

Environmental Law in Pakistan

Governing Natural Resources
and the Processes and
Institutions That Affect Them

Part 1

Federal

IUCN
The World Conservation Union

Environmental Law

in Pakistan

Governing Natural Resources
and the Processes and
Institutions That Affect Them

Federal

Contents

	Abbreviations	05
	Introduction to the Series	06
	Foreword	08
	Acknowledgements	10
01	Executive Summary	12
02	Methodology	16
03	Hierarchy of Legal Instruments	18
04	Governance	22
05	Natural Resources	30
06	Processes and Institutions	42
07	Summary and Conclusions	74

Older legal instruments and court decisions employ patterns of English language usage that are in many cases archaic, particularly with respect to hyphenation. In the interest of authenticity, this usage has been retained in the titles of all materials reviewed and discussed in this volume. Similarly, in older laws and rulings, the names of the provinces of Balochistan and Sindh are written “Baluchistan” and “Sind”—the official spelling used by the British colonial administration. This spelling too has been retained in the titles reproduced here, although the modern spelling is used throughout the text of the analysis.

The process of amending laws in Pakistan is in many cases carried out in stages, by means of specific instruments intended to revise a single law, or through general amending or adapting legislation that deals with scores of legal instruments. The same hold true for repealing laws. As a result, it is sometimes difficult to determine the status of a particular statute. While every effort has been made to ensure that information about the status of various legal instruments is up-to-date, IUCN cannot guarantee that every law reviewed in this volume remains in force as of 2005.

Abbreviations

CBR	Central Board of Revenue
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
EIA	Environmental Impact Assessment
FATA	Federally Administered Tribal Areas
IEE	Initial Environmental Examination
IUCN	The World Conservation Union
NEQS	National Environmental Quality Standards
NWFP	North-West Frontier Province
PATA	Provincially Administered Tribal Areas
PEPA	Pakistan Environmental Protection Act 1997
PPC	Pakistan Penal Code 1860
WAPDA	Water and Power Development Authority

Introduction to the Series

Under the Pakistan Environmental Protection Act 1997, the term environment is defined to mean air, water, land and layers of the atmosphere; living organisms and inorganic matter; the ecosystem and ecological relationships; buildings, structures, roads, facilities and works; social and economic conditions affecting community life; and the interrelationship between these elements (Section 2(x)).

Environmental law in Pakistan is thus defined in the broadest sense to include the management of biological and other natural resources as well as the control of pollution and hazardous materials. The environmental legal regime in force in the country today comprises a substantial number of laws covering subjects ranging from species to sectors to activities, and enacted over a period of more than 125 years.

Environmental Law in Pakistan is a six-part series, organised as follows: Part 1: Federal, Part 2: Balochistan, Part 3: North-West Frontier Province, Part 4: Punjab, Part 5: Sindh, and Part 6: Northern Areas. Each volume reviews and analyses the law governing natural resources, as well as the processes and activities that impact natural resource management. The full text of all legal instruments surveyed can be found at <http://www.iucn.org/places/pakistan/elaws>. For a fuller understanding of environmental legislation at the sub-national level, the provincial and regional surveys should be read together with the federal review. Older national laws that currently operate as provincial laws are discussed in detail in the provincial studies.

The process of compiling, writing and editing this series will have taken more than five years by the time it is complete. The authors are legal practitioners and academics belonging to all provinces and territories of Pakistan. They searched for and reviewed hundreds of federal and provincial legal instruments to identify statutes that govern natural resources directly, as well as those that actually or potentially affect natural resource management in the country.

Environmental Law in Pakistan is intended to serve as a reference resource for law students and teachers, practising lawyers, lawmakers, judges, administrators, corporate officers, and others who require information on the subject. Every effort has been made to keep the text of the analysis jargon-free so that it is accessible to the widest possible audience.

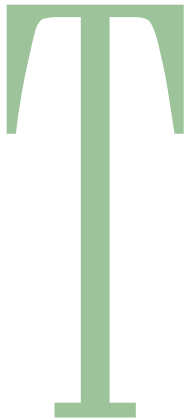
Foreword

During the last two decades great interest has been shown in environmental law. Initially environmental law was a mix of penal, health, agriculture, planning and development regulations and statutes, which were and still are being applied to meet the environmental issues. The Environmental Law in Pakistan was specifically enacted in a disciplined shape by promulgating Pakistan Environmental Protection Act 1997 but neither it is comprehensive to cover all environmental issues nor meets the emerging issues in this field. However it demonstrates that principles of environmental law have matured having its own identity. There existed provisions relating to environment in different statutes as they were framed to meet the needs of the society without aiming directly at environment. This created problem in locating the relevant law for a particular environmental issue. The uphill task of searching such scattered provisions and brining them together under the umbrella of environment has commendably been performed by publishing this book. It is a pioneering work and a comprehensive collection of environmental provisions in various statutes providing protection to environment and sustainable development. This volume is an encyclopedia of Pakistan Environmental laws available at hand with proper notes, references and important leading judgments of the superior courts. IUCN has again met the challenge and deserves full commendation.

To agitate an issue and assert or defend a right one should know the correct law applicable to it. Searching of relevant law not only requires hard work but is a key to success. This volume provides a key to environmental law and will serve as a useful guide for all those who have interest in environment be they judges, jurists, advocates, teachers, scholars, journalists or persons devoted and interested in protecting the environment. It is a useful addition to the law literature. In preparation of this volume the authors, researchers, scholars and attorneys who made efforts to complete the work deserve congratulation.

Justice (retired) Saleem Akhtar

Acknowledgements



he authors of this volume are Mr. Ijaz Ahmed and Ms. Muneeza Kazi. Mr. Ahmed is a Partner at Mandviwalla & Zafar, Karachi. At the time she drafted this review, Ms. Kazi was an Associate with Mandviwalla & Zafar, Karachi.

Authors of other parts of the series who contributed to the federal review are:

- Professor Ahmed Ali Khan, Dean, Faculty of Law, University of Peshawar; and Mr. Inayatullah Khan, Lecturer, Faculty of Law, University of Peshawar (Part 3);
- Mr. Jawad Hassan, Partner, Hassan & Hassan, Lahore; Mr. Ahmed H. Ghazali, Associate, Afridi Shah Minallah, Lahore; and Mr. Shahab Qutub, Associate, Raja Akram Associates, Lahore (Part 6); and
- Professor Mir Aurang Zaib (co-author, Part 2).

Mr. Zahid Hamid of Hamid Law Associates, Lahore, contributed to the section on forests. Surrige and Beecheno, Karachi, and the Library of the Sindh High Court provided invaluable assistance in locating copies of legal instruments that were difficult to find.

The following former staff members of IUCN-The World Conservation Union, Pakistan, spent countless hours researching legal instruments and coordinating logistical aspects of this review:

- Mr. Mukarram Farooqi, Information Manager, Karachi Office;
- Mr. Asad Ihsan, Senior Coordinator, Environmental Law Programme, Karachi Office;
- Ms. Huma Ikramullah, Deputy Coordinator, Environmental Law Programme, Karachi Office; and
- Mr. Arshad Mehmood, Librarian, Islamabad Office.

As Series Editor, Ms. Firuza Pastakia assured the coherence and consistency of this report with a fine sense for both substance and syntax.

Patricia F. Moore
Head, IUCN Regional Environmental Law Programme, Asia
Series General Editor

01

**Executive
Summary**

Pakistan is a Party to all major multilateral treaties that address natural resource conservation and management. In becoming a Party to these international conventions, the federal government has assumed obligations to implement their provisions which in many cases requires legislation.

The subject of ecology appears in the Concurrent Legislative List of the Constitution. In theory, this allows both federal and provincial governments to legislate on matters governing natural resources. In practice, however, the federal government has for the most part abstained from legislating natural resource conservation and use, except in cases that affect international trade or national security. Law-making to regulate natural resource use is left primarily up to provincial governments.

Most federal laws related to natural resources pre-date the 1973 Constitution. Much of this legislation is more than 50 years old, while several laws in force today were enacted as far back as the 1800s. These statutes delegate to provincial governments most of the responsibility for administering the exploitation of natural resources. The legislation focuses largely on administrative matters, detailing powers, prohibitions and penalties. With few exceptions, federal statutes delegate rule-making and other implementation powers either to provincial governments or to bodies and authorities specifically established for such purposes.

Federal legislation does not apply in substantial areas of the country. The Federally Administered Tribal Areas (FATA), Provincially Administered Tribal Areas (PATA) and Northern Areas are all exempt from federal law unless the executive branch of the government with jurisdiction for a particular area explicitly extends the application of a legal instrument to that area.

In practice, most laws governing natural resources operate as provincial laws. The only exceptions are statutes related to marine fisheries located outside Pakistan's territorial waters, legal instruments governing the allocation of freshwater resources and an act that prohibits cutting trees in strategic areas.

Federal statutes governing natural resources regulate the orderly prospecting and exploitation of those resources to ensure their continued availability for future exploitation, rather than providing for conservation and development. Laws regulating the commercial aspects of marine fisheries, for instance, contain no provisions related to the conservation of fisheries resources. The single federal law that enables a ban on fishing does so in the context of exploitation rather than conservation.

Only one law in force mentions the protection of the marine environment, but does not establish any substantive requirements for such measures. There are no federal laws providing for the protection of mangroves, coastal forests and marine ecosystems, or smaller marine organisms and their habitats. No federal legislation exists to control freshwater pollution except for a few provisions of the Pakistan Environmental Protection Act (PEPA) 1997 that apply indirectly, and scattered clauses in the Penal Code, Forest Act and Islamabad Wildlife Ordinance.

Similarly, laws governing the forest sector regulate the exploitation of forest resources and impose restrictions on the use of certain forests in the interest of national security. There is currently no federal legislation providing a framework to manage forests as ecosystems or landscapes, to conserve them as habitats for wild flora and fauna, or to protect rare or threatened forest species.

Although the subject of wildlife is on the Concurrent Legislative List, no federal law exists to establish fundamental principles of wildlife conservation and use, to be applied equally in all provinces and territories. There is no federal law to implement Pakistan's obligations under the Convention on the Conservation of Migratory Species of Wild Animals (1979) and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (1973), or CITES, although statutory rules are used to control the import and export of endangered species. Nor does federal legislation exist to establish a national system of protected areas, as required by the Convention on Biological Diversity (1992) to which Pakistan is a Party.

Federal laws governing the processes and institutions that affect natural resources focus on regulating those processes to ensure their orderly conduct and achieve commercial objectives. Over one third of the legislation governing processes and institutions that affect natural resources was framed before Pakistan's independence in 1947 and pre-dates modern trends in natural resource law. As such, it is not surprising that these laws contain no provisions integrating conservation and sustainable development.

The basic law on land acquisition for public purposes dates back to 1894 and makes no mention of natural resource conservation. Even so, the language of the 1894 law and others is vague enough to permit interpretation favouring conservation and sustainable use until such time that legal reform affirmatively provides for ecologically sound practices.

No general legislation exists to implement a national agricultural policy or establish a framework governing agricultural activity across the country. Federal laws in the agriculture sector regulate inputs such as pesticides and fertilisers, and control activities such as processing, marketing and transportation. The law does not provide measures to mitigate the impact of agricultural inputs and practices on the natural environment on which agriculture depends.

Three federal laws governing extractive industry pre-date Independence; one is more than 100 years old. No framework legislation exists to implement federal policy on the subject, or to set out guidelines for exploring, exploiting and closing sites where minerals and petroleum products are extracted. Federal law contains no provisions to mitigate the substantial environmental impacts of mineral exploration.

Half of the federal legislation pertaining to transport dates back to the pre-Independence era, while at least four laws governing this sector are more than a century old. But even recent legislation on terrestrial transport fails to regulate the impact of transport-related activities on natural resources and the environment, although recent legislation on commercial maritime shipping does provide for some measure of environmental protection.

Comprehensive legislation governing the tourism sector and its impact on natural resources is also lacking. Federal laws in force today are more than a quarter century old, and govern specific services rather than setting national standards and guidelines for development of the industry as a whole.

Investment and tax law in Pakistan favours the development of industry and agriculture. Existing tax laws have failed to tap the potential of using taxes as a tool to control pollution or encourage sustainable natural resource management, such as by providing tax incentives for environmentally friendly industries. Rather, the current tax structure is driven by revenue considerations and commercial interests. Federal law provides no incentives to encourage investors willing to undertake projects that are based on sound environmental principles.

The import/export regime does not contain provisions to discourage the import of goods that damage the environment or encourage the import of environmentally friendly products. The law does not require submission of data on imported goods that would permit a determination of their potential effect on natural resources.

For the most part, federal legislation fails to provide for environmental conservation or protection. Notable exceptions to this rule are laws on export processing zones, electric power generation and maritime shipping. Environmental provisions in the statutes on export processing zones and electricity, however, are vague and general, providing no clear guidelines or limitations. In addition, environmental provisions in the law on export processing zones are discretionary rather than mandatory. Maritime shipping law is more specific, referring to the provisions of an international agreement. Similarly, a recent amendment to legislation governing ports in Karachi makes polluters liable for clean-up costs and nominates authorities responsible for ensuring a pollution-free environment in the vicinity of the harbour.

