporting tool" (SMART) must be reintroduced to the industries of Islamabad. This will monitor the emission quality and quantity and help in better reporting under the National Environmental Quality Standards (Self-Monitoring and Reporting by Industry) Rules, 2001. SMART will also enable PEPA to easily detect industries exceeding the threshold set by NEQS and take timely action.
- (d) Strengthen PEPA to enforce test protocols for inspection and maintenance of vehicles and industrial machinery, and "pre-emission cleaning and refining techniques" in the industrial area of Islamabad.
- (e) Introduce combustion efficiency in diesel engines of factories by using cleaner fuels like LNG and promote lead-free gasoline by giving incentives to refineries so that they may invest in sulphur content reduction technologies in diesel.
- (f) Higher taxes on diesel and other fuels containing high levels of lead and sulphur for vehicles and improving the quality of diesel for decreasing per vehicle emission and on spot checking/fine of polluting vehicles by mobile teams.
- (g) Introduce new vehicle standards by adopting Euro-2 norms and aiming for Euro-4 norms gradually.
- (h) A follow up of commitments made in the approval of the EIAs of projects in Islamabad to ensure that vegetation cover removed for construction is replenished.
- (i) Private sector must be involved in plantation efforts, and the subsequent care, along major road works, such as Islamabad Expressway.

(6) Public Participation/Public Engagement Committees

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

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

(7) Climate Change

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

(8) Better Co-ordination between Environmental Management Agencies

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

(9) Holistic Mass Transit Plan for Islamabad

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

(10) Restructuring CDA

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

(11) Toll-Free Telephone Numbers

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

(12) Public Education

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

(13) ICTLGA and the Commission's recommendations

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

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

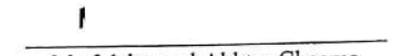
F. Acknowledgements

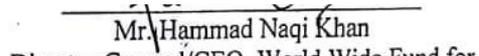
The Chair expresses his gratitude to the members of the Commission and to, particularly, Mr. Arif Ahmed Khan (Vice Chair), Raja Hasan Abbas (Cabinet Secretary), CDA, PEPA, SDPI, Mr. Abdul Saboor Nizamani (Joint Secretary), and Mr. Shujaat Umar Pirzada (Associate, Hassan & Hassan (Advocates)), for their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

G. Note on Signatories to this Report

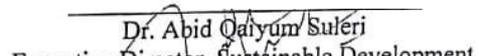
This Report was unanimously adopted by the Commission. All the members have signed the Report. Dr. Muhammad Khurshid, DG, PEPA, took an active part in the work of the Commission till his appointment, in July 2015, as the Director General of South Asia Co-operative Environment Programme (SACEP), in Sri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

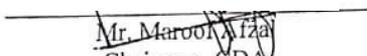

Mr. Raja Hasan Abbas
Secretary, Cabinet

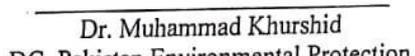

Mr. Mahmood Akhtar Cheema
Country Representative, IUCN Pakistan

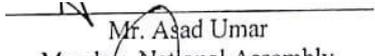

Mr. Hammad Naqi Khan
Director General/CEO, World Wide Fund for Nature Pakistan

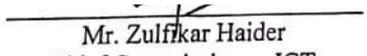

Ms. Saima Amin Khawaja
Advocate, High Court

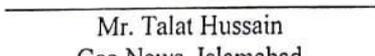

Dr. Abid Qaiyum Suleri
Executive Director, Sustainable Development Policy Institute (SDPI)

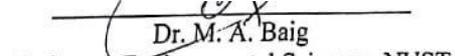

Mr. Maroof Afza
Chairman, CDA

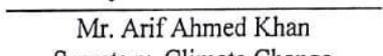

Dr. Muhammad Khurshid
DG, Pakistan Environmental Protection Agency

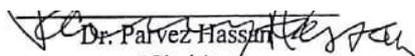

Mr. Asad Umar
Member, National Assembly


Mr. Zulfiqar Haider
Chief Commissioner, ICT


Mr. Talat Hussain
Geo News, Islamabad


Dr. M. A. Baig
Chairman, Environmental Sciences, NUST


Mr. Arif Ahmed Khan
Secretary, Climate Change
(Vice Chair)


Dr. Parvez Hassan
(Chair)

Islamabad, 7-19 October 2015