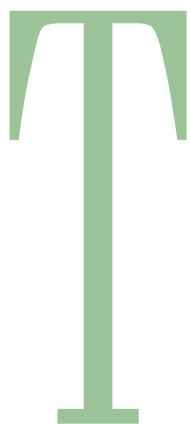
Most federal laws emphasise administrative detail and provide little substantive direction, while legislation governing natural resources and the processes that affect them fails to provide either a general or sectoral framework for coordinating sustainable development with sustainable resource exploitation.

The distribution of powers between the federal government and the provinces complicates the process of managing natural resources and regulating related processes. For instance, the mining of radioactive substances and the exploitation of petroleum products are subjects that lie within the exclusive domain of the federal government, while the management of natural resources and protected areas affected by such activities is likely to be under the control of a provincial government. In the event of a conflict, federal law will prevail. Local government bodies have been entrusted with certain environmental and natural resource responsibilities but there is no legal framework providing for coordination between local bodies, provincial environmental protection agencies and other authorities responsible for natural resources.

Another significant omission from federal legislation concerns citizen participation in natural resource management and conservation. The law contains no provisions enabling participation or allowing citizens to access information held by various government authorities responsible for natural resources and their management.

Federal case law on natural resource issues is, for all practical purposes, non-existent. The Shehla Zia case, in which the Supreme Court of Pakistan declared the right to a healthy environment to be a part of the fundamental constitutional right to life guaranteed to all citizens, was based on pollution concerns rather than natural resource issues. This ruling nevertheless creates a solid precedent for extending fundamental rights to cover issues related to natural resources.

02 Methodology



he original research framework for *Environmental Law in Pakistan* was developed jointly by the Series General Editor and one of the authors. The outline was tested and revised during the process of compiling and drafting each of the volumes in this series.

Authors were selected to include both legal academics and practising attorneys, to provide a wide range of perspectives and approaches to the research design. Two authors worked on the review of federal law, and at least two worked on each of the other volumes in the series. All authors met twice during the initial stages of compilation and drafting to discuss difficulties and questions, and agree on common solutions. This collaboration delivered composite analyses of hierarchy and governance that are richer and more exhaustive than individual chapters would have been without the joint effort.

Each team of authors evaluated legislation in force for every category specified in the research design, and selected for analysis those laws relevant to the focus on natural resources and related processes. Questions about the applicability of a particular legal instrument were resolved through consultations between authors and editors.

Resources tapped to research federal statutes included the Pakistan Code, law reports published in Pakistan, and a variety of academic and commercial legal texts. Laws are amended frequently and not all the amending statutes are published in the resources generally available, making it difficult—and in some cases impossible—to definitively ascertain the current status of a law. While even the oldest laws may be found in the Pakistan Code, rules and regulations framed pursuant to acts and ordinances are not included.

03 Hierarchy of Legal Instruments

3.1 Constitution of the Islamic Republic of Pakistan 1973

Pakistan's chief legal instrument is the 1973 Constitution. It establishes the relationship between the federal government and the provinces, and empowers the federal and provincial governments to perform their designated functions.

On 12 October 1999, a state of emergency was declared throughout Pakistan, the Constitution was held in abeyance, and the national and provincial assemblies were suspended. This marked the second occasion on which the Constitution of 1973 was held in abeyance; the first time was during the period 5 July 1977–2 March 1985. Immediately following the declaration of the 1999 emergency, a series of provisional constitution orders and executive orders, issued between October and December of that year, provided for the functioning of the government, and awarded legislative powers to the chief executive and provincial governors (Order 1 of 1999, Order 5 of 1999 and Order 9 of 1999). The following year the national and provincial assemblies were dissolved.

In the period during which the assemblies remained dissolved, the legislative process was substituted by a series of orders and ordinances issued by the chief executive and provincial governors. Bypassing the usual procedure for legislative ratification, ordinances issued between 1999 and 2002 were validated by the Constitution (Seventeenth Amendment) Act 2003. These ordinances remain in force and do not need to be adopted by the relevant legislative body. No ordinances were issued on matters related to the environment, natural resources or their management during this period.

By March 2003, the Constitution was restored. The process was carried out in phases, from November 2002 to March of the following year, and included the promulgation of the Legal Framework Order 2002 which amended the Constitution. All of the constitutional amendments made during this period, which were the subject of debate, were passed into law in 2003 via the Constitution (Seventeenth Amendment) Act. Elections to the national and provincial assemblies were held on 10 October 2002, and polls for the Senate were held on 24 February 2003.

3.2 Legislative Acts

First in the hierarchy of sub-constitutional legal instruments are acts passed by the legislative branch of government—the national and provincial assemblies. Here, federal law controls. Under Article 143 of the Constitution, if legislation passed by a provincial assembly comes into conflict with a law enacted by the national assembly, the federal statute overrides the provincial one to the extent of the inconsistency.

Some federal laws themselves operate as provincial statutes, either because legislative power with respect to a particular subject has shifted from the federal to provincial level during one of several constitutional changes, or because the national assembly was authorised to frame a law on a provincial subject by provincial consent, under Article 144 of the Constitution. This Article also allows the provinces to subsequently amend or repeal such laws. In addition, certain laws framed during the colonial era now operate as provincial statutes because their subject matter does not fall under the legislative jurisdiction of the federal government.

3.3 Ordinances

Under the 1973 Constitution, ordinances may be promulgated by the executive branch of government—by the president when the national assembly is not in session (Article 89) or by a provincial governor when a provincial assembly is not in session (Article 128). Ordinances deal with matters not already covered by federal or provincial law and are promulgated when it is considered necessary to take immediate action. The president and governors have broad powers to assess such urgency. Ordinances have the same force and effect as an act but normally remain in force for a limited period of time—three months in the case of governors' ordinances (Article 128) and four in the case of presidential ordinances (Article 89). During this period, the president or governors may withdraw an ordinance, or it may be disapproved or modified by the relevant legislative body. Generally, an ordinance lapses if the relevant assembly fails to adopt it within the specified period.

In some cases, most notably when the assemblies have been dissolved or suspended, ordinances have been given the status of a legislative act by means of special orders. Continuation-in-force orders have exempted ordinances and orders from the provisions of Articles 89 and 128 of the Constitution. Ordinances protected in this way do not need to be ratified by a legislative body. On some occasions, continuation-in-force orders are in turn repealed by a later “democratic” government; in other cases, the protections have been formalised, as with the Constitution (Seventeenth Amendment) Act 2003.

Although the legislative history of an ordinance or act may be indicated in its text, this is not always the case. Nor is it possible in every instance to trace the history of a particular legal instrument by its title alone, since an ordinance approved by the assemblies is not always renamed or reissued as an act.

3.4 Rules and Regulations

Rules and regulations are not independent legal instruments. They are issued by the executive branch of government, pursuant to a particular act or ordinance, for the purpose of implementing specific provisions of that legal instrument. They may be issued by the federal or provincial government, or by a delegated actor or agency, depending on the legal instrument they are made to implement.

Rules are the principles to which an action or procedure is intended to conform and are always framed in the exercise of powers delegated under a statute. Examples of statutory rules include the federal and provincial rules of business, which establish parameters for the functioning of the executive, as well as rules made under PEPA 1997.

Regulations provide for specific measures that are required to put an act or ordinance into effect. The federal and provincial governments also use regulations to govern FATA and PATA, respectively. Article 247 of the Constitution gives the president or provincial governors the authority to make regulations “for the peace and good government” of the tribal areas.

3.5 Orders

Orders are usually issued in exercise of a power delegated under a statute. They may deal with a broad range of substantive issues, or with a specific and limited situation, as in the case of environment protection orders that can be issued under PEPA 1997. Administrative orders are issued by an administrative authority in exercise of a delegated power to administer a particular issue. The status of an order depends on the delegated power under which it is issued. Orders have also been issued in situations where there is no statutory delegation, such as, for example, provisional constitution orders and other executive orders issued during the period October 1999–August 2002, as well as the Legal Framework Order 2002.

3.6 Notifications

Notifications are not a separate class of legal instrument. They are the mechanism by which the executive branch of government promulgates rules and regulations. Notifications also serve as a means to communicate specific official actions taken to accomplish a particular, limited purpose, such as designating a protected area. Due to their volume and specificity, this review has not compiled or discussed notifications.

3.7 Laws of West Pakistan

Until 1970, the sovereign state of Pakistan was divided into two provinces: East Pakistan (now Bangladesh) and West Pakistan. In that year, under the Province of West Pakistan (Dissolution) Order 1970, West Pakistan was further divided into four new provinces: Balochistan, the North-West Frontier Province (NWFP), Punjab and Sindh. The following year, the province of East Pakistan gained independence and the new state of Bangladesh was created.

Under the Dissolution Order, all legal instruments existing at the time—whether applicable to all or part of West Pakistan, and whether or not they had taken effect as of the date of the order—remained in force and were made applicable to each of the newly created provinces until such time as they were repealed or amended by the new provincial assemblies. Many such laws were never subsequently repealed or amended. The West Pakistan laws that remain in force today apply to those provinces that have not acted to amend or repeal them, and function as individual provincial laws. As in the case of ordinances in general, it is difficult to trace the legislative history of a West Pakistan legal instrument by its title alone.

04 Governance

T

he 1973 Constitution defines the state to include the federal and provincial governments, the national and provincial assemblies, and authorities empowered by law to impose a tax or cess (Article 7). The term government, meanwhile, refers to executive authority at either the federal or provincial level. The Constitution provides for the exercise of authority at the federal and provincial levels of government; the powers of each

level are further delineated by statute. Authority for local governance is provided solely by statute. Article 247 provides for the governance of FATA and PATA designated in Article 246.

4.1 Federal

The Constitution specifies the jurisdiction of various branches of government and outlines the division of powers between them.

4.1.1 Legislative

Articles 141–144 of the Constitution deal with the legislative powers of the federal and provincial governments. Subject matter jurisdiction is specified in the Legislative Lists contained in the Fourth Schedule of the Constitution.

Under Article 141, the national assembly may legislate for the whole or any part of Pakistan, and a provincial assembly may frame laws for all or part of its own province. The national assembly enjoys exclusive jurisdiction over subjects mentioned in the Federal Legislative List, and shares with provincial assemblies legislative powers over matters on the Concurrent Legislative List (Article 142). Article 142 also confers on provincial assemblies exclusive jurisdiction to legislate on any subject that is not specified in either the Federal or Concurrent List—referred to as the residuary legislative power of the provincial government. Where federal and provincial laws are inconsistent, federal law prevails to the extent of the “repugnancy” (Article 143). Under Article 144, residuary power may be assigned to the national assembly if two or more provincial assemblies pass a resolution to that effect. At the same time, provincial assemblies have the power to subsequently amend or repeal any such law framed by the national assembly.

The subjects of environmental pollution and ecology are mentioned in the Concurrent Legislative List. This means that both federal and provincial governments may enact legislation governing natural resources.

In addition to the powers specifically awarded to provincial governments by the Constitution, a federal law may authorise provincial governments to exercise certain powers of the federal government or make rules to carry out the purposes of a law. In a declared emergency, meanwhile, the federal government may assume legislative authority over a province (Article 232).

Acts of the national and provincial assemblies do not automatically apply to the constitutionally designated tribal areas. Under Article 247 of the Constitution, the president may extend the provisions of a federal law to FATA and a provincial governor, with the approval of the president, may make regulations for the PATA under that province’s jurisdiction. Nor does federal law apply automatically to the Northern Areas where, for a legal instrument to take effect, the Ministry of Kashmir Affairs and Northern Areas must first issue an order or notification extending its application. Residuary power with respect to the Northern Areas and the tribal areas also lies with the federal government (Article 142).

4.1.2 Executive

The federal government is empowered to exercise its authority in two ways: through administrative authorities directly under its control and through provincial governments. In the latter case, the federal government may entrust any of its functions to a provincial government, with the consent of that government (Article 146). Conversely, Article 147 allows a province to entrust its executive authority to the federal government or its officers. The federal government may direct the provinces to take specified actions in the following matters: to ensure that provincial executive authority is exercised in such a way that it does not “impede or prejudice” the exercise of federal executive authority; to “carry into execution” any federal law on a subject in the Concurrent List, “which authorises the giving of such directions”; to construct and maintain “communication” infrastructure of national or strategic importance; and to prevent “any grave menace” to law and order, or to “economic life” (Article 149). The federal government may also assume executive authority over a province during a declared emergency (Article 232).

The president exercises executive authority over FATA, while provincial governors hold executive authority for the tribal areas located in their respective provinces, subject to the approval of the president (Article 247). Article 145 allows the federal government to direct a governor to act as its “Agent” in areas that are “not included in any province”.

Federal executive authority governs in the Northern Areas through the Ministry for Kashmir Affairs and Northern Areas. Powers are delegated to the Northern Areas local authorities through orders issued by the Ministry.

Article 99 of the Constitution gives the federal government the power to adopt rules of business to govern its administrative operations. The Federal Rules of Business 1973, as amended, are statutory rules, assigning functions to and dividing responsibilities between various ministries, their divisions and departments, and semi-autonomous bodies. These rules provide for the distribution of responsibility amongst ministries, establish the hierarchy of responsibility within individual ministries, and lay down operational procedures, some of which are compulsory, for interaction between ministries. Ministers take operational decisions while policy issues are referred to the Cabinet. Subject to the rules, business within a ministry is conducted in accordance with administrative guidelines and policies issued by the government from time to time. The 1973 Rules of Business are not explicit, however, on either the subject matter jurisdiction of ministries or their functions.

4.1.3 Judiciary

Article 175 of the Constitution establishes the Supreme Court of Pakistan along with the provincial high courts. Article 203C creates the Federal Shariat Court, which is empowered to decide whether a law or any provision of a law is repugnant to the injunctions of Islam (Article 203D). Article 212 provides for administrative courts and tribunals as well as other courts to be established by law. The environmental tribunals created by PEPA 1997 are one example of courts created by law.

Federal and provincial courts form part of a single national judicial system with the Supreme Court at the apex, serving as the appellate authority for all decisions taken by the provincial high courts (Article 185). The Supreme Court has original jurisdiction to hear matters pertaining to the enforcement of fundamental rights, disputes between a province and the federal government, or between provinces (Article 184), and questions of law that may be referred by the president (Article 186).

4.2 Delegation

The Constitution does not establish a general pattern for delegating powers and duties, nor are executive or legislative guidelines provided for the purpose. The Constitution awards powers to both the federal and provincial governments. The exercise of delegated power is controlled by provisions of the governing statute or rules framed under it, or by guidelines issued for this purpose by the corresponding government. Some federal statutes delegate rule-making power to provincial governments, which in turn may delegate their powers to subordinate officers or authorities. In some cases, this delegation is provided for in the statute itself, while in other instances governments are authorised to delegate such powers by publication of a notification in the official gazette. Statutory powers may be sub-delegated only if the original delegating legal instrument expressly provides for it. The exercise of discretion is controlled by the principles of natural justice, equity, reasonableness and other similar doctrines.

4.3 Provincial

Parts IV and V of the Constitution set out the powers of provincial governments.

4.3.1 Legislative

The subject matter jurisdiction of the provincial assemblies is provided for in Article 142 of the Constitution and specified in the Fourth Schedule, containing the legislative lists. A provincial assembly may also override judicial decisions by means of legislation.

4.3.2 Executive

The executive power of provincial governments extends to the same subjects over which provincial assemblies enjoy legislative authority (Article 137). Under Article 129 of the Constitution, the executive authority of a province is vested in the governor, who exercises this power either directly or through subordinate officers.

Article 139 gives provincial governments the power to adopt rules of business to govern their administrative operations. As at the federal level, provincial rules of business are statutory rules. The business of provincial governments is divided among various departments and “attached departments” which are semi-autonomous. Provincial rules of business establish the hierarchy of departments, provide for the division of responsibilities between various departments and attached departments, and establish the manner in which responsibilities are to be carried out, besides dealing with other miscellaneous issues. Subject to the rules of business, affairs within a department or attached department are conducted in accordance with administrative guidelines and policies issued by the provincial government from time to time. The rules of business also provide for interaction between various departments, which in certain cases is compulsory.

The delegation of powers to authorities subordinate to provincial governments is regulated by local government ordinances of each province.

4.3.3 Judiciary

Each province has civil and criminal trial courts of original jurisdiction, created by law, to deal with all matters within their respective territorial and pecuniary jurisdiction. The jurisdiction of the high court, the apex judicial authority for the province, is established in Article 199 of the Constitution. The high court supervises the lower judiciary (Article 203) and hears appeals against decisions of the lower judiciary. A provincial high court has original jurisdiction in certain matters including constitutional jurisdiction, under which it may enforce fundamental rights, direct specific performance of the public duties of the federal and provincial governments as well as their respective functionaries, and review executive and legislative actions (Article 199). When a provincial high court exercises its constitutional jurisdiction to review the exercise of executive or administrative authority, it may modify the actions in question or set them aside. This power is akin to the jurisdiction of the British courts to issue writs.

4.4 Federal Capital

The Islamabad Capital Territory, or federal capital, is designated by the Constitution as one of the territories of Pakistan (Article 1(2)(b)); two general seats in the national assembly are allocated to representatives of the capital (Article 51(1A)). The national assembly has territorial jurisdiction to legislate for the capital, while the executive branch of the federal government is the executive authority for this area.

4.4.1 Islamabad Capital Territory Local Government Ordinance 2002

This ordinance restructures local government in the Islamabad Capital Territory to devolve political power, and decentralise administrative and financial authority. The federal interior minister acts as the chief executive of the federal capital (Section 2(vi)). Under the ordinance, “local government” includes the district government and the zila council in Islamabad City District, and the union administration and union council in each union. Administrative, financial and appellate powers of the officers of the Islamabad Capital Territory Administration are decentralised to deputy district officers, district officers, executive district officers and district coordination officers as applicable, while the posts of chief commissioner, deputy commissioner and executive magistrate are abolished (Section 153). Operational aspects of the application of the law continue to be defined.

In addition to matters related to the devolution of local government, the ordinance also provides for local regulation of specified aspects dealing with forests, grazing land, freshwater, pollution, public transport, taxation and extractive activities. Decentralised offices are established, with responsibility for matters including taxation, agriculture, soil conservation, water management, fisheries, industries, mineral development and transport (First Schedule).

The zila council submits approved proposals for land use plans, environment control and maintaining ecological balance, as well as water resource management and public transport (Section 32) to the Federal Capital Commission for consideration and final approval (Section 108). The zila council and union councils are authorised to make by-laws that govern forests and plantations, agricultural development, pollution control, and extractive activities (Section 163, read with the Fifth Schedule, Part II). The local government may make rules governing forestry—with the exception of *guzara* (wasteland) forests, protected forests and watershed management—development authorities and site development schemes, and taxation (Fifth Schedule, Part I). Union administrations may regulate grazing and the use of public spaces (Section 42). Union, village and neighbourhood councils are responsible for the maintenance of local water supply sources and watercourses as well as for beautification, including planting trees (Sections 53 and 63).

Penalties prescribed under the ordinance range from imprisonment for one month and/or a fine of 5,000 rupees for polluting the physical environment, to three years imprisonment and/or a fine of 15,000 rupees for polluting the water supply (Section 119 and the Fourth Schedule).

4.5 Court Decisions

The following judgements deal with the scope and powers of the federal and provincial governments and legislatures.

4.5.1 **Imtiaz Gohar and others v. Additional Commissioner and others, 1990 MLD 1912**

The issue in this writ petition is the validity of administrative decisions on appeal against orders issued under statutory rules by an official to whom that particular power has not been delegated by statute. The Lahore High Court holds that there must be express or implied statutory authority to delegate, and that sub-delegation of powers is not permitted. According to the ruling, action taken by an official who does not have statutory authority is invalid and judicial powers delegated by statute to one official may not be delegated to another official by administrative action.

4.5.2 **Kh. Muhammad Sharif v. Federation of Pakistan, 1989 CLC 1387**

In this writ petition, the plaintiff raises the issue of the competence of the executive authority of the federal government to initiate a programme in areas not included in either constitutional legislative list and therefore within the jurisdiction of the provinces. The Lahore High Court does not address the issue of the federal government's authority to initiate the programme, holding that a private citizen does not have standing to bring suit on an issue arising between the federal government and a provincial government, and that the Supreme Court has exclusive jurisdiction to resolve disputes between the federal and provincial governments.

4.5.3 **Zaibtun Textile Mills Ltd v. Central Board of Revenue and others, PLD 1983 Supreme Court 358**

In this consolidated appeal on several related civil appeals dating from 1969 and 1971 concerning the application of rules made under the Central Excises and Salt Act 1944, as amended by the Finance Act 1966, the appellants allege that the national assembly had improperly delegated legislative powers to an authority of the executive branch of government. The Supreme Court denies the appeal, noting that the act in question delegated rule-making authority rather than legislative powers.

4.5.4 **Mst. Nasim Fatima v. Government of West Pakistan and, Superintendent, Central Jail, Dera Ismail Khan, PLD 1967 Lahore 103**

This writ petition challenges the delegation of powers under the Defence of Pakistan Ordinance 1965. The Lahore High Court holds that in delegating to executive authorities the power to make rules and regulations for the purpose of implementing statutory provisions, the legislature neither delegates legislative functions nor creates a parallel legislature. The court notes that the principle of delegating rule-making authority is well established, and states that a statute specifying its objectives and laying down policy or guiding principles under which rules and regulations may be framed does not delegate legislative functions.

4.5.5 Abdul Ghani v. Chief Settlement and Rehabilitation Commissioner Pakistan and another, PLD 1964 (WP) Lahore 214

This writ petition challenges the delegation of powers under the Displaced Persons (Compensation and Rehabilitation) Act 1958. The Lahore High Court holds that when a statutorily competent authority delegates powers to a subordinate authority, the delegating authority does not give up those powers, and may impose conditions on the exercise of the delegated power and review decisions made by the subordinate authority. The court also notes that a subordinate authority to whom a power is delegated does not have the authority to further delegate that power.

4.5.6 Punjab Province v. Federation of Pakistan, PLD 1956 Federal Court 72

In a dispute between the Federation of Pakistan and the province of the Punjab over tax liability arising from a statute, the Federal Court (the apex court of the country at that time) rules that any dispute of law or fact on which the existence or extent of a legal right depends must be determined by the Federal Court if the dispute is between the federal government and one or more provinces, or between two or more provinces. This principle is contained in Article 184 of the 1973 Constitution.

4.5.7 Abdullah v. the Crown, PLD 1955 Sind 384

This suit challenges action taken by the central government after it had delegated its powers to a provincial authority. The Sindh High Court holds that the delegation of powers does not amount to a renunciation or abdication of those powers on the part of the delegator. It notes that it is inherent in every delegation that the delegator “can at any time revoke the delegation and the power reverts” to them.

05

**Natural
Resources**

5.1 Legal Instruments

Pakistan is a Party to all major international agreements that address natural resource conservation and management. These multilateral treaties include the Convention on Wetlands of International Importance especially as Waterfowl Habitat (1971), Convention concerning the Protection of the World Cultural and Natural Heritage (1972), Convention on International Trade in Endangered Species of Wild Fauna and Flora, Convention on Migratory Species, Convention on Biological Diversity, and Convention on Combating Desertification (1994). In becoming a Party to these agreements, the federal government has assumed obligations to implement their provisions, which in many cases requires legislation.

The subject of ecology appears in the Concurrent Legislative List, meaning that both federal and provincial governments may legislate on matters related to most natural resources. In practice, the federal government has largely abstained from legislating natural resource conservation and use except in cases that affect international trade or national security. Law-making to regulate natural resource use has for the most part been left up to provincial governments.

Many federal legal instruments governing natural resources pre-date the 1973 Constitution, while some are more than 50 years old. Several laws in force today were adopted as far back as the 1800s. These statutes delegate to provincial governments most of the responsibility for administering the exploitation of natural resources. Their content is primarily administrative, detailing powers, prohibitions and penalties.

5.1.1 Land Tenure

The two federal legal instruments governing land tenure were substantively curtailed by a 1990 Federal Shariat Court ruling which invalidated specified provisions restricting land holdings as un-Islamic (see 5.2.1 below). Other provisions of these two legal instruments remain operative.

5.1.1.1 Land Reforms Act 1997

The objective of this act was to bring about a more equitable distribution of land for the benefit of tenant farmers. The law fixed a ceiling on the area of land that may be owned. The provisions of this act were challenged before the Federal Shariat Court. In 1990, the Court ruled that ceilings on land holdings were against the injunctions of Islam, invalidating Sections 3, 4, 5, 6, 7(5), 8, 9, 10, and 11–17. Those portions of Section 7 that remain valid prescribe procedures for making declarations of land ownership. Sections 18–27 concerning the Federal Land Commission also remain valid, as do the procedural provisions of Chapters VII and VIII. Provisions on joint holdings (Sections 22 and 23) and on alienation (Section 24) also remain valid pending future decision of the court.

5.1.1.2 Land Reforms Regulation 1972

The preamble to these regulations mentions Islam and justifies the redistribution of land on religious grounds. Accordingly, these regulations place certain restrictions on the ownership and possession of land. Nevertheless, the provisions of these regulations were also challenged before the Federal Shariat Court which, in 1990, invalidated most of the substantive provisions on the grounds that they were against the injunctions of Islam. Sections 7, 8, 9, 10, 13, 14, 18 and 25(3)(d) were invalidated in their entirety. Sections 2(7), 15, 16, 17, 19, 20 and 25(1) were invalidated with respect to specified conditions. The sections of the regulations that remain valid concern land commissions (Sections 4–6), the exchange of land among family members (Section 11), declarations of land ownership (Section 12), land grants to tenants (Section 18), the rights of tenants (clauses of Section 25 that were not invalidated in whole or in part), the use of land recovered from universities and certain charitable institutions (Section 21), and the procedural provisions of Section 3 and Parts VIII and IX.

5.1.2 Forests, Timber

Laws governing this sector regulate the exploitation of forest resources or impose restrictions on the use of certain forests in the interest of national security. There is currently no federal law that provides a framework for the management of forests as ecosystems or landscapes, for their conservation as habitats for wild flora and fauna, or for the protection of rare or threatened forest species.

When Pakistan gained independence from British rule in 1947, the Forest Act 1927 was in force across most of the country, except for northern Balochistan (to which the Balochistan Forest Regulation 1890 was applicable). The 1927 Act was subsequently extended to the PATA of Chitral, Dir, Kalam, Malakand and Swat (1974). There is no single legal instrument that extends the Forest Act 1927 to all of the Northern Areas but by 1991 a series of notifications had extended the Forest Act to all of the Northern Areas. The law does not apply to FATA which covers 2.76 million hectares

along the country's border with Afghanistan, not does it apply to the NWFP which enacted its own Forest Ordinance in 2002.

The subject of forests was included in the Provincial Legislative List of the Government of India Act 1935, and in the 1956 Constitution. It was not mentioned in the Central Legislative List of the 1962 Constitution or in either of the legislative lists of the 1973 Constitution. As a result, under the residuary rule, forestry has become an exclusively provincial subject. Provincial assemblies may amend the 1927 Forest Act or enact new forestry laws for their respective provinces, as the NWFP has done.

5.1.2.1 Cutting of Trees (Prohibition) Act 1992

This act focuses on border security rather than the protection of forests. It prohibits the cutting of trees near Pakistan's international borders and provides for the demarcation of such zones. Trees in these areas cannot be cut without the permission of an officer designated by the provincial government.

All powers under this act have been delegated to provincial governments, including the power to make rules and to demarcate zones in border areas. Provincial government officers have the power to enter, survey and map the land.

5.1.2.2 Forest Act 1927

Although it was enacted more than 75 years ago, the Forest Act 1927 remains the basic charter for forest management across most of Pakistan. Technically, this legislation operates as a provincial law. Although provincial governments are empowered to amend the law, it was only as recently as 2002 that the NWFP enacted its own legislation on the subject. Other provinces and the Northern Areas continue to manage forest resources under the Forest Act.

Designed to protect forest areas and regulate forest produce, the Forest Act provides for the creation of various classes of forest and allows provincial governments to "reserve" state-owned forest land, assume control of privately owned forest land, and declare any government-owned forest land to be a protected area. The law prohibits grazing, hunting, quarrying, clearing for the purpose of cultivation, removing forest produce, and felling or lopping trees and branches in reserved or protected areas.

Standing forests and wasteland on government-owned land, or over which the government enjoys proprietary rights, may be declared reserved by the government through notification in the official gazette (Section 3). Clearing land, felling trees, cultivation, grazing livestock, trespassing, mining and collecting forest produce are prohibited in reserved forests, along with hunting, shooting, fishing, setting traps or snares and poisoning the water (Section 26). These offences are punishable with a maximum of six months' imprisonment and/or a fine of 500 rupees, in addition to which offenders may be required to pay compensation for damage caused. Section 26 also prohibits setting fires in a reserved forest, and allows the government to suspend for an indefinite period all rights in a reserved forest where a fire has been set, either deliberately or by negligence.

The government may assign rights over a reserved forest to a village community (Section 28). Such forests are known as village forests. The government retains the power to make rules for the management of village forests.

Government-owned forests and wasteland not included in a reserved forest are designated as protected forests (Section 29). The government may declare trees or classes of trees to be reserved; close entire forests or parts of a forest; and prohibit mining, clearing and the removal of forest products (Section 30). The government may also suspend the rights of private persons in such forests, "provided that the remainder of such forest be sufficient, and in a locality reasonably convenient, for the due exercise of the rights suspended in the portion so closed" (Section 30(b)). This suggests that the government does not have absolute power to close private forests and must take into account the interests of rightsholders.

In protected forests, cutting or damaging trees, quarrying, cultivation and setting fires are offences punishable with up to six months in prison and/or a fine of 500 rupees (Section 33). Interestingly, hunting, shooting, fishing and poisoning the water in protected forests are not listed as offences. Rather, these activities are included in a detailed list of matters regarding which the government may make rules (Section 32). As with reserved forests, the government may suspend all rights to a protected forest if damage by fire has been caused either wilfully or through negligence (Section 34).

In addition to government-owned forests and wasteland, the Forest Act also allows the authorities to regulate privately owned forests and land. This may be done when the protection of privately owned forests "appears necessary" for any of the following purposes: protection from floods or landslides; preserving soil; maintaining watersheds; safeguarding roads, bridges and railways; and the "preservation of the public health" (Section 35). In such cases, the government is authorised to regulate or prohibit grazing, setting fires and clearing land for cultivation. The government may also carry out works on this land and, if necessary, acquire such land "for public purposes" (Section 37).

The law allows forest officials and police officers a wide range of powers, including the authority to arrest suspected offenders without a warrant (Section 64), release detainees on bond (Section 65) and act to prevent a forest offence from being committed (Section 66). The government may award forest officials additional powers to enter and survey land, issue search warrants, hold inquiries into forest offences, compel the attendance of witnesses and record evidence (Section 72).

The Forest Act introduces collective responsibility for forest management, requiring all rightsholders in reserved and protected forests to furnish evidence to the authorities about forest offences committed in their areas, and to prevent or extinguish forest fires (Section 79).

5.1.3 Fisheries

The topic of “fishing and fisheries beyond territorial waters” is included in the Federal Legislative List (Part 1, item 36), while “environmental pollution and ecology” and “shipping and navigation” are on the Concurrent Legislative List, which does not mention fisheries specifically. Under the residuary rule, therefore, fishing and fisheries within territorial waters is a provincial legislative subject.

Marine fisheries resources that lie beyond Pakistan’s territorial waters are controlled by the federal government through various departments and statutory bodies. Federal legislation regulates fish exports, but contains no provisions regarding the conservation of fisheries resources and is not specifically limited by export restrictions on protected species. The laws that enable a fishing ban to be imposed do so in the context of exploitation rather than conservation. Nor are there any provisions regarding aquaculture or the protection of endangered marine species or habitat.

There is no recent federal law on the subject of freshwater fisheries. The Fisheries Act 1897, framed half a century before Independence, remains in force but operates as a provincial law.

5.1.3.1 Pakistan Fish Inspection and Quality Control Act 1997

This act, as amended, regulates the quality of fish exports and establishes an inspection committee. It allows fishery officers to inspect fish processing plants, issue certificates of quality, and detain sub-standard fish and fish products (Section 10).

The federal marine fisheries department makes rules to govern the registration of fish processing plants; the inspection of fish; quality standards; the handling, processing, packaging, storage and marketing of fish and fishery products; and the disposal of sub-standard fish and fishery products. The federal government may delegate its powers to a fishery officer or an inspection committee (Section 17). Fishery officers are nominated by the federal government, while the inspection committee comprises members from the Export Promotion Bureau and marine fisheries department. Under the Pakistan Fish Inspection and Quality Control (Amendment) Ordinance 1998, penalties for offences are revised and significantly increased.

5.1.3.2 Exclusive Fishery Zone (Regulation of Fishing) Act 1975

This act, as amended, regulates fishing in Pakistan’s “exclusive fishery zone” which lies beyond the country’s territorial waters. It requires fishers operating in this area to obtain a license. The law prohibits fishing with the aid of explosives, poison, lime and other toxic substances (Section 5).

Under Section 6, the federal government has the power to ban all fishing or the fishing of certain species for any period of time. The federal government may make rules to determine the types of nets and size of mesh that may be used; the size and quantity of fish that may be caught or processed at any time; the terms and conditions to which fishing licenses are subject; the registration of fishing craft and gear; registration fees, license fees, royalties and other dues; the designation of landing areas; and the inspection of fish (Section 16). The federal government may delegate its powers to officers (Section 14); there is no delegation of powers to provincial governments.

The Exclusive Fishery Zone (Regulation of Fishing) (Amendment) Act 1993 makes procedural changes to the law. These amendments are not relevant to the conservation of fisheries resources.

5.1.3.3 Fisheries Act 1897

This act, which currently operates as a provincial law under the residuary legislative and executive power of the provinces, forbids the use of explosives for the purpose of fishing (Section 4). It also prohibits the use of poison to catch or destroy fish, but gives the provincial government the discretion to modify that prohibition for a specific area through notification in the official gazette (Section 5). The provincial government has the power to regulate fishing by making rules to govern the construction of weirs and the use of fishing equipment (Section 6), and to prohibit fishing in any area for a period of up to two years (Section 6(4)). In addition, the police or a provincial government officer may, under limited conditions, arrest without a warrant persons suspected of committing an offence under this act (Section 7).

5.1.4 Wildlife, Fauna and Non-Timber Flora

Wildlife is not specifically mentioned in either of the legislative lists. Although it could be argued that the subject of ecology on the Concurrent List includes wildlife, the topic is currently treated as a provincial matter under the residuary rule. Laws governing wildlife that were previously enacted to apply to all of Pakistan now operate at the provincial level.

Federal legislation governing wildlife is minimal and archaic. In one case, a law still in force is now irrelevant and in another, the law has been repealed by new legislation in some provinces but not in others. Older federal legislation regulates the hunting and capture of specific animal species but does not provide for the coordinated management and conservation of wildlife or habitat. No general federal law exists to establish fundamental principles of wildlife conservation and use, to be applied equally in all provinces and territories. There is no federal law to implement Pakistan's obligations under CITES and the Convention on Migratory Species, although statutory rules are used to control the import and export of endangered species.

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

This ordinance applies to the Islamabad Capital Territory alone and contains general prohibitions against hunting (Section 5), as well as specific bans on certain methods such as the use of arms, ammunition and explosives; chemical substances; manually or mechanically propelled vehicles; decoys or call birds; and pitfall traps, trenches or fences (Section 6). The ordinance prohibits the possession or acquisition of animal trophies, except with a certificate of lawful possession (Section 9). The export or import of live wild animals, endemic or exotic species, and trophies or meat of wild animals is prohibited, except through an authorised customs port and with a permit (Section 10). Animals and animal products may, however, "transit" through the country as long as the consignment is accompanied by transit documents, enters through a customs port and is not off-loaded (Section 13).

The law divides species into various categories, such as "game animal", "protected animal" and "wild animal" (Section 2). Different

hunting restrictions are placed on each, and scattered throughout the text of the ordinance. It is not an offence to kill or capture a wild animal by any means in self-defence, to protect the life of another, or to protect standing crops or livestock (Section 19). In addition, the federal government may grant exemptions generally (Section 6), and allow the killing and capturing of wild animals for “public or scientific purposes” (Section 39). At the same time, officers authorised by the federal government are empowered to issue licenses permitting the use of hawks or dogs for coursing game animals (Section 7), and to issue dealers’ permits authorising trade in wild animals and trophies (Section 14).

The 1979 ordinance also allows for the establishment of wildlife sanctuaries, game reserves and private game reserves.

The federal government has the power to make rules and to delegate its powers. Authorised officers may arrest and prosecute offenders. Violation of the provisions of this ordinance constitutes a criminal offence punishable with imprisonment and/or a fine.

5.1.4.2 Wild Birds and Animals Protection Act 1912

This act operates as a provincial law but today applies only to the province of Balochistan. It was repealed in its application to the NWFP, the Punjab and Sindh, as well as the Northern Areas, by the West Pakistan Wildlife Protection Ordinance 1959, which in turn has been repealed by subsequent provincial legislation.

5.1.4.3 Prevention of Cruelty to Animals Act 1890

This act, which operates as a provincial law and in any case delegates all powers under it to provincial governments, applies to “domestic or captured” animals (Section 2(1)). The law does not define the term domestic animals but the subject matter deals primarily with livestock and draught animals. There is, however, nothing in the law to exclude pets, zoo animals or laboratory animals from its ambit, including “exotic” species which may be threatened or endangered and are thus also covered by the provisions of CITES. Similarly, Section 6C, which prohibits animal fights and baiting except under specified conditions, suggests that the protection clauses of this law cover other animals besides livestock.

Provincial governments have the power to make rules in a number of areas, including the maximum permissible load carried or drawn by draught animals and their living conditions. The law prohibits the use of a bit or harness involving cruelty. It is an offence to subject an animal to unnecessary pain and suffering, to starve an animal and to abandon an animal under conditions that render it likely to suffer from starvation or thirst. It is an offence to kill an animal in an “unnecessarily cruel” manner (Section 5).

5.1.4.4 Elephants’ Preservation Act 1879

This act operates as a provincial law and has been repealed in the Punjab as well as the Islamabad Capital Territory. It governs the capture or killing of elephants and the taking of ivory, and requires

hunters to obtain a license (Section 3(c)). Killing, injuring, capturing, or attempting to kill, injure or capture a wild elephant is permitted without a license, as long as it is done in defence of human life, or to protect homes, farms, public roads, railways or canals (Sections 3(a) and 3(b)).

Powers under the act are delegated to provincial governments, which may extend the application of this law to any area within their jurisdiction (Section 1). This statute remains in force despite the fact that in Pakistan elephants are no longer found in the wild.

5.1.5 Protected Areas

Protected areas are not specifically mentioned in either of the legislative lists. Although it could be argued that “ecology”, which is on the Concurrent List, includes protected areas, the subject is currently treated as a provincial matter under the residuary rule.

There is no federal legislation to establish a national system of protected areas, or to set out basic principles for all provinces to follow in designating and managing protected areas, including reserved and protected forests. Currently, “national” parks and other types of protected areas may be established under provincial wildlife laws, but no provincial law provides for inter-provincial coordination in designating and managing a national protected areas system.

5.1.5.1 Pakistan Environmental Protection Agency Review of Initial Environmental Examination and Environmental Impact Assessment Regulations 2000 (SRO 339(I)/2000 dated 13 June 2000)

These regulations, issued under Section 33 of PEPA 1997, empower the “Federal Agency” to designate “environmentally sensitive areas” (Section 21 and Schedule II, item I). Under PEPA 1997, Section 2(xvi), the term Federal Agency is defined as “the Pakistan Environmental Protection Agency [. . .] or any other Government Agency, local council or local authority exercising the powers and functions of the Federal Agency.” The relationship between “environmentally sensitive areas” that may be established by the federal government and protected areas established under provincial laws is not specified.

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

The only federal legislation dealing with protected areas applies solely to the Islamabad Capital Territory. This law empowers the federal government to establish wildlife sanctuaries, national parks and game reserves in the Islamabad Capital Territory. The purpose of declaring a wildlife sanctuary is to ensure the “undisturbed breeding” of wildlife (Section 20), while national parks are to be designated for the purpose of “preserving scenery, flora and fauna” in their natural state (Section 21). Game reserves may be designated with a view to “providing facilities for hunting” (Section 22). The law also allows for the creation of private game reserves (Section 23).

The federal government has the power to make rules and delegate its powers. Authorised officers may arrest and prosecute suspected offenders, and are empowered to “take all lawful means” in order to prevent the commission of an offence under this ordinance (Section 31). Violations of the provisions of this

ordinance are punishable with imprisonment for up to one year and/or a maximum fine of 2,000 rupees.

5.1.6 Freshwater

Freshwater resources do not appear on either of the legislative lists, and so technically fall under the legislative jurisdiction of provincial governments. Federal legislation currently in force governs the allocation of freshwater resources but makes no provision for the conservation or sustainable use of these resources. There are no federal laws to deal specifically with the subject of freshwater pollution, which is covered by scattered clauses in the Penal Code, Forest Act and Islamabad Wildlife (Protection, Preservation, Conservation and Management) Ordinance, as well as a few provisions of PEPA that apply indirectly.

5.1.6.1 Pakistan Environmental Protection Act 1997

Under PEPA 1997, the term environment is defined to include water (Section 2(x)(a)) and various forms of pollution are defined in detail. In Section 2(vi), the term discharge is defined as “spilling, leaking, pumping, depositing, seeping, releasing, flowing out, pouring, emitting, emptying or dumping” while Section 2(viii) defines effluent as “any material in solid, liquid or gaseous form or combination thereof being discharged from industrial activity or any other source.” Emission standards, meanwhile, are defined in Section 2(ix) as “permissible standards established by the Federal Agency or a Provincial Agency for emission of air pollutants and noise and for discharge of effluents and waste.”

Section 11 prohibits discharges and emissions in excess of the limits prescribed under the National Environmental Quality Standards, or NEQS (see SRO 742(I)/93 dated 24 August 1993 and SRO 549(I)/2000 dated 8 August 2000). Section 16 allows an environmental protection order to be issued in cases where discharges and emissions are found to be causing or likely to cause “an adverse environmental effect”. Section 12, which requires an initial environmental examination (IEE) or an environmental impact assessment (EIA) to be carried out for all projects, can be used to ensure that new development does not damage natural resources, including freshwater.

5.1.6.2 Pakistan Environmental Protection Agency Review of Initial Environmental Examination and Environmental Impact Assessment Regulations 2000 (SRO 339(I)/2000 dated 13 June 2000)

These regulations, framed under Section 33 of PEPA, require that specified types of irrigation projects undergo prior environmental assessment. Schedule I lists the types of projects related to water and dams (Section F) that must undergo a prior IEE while Schedule II lists those projects related to water and dams (Section E) that require a prior EIA.

5.1.6.3 Indus River System Authority Ordinance 1992

This ordinance establishes the Indus River System Authority to monitor the distribution of water between the provinces. It provides a regulatory framework for the implementation of the 1991

“Apportionment of the Waters of the Indus River System Between the Provinces” agreement. The ordinance contains no provisions for the protection of the Indus or the ecosystems supported by the river and its tributaries. The federal government has the power to make rules (Section 21), while the Authority may frame regulations (Section 22).

5.1.6.4 Forest Act 1927

Although this law focuses on forest-related issues, poisoning water in a reserved forest is an offence under Section 26(1)(i), punishable with a fine of 500 rupees and/or a sentence of six months in prison. This provision is difficult to enforce, however, since the term “poison” has not been defined.

5.1.6.5 Canal and Drainage Act 1873

This act regulates irrigation, navigation and drainage. All powers under this act, including the power to make rules, have been delegated to the provinces. Provincial governments may order any river, stream, lake, or water body to be used for any public purpose at any time (Section 5). The law contains no provisions for the sustainable use of freshwater resources or for their preservation.

5.1.6.6 Pakistan Penal Code 1860

The Pakistan Penal Code (PPC) 1860 deals specifically with the pollution of water in Chapter XIV on public health and safety. Here, “fouling” or “corrupting” the water of a public spring or reservoir is listed as an offence, punishable with up to three months in prison and/or a fine of 500 rupees (Section 277). This provision is limited in scope, since it applies only to reservoirs and public springs, and the terms “fouling” and “corrupting” are not defined. But provisions of PEPA 1997 (Sections 6 and 7) and the NEQS (Appendix I) may be applied to facilitate enforcement of Section 277. Other sections of this chapter may be interpreted to include the protection of water resources, including Section 268 on public nuisance, Section 269 on negligence likely to spread infectious disease, and Section 284 on negligent conduct with respect to the possession and handling of poisonous substances.

Similarly, Chapter XVII on offences against property contains certain provisions that may be interpreted to include the protection of water resources. Sections 425–440 deal with “mischief”, defined as damage to property resulting in destruction or loss of utility. Section 430 provides specifically for mischief caused to irrigation works, while Section 431 deals with damage to roads, bridges, rivers or channels. Meanwhile, Chapter XXIII, Section 511 on attempted offences could also be interpreted to include offences related to the “fouling” or “corrupting” of water.

5.1.7 Coastal and Marine

The subject of “environmental pollution and ecology”, which appears on the Concurrent Legislative List (item 24), would include marine ecosystems. There are no federal laws that specifically control coastal areas. Laws regulating the marine environment are primarily concerned with facilitating marine fisheries and with transport by sea, and were enacted 30 to 165 years ago. Only one law in

force mentions protection of the marine environment, but fails to establish any substantive requirements for this purpose. There are no federal laws providing for the protection of mangroves, coastal forests and marine ecosystems, or smaller marine organisms and their habitats.

5.1.7.1 Territorial Waters and Maritime Zones Act 1976

This law provides for the delimitation of Pakistan's territorial waters, contiguous zone, continental shelf, and exclusive economic zone. The emphasis in this act is on the commercial exploitation of natural resources and on protection from intrusion into Pakistan waters.

Territorial waters lie "twelve nautical miles beyond the land territory and internal waters of Pakistan" (Section 2). The contiguous zone is the "area adjacent to and beyond the territorial waters and extending seawards to a line of twenty-four nautical miles" (Section 4). The continental shelf consists of the "seabed and sub-soil of the submarine areas that extend beyond the limit of the territorial waters of Pakistan" (Section 5), while the exclusive economic zone is defined as the "area beyond and adjacent to the territorial waters the limit of which is two hundred nautical miles" (Section 6).

Sections 3–8 provide for the use and exploitation of resources within the various zones defined in the act. The law also mentions the protection of marine resources, reserving for the federal government "exclusive sovereign rights" with respect to the continental shelf, including the right to preserve and protect the marine environment, and control or prevent pollution (Section 5(2)(d)).

Although the federal government has the power to make rules regarding the "conservation and management" of resources as well as the "preservation and protection of the marine environment and prevention and control of marine pollution" (Section 14), the law does not create an obligation to do so. Nor does the act contain provisions making it mandatory for the parties involved in the exploitation of resources within Pakistan's territorial waters and other maritime zones to protect the marine environment.

5.2 Court Decisions

5.2.1 Qazalbash Waqf and others v. Chief Land Commissioner, Punjab and others, PLD 1990 Supreme Court 99

This case, appealed to the Federal Shariat Appellate Bench, challenges those provisions of the Land Reforms Act 1977, Land Reforms Regulation 1972 and Punjab Tenancy Act 1887 that are related to restrictions on land holdings. The Shariat Appellate Bench ruling invalidates specific provisions of these laws in their entirety, while other provisions are declared invalid with respect to specified conditions. The ruling leaves the validity of three provisions open for future deliberation.

06

**Processes and
Institutions**

6.1 Legal Instruments

Of the federal laws governing the processes and institutions that affect natural resources and their management, more than one third were framed during British colonial rule. Most laws related to this area are more than half a century old, some enacted as far back as the 1800s. Much of this legislation is purely administrative in content, establishing authorities and institutions, regulating their functions, and prescribing penalties for violations. Since these laws pre-date modern legislative trends, it is not surprising that they contain no provisions related to conservation or sustainable development. But even in the case of laws enacted in the last 30 years—since the concept of sustainable development began to gain acceptance—few provisions for such measures are included.

6.1.1 Urban and Rural Development

The subject of urban and rural development is not mentioned in either of the legislative lists. With the exception of military land, which is under federal control, urban and rural development falls within the legislative domain of the provinces. The basic law on land acquisition for public purposes dates back to 1894 and makes no mention of natural resource conservation. The language of the 1894 law as well as other legislation is, however, vague enough to allow interpretation favouring conservation and sustainable use.

6.1.1.1 Cantonments Ordinance 2002

This ordinance repeals the Cantonments Act 1924. As under the 1924 act, the federal government may, by notification, declare any area where the Pakistan armed forces are quartered, or where defence installations or defence production units are located, or which is in the vicinity of such installations, to be a cantonment. The ordinance includes specific provisions for arboriculture, planting trees and forests, felling of trees and laying out gardens, water supply and drainage.

6.1.1.2 Pakistan Environmental Protection Agency Review of Initial Environmental Examination and Environmental Impact Assessment Regulations 2000 (SRO 339(I)/2000 dated 13 June 2000)

These regulations, to be read with PEPA Section 12, contain detailed procedures that must be followed in the IEE/EIA process, such as conducting public hearings, issuing notices, recording decisions and accepting or rejecting an EIA/IEE. Section 5(a) requires that an EIA is carried out for any project likely to cause an “adverse environmental effect”.

Housing schemes and projects with significant “off-site impacts” such as hospitals, as well as urban development projects, require an IEE (Schedule I, Section I). Small-scale operations related to urban development that require an IEE include water supply and treatment installations (Schedule I, Section G), and waste disposal facilities with an annual capacity of less than 10,000 cubic metres (Schedule I, Section H).

Urban plans in large cities and large-scale tourism development projects are included in Schedule II, Section H, and require an EIA. Other large-scale operations requiring an EIA are specified in Schedule II, Sections F and G.

The regulations provide for the monitoring of projects after completion. Section 18 requires owners to submit an annual report to the Federal Agency. This report must summarise operational performance with an emphasis on adequate maintenance and measures to mitigate adverse affects on the environment. On the basis of such reports or its own investigations, the Federal Agency is authorised to cancel the approval of any project at any time if it is found that conditions of approval have been violated or false information provided (Section 19).

Section 21 empowers the Federal Agency to designate “environmentally sensitive areas”, but does not specify how such areas relate to urban and rural development, to protected forests designated under forest laws, or to other types of protected areas designated under provincial legislation.

6.1.1.3 Antiquities Act 1975

“Ancient and historical monuments, archaeological sites and remains” are mentioned in the Concurrent Legislative List (item 37). The 1975 law defines antiquities to include “ancient product[s] of human activity” as well as objects or sites of “historical, ethnographical, anthropological, military or scientific interest” (Section 2(c)). The federal government has the power to decide

what is or is not an antiquity (Section 4), acquire land containing antiquities (Section 7), carry out the compulsory acquisition of protected immovable antiquities (Section 15) and place restrictions on the use of protected immovable antiquities (Section 18). The law contains detailed provisions related to antiquities and national monuments, and empowers the federal government to make rules for their preservation and protection (Section 37). The government has the authority to prevent the execution of development schemes (Section 22) and restrict mining activities (Section 28) in the vicinity of protected and immovable antiquities. But the law contains no specific provisions to regulate or monitor the impact of environmental factors, nor does it link areas containing monuments and antiquities with other types of protected areas. All powers under this act remain with the federal government. This law was enacted the year before Pakistan became Party to the World Heritage Convention, but was not subsequently amended to take into account the country's obligations under the convention.

**6.1.1.4 Islamabad
(Preservation of
Landscape)
Ordinance 1966**

This ordinance prohibits the destruction, damage or alteration of the landscape of Islamabad (Section 4). The term landscape is defined to include “earth, land, clay, rock, boulders, shingles, pebbles” and any other objects that lie on the surface of the land, as well as trees, vegetation and “all objects of natural beauty visible to the eye” (Section 2(a)). Offences under this ordinance are punishable with imprisonment for a maximum term of six months and/or a fine of up to 5,000 rupees (Section 5). Police officers and officials authorised by the Capital Development Authority are awarded far-reaching powers to arrest suspected offenders without a warrant (Section 6) and to search premises (Section 9). Officials are authorised to exercise the powers of a civil court and may conduct summary trials (Section 8). The Capital Development Authority enjoys indemnity from prosecution for anything it does or intends to do under this ordinance (Section 12). The federal government has the power to make rules (Section 15).

**6.1.1.5 Capital
Development Authority
Ordinance 1960**

This ordinance creates the Capital Development Authority (Section 4), which is mandated to prepare a master development plan for Islamabad (Section 11). The Authority is empowered to require local bodies to prepare schemes for the utilisation of water and other natural resources (Section 12(2)(f)). The deputy commissioner is empowered to acquire land for the purposes of this ordinance (Section 25). Compensation for land so acquired must be paid as specified (Sections 29–31). The post of deputy commissioner has been abolished under Section 153(3)(i) of the Islamabad Capital Territory Local Government Ordinance 2002, which establishes a new framework for local-level governance in the capital. The 1960 ordinance has not been amended to reflect the reorganisation of local government in Islamabad and must be read together with the 2002 ordinance, as well as other legal instruments that set out the details of the current administrative structure.

**6.1.1.6 Land Control
(Karachi Division) Act
1952**

This law was enacted at the time that Karachi was the federal capital and now operates as a provincial statute. It allows the provincial government to declare any part of Karachi to be a controlled area (Section 3) where construction and rebuilding are prohibited without prior permission from the provincial government (Section 5). The government is empowered to evict persons found “unauthorisedly occupying or wrongfully in possession” of land or buildings in controlled areas (Section 11). The power to make rules has been delegated to the provincial government (Section 20). Although there are no specific provisions for land control for conservation purposes, that possibility is not excluded. Following the promulgation of the Sindh Local Government Ordinance 2001, certain powers related to land have been devolved to the local government. The status and extent of the provincial government’s powers under the 1952 act remain to be clarified.

**6.1.1.7 Land Acquisition
Act 1894**

This law regulates the acquisition of land for public purposes and provides for compensation in cash, in the form of an alternative land allocation, or through another type of equitable arrangement (Section 31). This is the principal statute governing the acquisition of privately owned land for public purposes. In addition, the law allows for the “temporary occupation and use” of waste or arable land for a maximum period of three years (Section 35).

The law provides for a preliminary enquiry to survey land and assess its suitability, allowing government officers to bore into the subsoil, dig trenches, and cut down or clear standing crops and “jungle” areas (Section 4). It lays down procedures for hearing objections that may be raised to proposed acquisition (Section 5A). Provincial governments administer the land acquisition procedure. Other powers under this act, including the power to make rules, are also delegated to provincial governments.

6.1.2 Agriculture

Agriculture is not included in either of the legislative lists and is therefore a provincial subject. No general legislation exists to establish a framework governing agricultural activities, or to implement a national agricultural policy. Federal laws in the agriculture sector regulate inputs such as pesticides and fertilisers, along with agriculture-related activities such as processing, marketing and transportation. The law does not create policy guidelines for providing credit to support the agriculture sector, or prescribe measures to mitigate the environmental impact of agricultural inputs and practices. Nor do laws governing this sector create a system of classification or labelling for agricultural chemicals to indicate their contents and potential impact on natural resources.

**6.1.2.1 Pakistan
Environmental Protection
Agency Review of Initial
Environmental
Examination and
Environmental Impact
Assessment Regulations
2000 (SRO 339(I)/2000
dated 13 June 2000)**

Schedule I, Section A, of these regulations requires that an IEE is undertaken prior to the establishment of specified types of farms.

6.1.2.2 Seed Act 1976

This act regulates the production and sale of seeds, and establishes various bodies to oversee and manage the seed industry. The provisions of this law apply to food crops, edible oil, fodder and cotton seeds (Section 2(p)). The National Seed Council is responsible for policy and overall supervision of the seed industry, including arrangements for the maintenance of the genetic potential of seeds and the development of seed production farms (Section 4). The Federal Seed Certification Agency carries out field inspections, sampling and testing, and provides technical advice (Section 6). The National Registration Agency assesses seed varieties, maintains a list of “registered” varieties and provides information about seed varieties (Section 8).

The federal government specifies the varieties of seeds approved for production, sets germination and purity standards, and regulates the labelling of certified seeds (Section 10). Only registered varieties that conform to these standards may be sold or distributed (Section 11). Seed producers, distributors and sellers must obtain a certificate from the government (Section 13). Seed analysts are authorised to inspect production farms (Section 17), while inspectors and certification officers are awarded wide powers to inspect packaged seeds (Sections 19 and 20). The federal government may make rules to carry out the purposes of this act (Section 29) and delegate its powers to a subordinate officer or authority, or to provincial governments (Section 28).

**6.1.2.3 Chemical
Fertilizers (Development
Surcharge) Act 1973**

This act provides for a development surcharge to be levied on both the production of chemical fertilisers and the sale of fertilisers not already subject to a surcharge at the production stage (Section 3). The federal government is empowered to fix the maximum price of fertilisers (Section 5), and to grant exemptions from the levy of a surcharge (Section 4). The law does not provide for any specific use of funds collected through the surcharge. The federal government makes rules to carry out the purposes of this act (Section 7) and may delegate its powers to an officer or authority (Section 8).

**6.1.2.4 Loans for
Agricultural Purposes
Act 1973**

This act regulates the procedure for acquiring agricultural credit from public- and private-sector banks (Section 4). The federal government may make rules to carry out the purposes of this act and delegate its powers to provincial governments (Section 5).

6.1.2.5 Agricultural Pesticides Ordinance 1971

This ordinance regulates the import, manufacture, formulation, distribution, sale and use of pesticides. Only materials that have been registered with the federal government may be imported or sold (Section 4). One of the conditions for registration is that the chemical in question, when used according to the manufacturer's instructions, should not cause damage to any vegetation other than weeds (Section 5). The definition of the term weed, as "any plant which grows where not wanted" (Section 3(s)), is so broad as to be counterproductive.

The ordinance establishes a technical advisory committee, makes provisions for the inspection of pesticides and the employment of analysts, and sets up pesticides laboratories (Sections 12–15). It contains no provisions to control or monitor the use of pesticides over extended periods of time, or to determine the long-term impact of pesticides on the environment, although it does contain a provision to protect human and animal health. Section 5(4)(d) states that a chemical, when used according to the manufacturer's instructions, should not be "injurious to vegetation, except weeds, or to human or animal health".

Maximum penalties under this ordinance are a fine of 5,000 rupees or imprisonment for a term of two years (Section 23). The federal government may delegate its powers (Section 29).

6.1.2.6 Agricultural Development Bank Ordinance 1961

This law provides for the establishment of the Agricultural Development Bank of Pakistan and contains procedures governing the bank's operations, as well as a few provisions related to the purpose for which loans are issued and matters such as loan recovery. In issuing credit, the bank is to give preference to the needs of small agriculturists (Section 21). The bank now operates under a new name, Zarai Taraqati Bank Limited.

6.1.2.7 Oilseeds Committee Act 1946

This act establishes the Pakistan Food and Agricultural Committee to improve the cultivation and marketing of oilseed and oilseed products. The law imposes a cess on oil extraction and export to finance the Committee's operations (Section 3). The functions of the Committee include assisting and encouraging agricultural, industrial and technological research (Section 9). The federal government may make rules (Section 17). The maximum penalty under this law is a fine of 1,000 rupees (Section 17A).

6.1.2.8 Coconut Committee Act 1944

This act imposes a cess on all "copra" used in coconut oil mills (Section 3(1)). The funds so collected are to be paid to the Pakistan Food and Agriculture Committee (Section 3(3)), and may be used by the Committee to provide extension services for the development of the coconut industry, determine grade standards for coconuts and coconut products, recommend prices, and assist in pest control (Section 9). The law does not provide substantive guidelines for the manner in which these activities are to be carried out.

6.1.2.9 Agricultural Produce (Grading and Marking) Act 1937

This act regulates the grading and marking of various types of “agricultural produce”, defined to include food, drink, fleece and animal skins (Section 2(a)). This definition is broad enough to cover all goods that relate to agriculture or originate from agricultural products. The federal government may extend the provisions of this act to articles not included in the original schedule. Powers are vested with the federal government. Offences committed under this law are punishable with a maximum fine of 500 rupees and/or imprisonment for up to two years (Sections 4 and 5).

6.1.2.10 Sugar-Cane Act 1934

This act regulates the price of sugarcane intended for use in sugar mills (Section 3). All powers have been delegated to provincial governments (Section 7), which may make rules exempting factories from the provisions of this law (Section 8). The maximum penalty under this law is a fine of 2,000 rupees (Section 7).

6.1.2.11 Cotton Transport Act 1923

This law allows the “appropriate government” to prohibit the import of cotton into “protected areas” except under a license. The appropriate government is the federal government in the case of transport across customs frontiers as well as inter-provincial trade, and the provincial government in all other cases, such as intra-provincial trade (Section 2(h)). Protected areas are defined as areas “into which import of cotton or of any kind of cotton [sic] has been prohibited” (Section 2(g)). These prohibitions are imposed for the purpose of “maintaining the quality or reputation of the cotton grown in any area” (Section 3).

The appropriate government prescribes procedures related to the movement of cotton (Section 4), and may make rules governing the issue of transport licences and the import of cotton into a protected area (Section 7). Maximum penalties for offences committed under this act are imprisonment for three months and/or a fine of 5,000 rupees (Section 6).

6.1.2.12 Cattle Trespass Act 1871

This act imposes penalties for damage to crops or public property caused by cattle. The term cattle is defined to include “elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs [sic], goats, and kids” (Section 3). Although the law extends to the entire country, provincial governments have the power to exclude certain areas from its ambit (Section 1). Provincial governments are permitted to delegate their functions to a local authority or magistrate (Section 31). Maximum penalties under this law are imprisonment for a term of six months and/or a fine of 500 rupees (Section 24).

6.1.3 Extractive Industry—Mining, Petroleum

Mineral oil and natural gas are included in the Federal Legislative List, along with minerals used in the production of nuclear energy (Part I, item 18 and Part II, item 2). Other types of minerals, and

the activity of mining itself, are not mentioned in either list, although the Concurrent Legislative List includes the regulation of labour and safety in mines and oilfields (item 30). Exploitation of minerals other than oil, natural gas and raw materials for the nuclear industry, is therefore a provincial subject. Laws that pre-date the 1973 Constitution also provide that oil, gas and radioactive materials are regulated by the federal government, while all other mines are under the authority of provincial governments.

Three federal laws on the subject pre-date Independence. One of these laws is more than 100 years old. But even in the case of more recent legislation, there are no provisions to mitigate the substantial environmental impacts of mineral exploration and production. Nor has the government passed any framework legislation to implement federal policy on the subject or to establish guidelines for exploring, exploiting and closing sites where minerals and petroleum products are extracted.

6.1.3.1 Natural Gas Regulatory Authority Ordinance 1997

This ordinance establishes the Natural Gas Regulatory Authority, which is responsible for overseeing activities in the natural gas sector. The Authority issues and renews licenses for the transmission, distribution, sale and purification of natural gas; determines tariffs; protects consumer interests; and administers investment programmes (Section 4). The Authority also has the power to certify that a licensee requires land for “public purposes” (Section 26). Such land may subsequently be compulsorily acquired under the Land Acquisition Act 1894.

The Authority may delegate its powers to its officers (Section 6). The power to issue policy guidelines under the ordinance lies with the federal government (Section 5), while rule-making powers are delegated to the Authority, subject to prior approval from the federal government (Section 31).

This ordinance governs both Sui companies and potential private-sector gas providers. It does not regulate gas exploration and sale from the field. Offences under this ordinance are punishable with a maximum penalty of imprisonment for three years and/or an unspecified fine (Section 29).

6.1.3.2 Pakistan Environmental Protection Act 1997

PEPA 1997 requires parties desiring to commence a project to submit an EIA or IEE to the Federal Agency (Section 12). A project is defined under Section 2(xxxv)(d) to include mining, prospecting and quarrying. At the same time, the Federal Agency may itself issue an environmental protection order in cases where extraction processes are causing or likely to cause an adverse environmental effect (Section 16).

The penalty for non-compliance with the provisions governing discharges and emissions (Section 11), and environmental protection orders (Section 16) is a fine that may extend to 1 million rupees for a first offence (Section 17(1)). For non-compliance with provisions governing the handling of hazardous substances (Section 14), fines may extend to 100,000 rupees (Section 17(2)). Penalties for repeat offenders may include closure or confiscation of the factory, machinery, equipment or substance involved in the offence; an order to restore the environment at the violator’s own

cost; and an order to pay compensation for any loss, bodily injury or damage to health or property caused by the violation, in addition to imprisonment for up to two years (Section 17(5)).

6.1.3.3 Pakistan Environmental Protection Agency Review of Initial Environmental Examination and Environmental Impact Assessment Regulations 2000 (SRO 339(I)/2000 dated 13 June 2000)

Under these regulations, mining and mineral processing projects are required to undergo a prior EIA or IEE, depending on the scale of the operation. Mining and processing operations involving iron, non-ferrous metals, copper, coal, sulphur, gold and precious stones must undergo a prior EIA (Schedule II, Section C). Smelting plants costing 50 million rupees or more, and steel rolling operations, require an EIA. Smaller-scale smelting plans are required to submit an IEE.

The IEE regime applies to the commercial extraction of sand, gravel, limestone, clay and other minerals not mentioned in Schedule II, and costing less than 100 million rupees (Schedule I, Section D). Operations involving crushing, grinding and separation are also subject to an IEE.

6.1.3.4 Oil and Gas Development Corporation Ordinance 1961

This ordinance establishes the Oil and Gas Development Corporation, which carries out geological, geophysical and “other” surveys to explore for oil and gas, and assists in extraction, refining and sales (Section 12). The Corporation has the power to acquire land, which must be done in accordance with the Land Acquisition Act 1894 (Section 24). The federal government may make rules (Section 29), while the Corporation may make regulations governing matters not covered by the rules (Section 29).

6.1.3.5 Regulation of Mines and Oil Fields and Mineral Development (Government Control) Act 1948

This act regulates the development of mines, oilfields and mineral deposits. The federal government makes rules related to the development of mines and nuclear substances, oilfields and gas fields, while provincial governments make rules related to other minerals and their extraction. Rule-making power includes exploration and prospecting licenses, payment of royalties and license fees, refining ores and mineral oil, and their storage and distribution (Section 2). All powers under this law have been delegated to the “appropriate” government—the federal government in the case of radioactive minerals, oil and gas, and the provincial governments for all other mines (Section 6).

6.1.3.6 Petroleum Act 1934

This act regulates the import, transport, storage, production, refining and blending of petroleum and other flammable substances. The federal government issues licenses and may make rules to regulate the import, transport and distribution of petroleum (Section 4). The law requires that all containers carrying “dangerous petroleum” (highly flammable) bear a warning (Section 6). The act also contains provisions regarding the testing and quality control of petroleum products (Section 14ff.). All powers remain with the federal government.

6.1.3.7 Mines Act 1923

This act, which is largely administrative in nature, regulates mining operations and mine management, and contains provisions regarding the health, safety and working conditions of mine labour. The power to make rules lies with the “appropriate government” (Section 29), defined as the federal government in the case of mines extracting radioactive material, oil, gas and flammable substances, and the provincial government for all other mines.

6.1.3.8 Land Acquisition (Mines) Act 1885

This act regulates the acquisition of land for the purpose of mining. Land is to be acquired in accordance with the Land Acquisition Act 1894. Provincial governments are empowered to extend the ambit of this law to any of the areas within their jurisdiction (Section 1(3)).

6.1.4 Non-Extractive Industry

The development of industries, where federal control is declared by law to be “expedient in the public interest”, is a subject on the Federal Legislative List (Part II, item 3) which also includes the standard and quality of goods intended for export (Part I, item 27). The subject of non-extractive industry is not mentioned specifically in either of the legislative lists. Federal laws governing the non-extractive industrial sector regulate only its commercial and administrative aspects, including labour.

6.1.4.1 Pakistan Environmental Protection Act 1997

Industrial activity is defined in PEPA as “any operation or process for manufacturing, making, formulating, synthesising, altering, repairing, ornamenting, finishing, packing or otherwise treating any article or substance with a view to its use, sale, transport, delivery or disposal, or for mining, for oil and gas exploration and development, or for pumping water or sewage, or for generating, transforming or transmitting power or for any other industrial or commercial purposes” (Section 2(xxii)). The wide scope for regulating industrial activity, provided by the definition, is reflected in the operative provisions of the law, particularly the prohibition on certain emissions with provisions for levying pollution charges (Section 11); IEE/EIA (Section 12); licensing (Sections 14 and 15); and environmental protection orders (Section 16).

A project is defined to include the construction, operation, alteration, expansion, repair, decommissioning or abandonment of factories or other installations (Sections 2(xxxv)(c) and 2(xxxv)(f)). PEPA requires parties desiring to commence a project to submit an EIA or IEE to the Federal Agency (Section 12). Meanwhile, the Federal Agency may issue an environmental protection order in cases where discharges, emissions, waste disposal or the handling of hazardous substances are causing or likely to cause an adverse environmental effect (Section 16).

The penalty for non-compliance with provisions governing discharges and emissions (Section 11), and environmental protection orders (Section 16) is a fine that may extend to 1 million rupees for a first offence (Section 17(1)). For non-compliance with provisions governing the handling of hazardous substances

(Section 14), fines may extend to 100,000 rupees (Section 17(2)). In addition to imprisonment for up to two years, penalties for repeat offenders may include closure or confiscation of the factory, machinery and equipment involved in the offence; an order to restore the environment at the violator's own cost; and an order to pay compensation for any loss, bodily injury or damage to health or property caused by the violation (Section 17(5)).

6.1.4.2 Pakistan Environmental Protection Agency Review of Initial Environmental Examination and Environmental Impact Assessment Regulations 2000 (SRO 339(I)/2000 dated 13 June 2000)

Under these regulations, manufacturing and processing projects are required to undergo prior IEE or EIA. Relatively small-scale industries and commercial operations that require a prior IEE are listed in Schedule I, Section C. Larger-scale manufacturing and processing operations requiring a prior EIA are listed in Schedule II, Section B.

6.1.4.3 Heavy Industries Board Act 1997

This act establishes the Heavy Industries Board that performs commercial and administrative functions with regard to Heavy Industries Taxila, including Heavy Re-Build Factories and Manufacturing Factories as well as other allied facilities owned by the federal government. The law provides for the corporate existence and functioning of the Board (Section 3). The federal government has the power to make rules to carry out the purposes of this act (Section 14). The Board is authorised to delegate its powers to one of its members (Section 11).

The Board manages only the Heavy Re-build Factories at Taxila. Other government-owned or nationalised industries are administered by the Board of Industrial Management.

6.1.4.4 Pakistan Standards and Quality Control Authority Act 1996

This act establishes the Pakistan Standards and Quality Control Authority, which oversees standardisation and quality control in the industrial and processed goods sector, and carries out the testing of products for import, export and local consumption. The Authority is responsible for training programmes, grading and labelling products, and communication with national and international public and governmental agencies on matters related to standardisation (Section 8). The law makes no reference to international standards, specifically ISO 14000. The federal government may make rules to carry out the purposes of this act (Section 26).

6.1.4.5 Factories Act 1934

This law governs the employment of labour, working hours, working conditions and facilities to be provided in the workplace. The act deals primarily with matters related to labour relations, but contains a detailed chapter on the health and safety of workers (Chapter III, Sections 13–33). The law requires that factories be kept clean and that “effluvia arising from any drain, privy or other nuisance” be removed at regular intervals (Section 13). These and

other health and safety stipulations apply only to workers within the premises of a factory. The act does not mention the disposal of waste generated during the manufacturing process or call for measures to mitigate the impact of such waste on the environment.

All powers under this act, including the power to make rules, have been delegated to provincial governments (Section 59).

6.1.4.6 Boilers Act 1923

This act consolidates and amends prior laws relating to steam boilers exceeding five gallons in capacity and requires that all boilers be registered (Section 6). The law does not apply to boilers on board a ship or mechanically propelled vessel, boilers belonging to the Pakistan Navy and boilers less than 20 gallons in capacity if they are used by hospitals for sterilising (Section 3). The federal and provincial governments are authorised to declare exemptions to this law, while the provincial government has the power to make rules (Section 29). Powers under this act have been delegated to provincial governments. The Boilers Board constituted under this act may make regulations (Section 28).

6.1.5 Taxation

Legislation on the subject of taxation is under the exclusive authority of the federal government, whereas different taxes are levied at various levels of government. The trend of taxation in Pakistan favours the development of industry and agriculture, and the current tax structure is driven by revenue and commercial considerations. Existing laws do not tap the potential of using taxation as a tool to control pollution or encourage sustainable natural resource management, which may be achieved by providing tax breaks and other incentives for environmentally friendly industries. The Central Board of Revenue (CBR) fixes rates of taxation. The duty structure is normally altered by making provision in the Finance Act of each year.

6.1.5.1 Income Tax Ordinance 2001

This ordinance regulates the collection of income tax from individuals and corporations. The CBR is authorised to fix rates of taxation (Section 237). The law contains detailed provisions with regard to the assessment and collection of income tax, and the adjudication of income tax offences. The tax structure is normally altered by making provisions in the Finance Act of each year. The CBR may make rules to carry out the purposes of this act.

6.1.5.2 Sales Tax Act 1990

This act regulates taxes on the sale, import, export, production, manufacture and consumption of goods defined to include “every kind of moveable property other than actionable claims, money, stocks, shares and securities” (Section 2(12)). The CBR is authorised to fix rates of taxation. The tax structure is normally altered by making provision in the Finance Act of each year. The CBR may make rules to carry out the purposes of this act (Section 50).

6.1.5.3 National Tariff Commission Act 1990

This act establishes the National Tariff Commission, which advises the federal government on matters related to tariffs, indigenous industries and export promotion (Section 4). The Commission exercises the powers of a civil court in certain matters (Section 13) and may, with prior permission from the federal government, make rules to carry out the purposes of the act (Section 18). This law focuses on protecting indigenous industry by means of tariffs, export promotion and measures to counter dumping.

6.1.5.4 Customs Act 1969

This law deals with taxes and duties on imports and exports. The CBR is authorised to make rules and fix the rates of duties levied on imports and exports. The act contains detailed provisions regarding the assessment and collection of customs duties. The duty structure is normally altered by making provision in the Finance Act of each year.

Statutory rules under this law prohibit the import and export of species controlled by domestic wildlife laws as well as by CITES.

6.1.5.5 Central Excises Act 1944

This act regulates the excise duties that may be charged on a variety of goods and services. The CBR determines the rate of duties levied under this law. The duty structure is normally altered by making provision in the Finance Act of each year. The tax structure under this act is directed by economic and revenue considerations. The CBR is authorised to make rules (Section 37).

6.1.5.6 Professions Tax Limitation Act 1941

This act imposes limitations on the amount of professional tax that provincial governments are entitled to impose (Section 2). Provincial legislation provides details of the tax for the respective province. This tax is unrelated to the income tax.

6.1.5.7 Central Board of Revenue Act 1924

This law establishes the CBR, which is the apex authority responsible for the collection of federal taxes. The federal government may make rules to regulate the operation of the CBR (Section 3).

6.1.6 Investment—Domestic and Foreign

Existing law focuses on providing incentives to attract domestic and foreign investment. It provides no incentives to encourage investors who undertake projects based on sound environmental principles. The regulation of stock exchanges, futures markets and corporations whose business is carried out in more than one province is a subject on the Federal Legislative List (Part I, items 30 and 31), as is the development of industries owned, a subject administered, managed or otherwise under the control of the federal government (Part II, item 3).

6.1.6.1 Protection of Economic Reforms Act 1992

This act provides statutory protection to the investment policies of the government in office at the time. It protects incentives and concessions offered to investors and entrepreneurs, and provides

safeguards for the liberalisation of foreign exchange policy. Besides liberalising foreign exchange controls (Section 4), the law provides foreign currency bank accounts immunity from inquiries by tax authorities and exemption from specified taxes (Section 5), guarantees secrecy for all banking transactions (Section 9), and protects privatised industries from nationalisation (Section 7).

6.1.6.2 Foreign Private Investment (Promotion and Protection) Act 1976

This law aims to protect foreign private investment from compulsory acquisition, nationalisation and expropriation by the government, as well as from changes in policy or discrimination on account of foreign ownership (Section 5). It allows for the repatriation of foreign investment and income earned (Section 6). The federal government may make rules to carry out the purposes of this act. Such rules may, among other matters, provide for the employment of Pakistani and foreign nationals in industrial undertakings involving foreign private investment (Section 11). There is no delegation of powers to the provinces.

6.1.7 Transport

The Federal Legislative List includes the subjects of maritime shipping and navigation (Part I, item 20); ports and port authorities (Part I, item 21); aircraft, air navigation, airports and air traffic control (Part I, item 22); the carriage of goods by sea or air (Part I, item 24); national highways and strategic roads (Part I, item 34); and railways (Part II, item 1). Contracts of carriage, shipping and navigation on inland waterways, and mechanically propelled vehicles are on the Concurrent List (items 9, 32 and 33).

Half of the federal legislation pertaining to transport dates back to the pre-Independence era and several laws are more than a century old. Among them is a 1908 law which regulates the operations of ports but, understandably, fails to deal with issues that are of importance today, such as pollution caused by coastal construction, the dumping of toxic or other waste, increased maritime traffic and land-based pollution. Only two laws specifically related to transportation have been enacted in the last 40 years, one related to merchant shipping and the other establishing the National Highway Authority. Recent legislation on terrestrial transport does not regulate the impact of transport-related activities on natural resources and the environment, but recent legislation on commercial maritime shipping does.

The Ports Act 1908 governs the general functioning of two ports and the Karachi Port Trust Act 1886 (as amended) governs the functioning of the port area in general, while the Korangi Fisheries Harbour Authority Ordinance 1982 deals specifically with the Korangi Harbour. The 1982 ordinance overrides the provisions of the Ports Act in cases where the two statutes conflict.

6.1.7.1 Pakistan Merchant Shipping Ordinance 2001

This comprehensive ordinance consolidates the law governing commercial shipping. Prior to its promulgation, the sector was governed by a multitude of Pakistani and colonial statutes, many of which have been repealed by the 2001 ordinance.

The law contains a full chapter on the prevention of pollution from ships (Chapter 43, Sections 552–575), based on the provisions of the International Convention for the Prevention of Pollution from Ships (1973), as modified by the Protocol of 1978. Tankers above a specified tonnage are required to carry an “international pollution prevention certificate” (Section 553). The discharge of sewage and

garbage from ships into the sea is prohibited, except where permitted in accordance with the 1973 Convention (Section 554). Similarly, the discharge of oil, “oily mixture or harmful substance [sic]” (Section 555) and noxious liquids (Section 556) is prohibited, except in accordance with the Convention. The ordinance prohibits the dumping of any waste into the sea, and violation of this provision is punishable with imprisonment for a minimum term of two years and a maximum fine of 1 million US dollars (Section 567), as well as cleaning charges (Section 574). In order to ensure compliance, the ordinance provides for maintaining certain records and equipment, and empowers the federal government to conduct surveys of ships (Sections 559–562).

The federal government has the power to make rules under the ordinance (Section 609), and to grant to any ship exemptions from the provisions of this law (Section 605).

This ordinance does not apply to ships employed by the Pakistan Navy, or ships owned by the Pakistan government or a foreign country that are employed for non-commercial purposes (Section 1(3)(c)).

6.1.7.2 Pakistan Environmental Protection Act 1997

PEPA prohibits the operation of motor vehicles that emit air pollutants or noise in excess of levels determined in the NEQS. For the purpose of this law, motor vehicles are defined to include land vehicles, chassis and trailers, but not vehicles running on fixed rails (Section 2(xxvii)). The provisions of PEPA apply only to land vehicles.

The NEQS set limits on smoke, carbon monoxide and noise pollution from new and used vehicles. Limits for carbon monoxide are 4.5–6 per cent, exceeding international standards of 2–3 per cent. Nitrogen oxides, sulphur oxides, lead and benzene emissions are not mentioned. For noise emissions, the limit is 85 decibels 7.5 meters from the source (SRO 742(I)/93 dated 24 August 1993, Annex III). Enforcement of the NEQS is the responsibility of the Federal Agency (Section 6(1)(f)).

The Federal Agency establishes standards for the quality of ambient air, water and land. While different standards may be set for emissions from various sources and for different areas and conditions, if such standards are less stringent than the NEQS, prior approval must be obtained from the Pakistan Environmental Protection Council (Section 6(1)(g)).

Section 11 prohibits emissions of air pollutants or noise in excess of the NEQS or, where applicable, standards established under Section 6(1)(g), and allows the federal government to levy a pollution charge on parties violating these standards. With respect to motor vehicles, the Federal Agency may direct any motor vehicle or class of vehicles to install pollution control devices or other equipment, undergo testing or maintenance, or use particular fuels, and such vehicles will not be permitted to operate until these directions are complied with (Section 15).

Contravention of or failure to comply with the provisions of this law is punishable with a maximum fine of 1 million rupees, and an additional fine of up to 100,000 rupees for each day that the infraction continues (Section 17(1)). Offences related to emissions from motor vehicles, meanwhile, carry the maximum penalty of a 100,000 rupee fine, with an additional fine of 1,000 rupees for each day that the infraction continues (Section 17(2)). Repeat violations may lead to imprisonment for up to two years (Section 17(5)). All cases brought against offenders under this act may be tried by Environmental Magistrates (Section 24).

6.1.7.3 Pakistan Environmental Protection Agency Review of Initial Environmental Examination and Environmental Impact Assessment Regulations 2000 (SRO 339(I)/2000 dated 13 June 2000)

These regulations, framed under Section 33 of PEPA, require specified types of transport projects to undergo a prior environmental assessment. Relatively small-scale highway construction projects, and port and harbour development schemes catering to smaller ships, require a prior IEE (Schedule I, Section E). Airports, railways, large-scale highways, and ports and harbours serving larger ships must submit a prior EIA (Schedule II, Section D).

6.1.7.4 National Highway Authority Act 1991

This act establishes the National Highway Authority which constructs and maintains national highways and “strategic” roads, the latter defined simply as roads that have been declared by the federal government to be strategic roads (Section 2(m)). The Authority collects tolls, sponsors technical research, and is responsible for the preparation of a master plan for the development and construction of highways (Sections 11 and 12).

Although a relatively recent piece of legislation, this law does not obligate the Authority to monitor or mitigate the environmental impact of highways. The power to make rules under this act is not delegated and remains with the federal government (Section 31).

6.1.7.5 Korangi Fisheries Harbour Authority Ordinance 1982

The purpose of this ordinance is to set up and provide for the operation of the Korangi Fisheries Harbour Authority to regulate the one harbour from which exploitation of fisheries resources beyond territorial waters is carried out. The Harbour Authority is controlled by the federal government but has the power to make rules to carry out the purposes of this ordinance (Sections 30 and 31). The Authority is responsible for the planning, construction, operation, management and maintenance of Korangi Harbour. It may borrow funds on terms approved by the federal government.

The Authority has no specific responsibilities regarding the environmental protection of the area under its control and is under no obligation to undertake conservation work. Section 9(2)(r), however, allows the Authority to “carry out other important work”. This provision could be interpreted as a protection clause, were the Authority to determine that conservation is “important”.

6.1.7.6 Port Qasim Authority Act 1973

This act defines the port area and establishes an Authority responsible for the area's planning, development and management. The Authority is charged with preparing a master plan for the port area (Section 10). It has the discretion to require appropriate local bodies to develop and implement schemes (Sections 10 and 31) for the utilisation of water, power and other natural resources (Section 11(2)(f)), and for environmental control and pollution prevention (Section 11(2)(j)), among other issues. Exploitation and utilisation of natural resources as building materials within the port area, for purposes other than personal use, requires prior authorisation from the Authority (Section 33).

The Authority may order that land be acquired for the purposes of the act (Section 37), after appropriate notice (Section 39) and on payment of compensation (Section 41). Any person aggrieved by an award or final order under this act may appeal to the provincial government within 15 days of the award or final order (Section 48). Penalties for violations may extend to six months' imprisonment (Section 58) and/or a fine of 2,000 rupees.

6.1.7.7 Carriage by Air (International Convention) Act 1966

This act implements the provisions of the Convention for the Unification of Certain Rules Relating to International Carriage by Air (1929), or Warsaw Convention, amended at the Hague in 1955, which regulates international carriage by air and deals with matters related to passenger traffic, cargo and the liabilities of carriers. Powers under this law are not delegated and remain with the federal government.

6.1.7.8 Motor Vehicle Ordinance 1965

The 1965 ordinance, as amended, operates as a provincial statute and applies to the Islamabad Capital Territory as well. It governs the licensing, registration and ownership of vehicles. Other provisions specifically deal with vehicular pollution. The provincial government may make rules governing emissions of "smoke, visible vapour, spooks [sic], ashes, grit or oil" (Section 74(2)(h)) and the "reduction of noise emitted by or caused by vehicles" (Section 74(2)(i)). The ordinance contains no other provisions related to environmental management.

6.1.7.9 Pakistan International Airlines Corporation Act 1956

This act establishes the Pakistan International Airlines Corporation and contains detailed regulations regarding its operations. The federal government is empowered to make rules and the Board of the Corporation may make regulations.

6.1.7.10 Dangerous Cargoes Act 1953

This act regulates the transit, handling and storage of "dangerous" cargo, defined as flammable and explosive substances (Section 2(1)). The federal government may declare any cargo to be dangerous, and control and monitor its import or transit (Section 3). The law focuses on safety within port premises, and contains procedures for dealing with "emergency" situations arising as a result of fire or explosions. It does not deal with cargo that may be

dangerous to the environment and, as such, contains no provisions to regulate such shipments.

6.1.7.11 Motor Vehicles Act 1939

This act originally governed the ownership and operation of motor vehicles. It regulated licensing and registration; public transport; the construction, equipment and maintenance of motor vehicles; traffic; insurance; and the jurisdiction and authority of various government functionaries. Since 1965, however, these matters have been governed by provincial motor vehicle law and Chapters I to VI of the 1939 act have been repealed in their entirety. The remaining provisions relate to motor vehicles temporarily leaving or visiting Pakistan (Section 92), insurance against third party risks (Section 94), the obligations of insurers (Section 96), the adjudication of offences relating to insurance (Section 99), and other insurance-related matters. The power to make rules lies with the federal government (Sections 92 and 111).

6.1.7.12 Carriage of Goods by Sea Act 1925

This act implements the provisions of a draft convention considered by the International Conference on Maritime Law held at Brussels in 1922, and governs the responsibilities, liabilities, rights and immunities of carriers under bills of lading. This antiquated law does not create any liabilities for environmental damage caused by goods carried by sea.

6.1.7.13 Ports Act 1908

This act consolidates prior laws relating to the Karachi Port and Port Qasim, and extends to the navigational rivers and channels leading to these ports. It regulates the working of the ports and the maintenance of harbour facilities, containing detailed rules as well for the “conservation of ports” (Chapter IV). These provisions, such as those prescribing heavy penalties for discharging “rubbish” and ballast into port waters without permission (Section 21), are aimed at ensuring that the business of the port progresses smoothly. The law contains no provisions for the protection of marine resources within the harbour or in surrounding areas.

6.1.7.14 Railways Act 1890

This act contains detailed provisions governing the construction, maintenance and operation of railways (Chapters III–VI). It regulates the employment of railway staff (Chapter VIA), sets out the general responsibilities of railway authorities (Chapter VII) and specifies the liability of railway authorities in case of an accident causing loss of life or property (Chapter VIII). The federal government may delegate its powers under this law. The act specifies in detail the issues for which rule making is authorised (Section 47).

6.1.7.15 Karachi Port Trust Act 1886

The Karachi Port Trust Act 1886 and its amendments up to 2000 do not provide for the protection of the marine environment within the jurisdiction of the harbour. Under a new section added by the Karachi Port Trust (Amendment) Ordinance 2000, the Board of Trustees is responsible for keeping the marine environment of the port free of pollution (Section 90(1)). Discharge of ballast water,

and other liquid and solid waste within port limits is prohibited (Section 90(2)). Such offences are punishable with a fine of up to 10 million rupees for each violation, with additional liability for clean-up costs (Section 90(3)).

6.1.7.16 Ferries Act 1878

This act regulates the operation of public ferries in the NWFP and the Punjab. It empowers the “appropriate government” to declare public ferries, acquire private ferries and declare them to be public ferries (Section 4) upon payment of compensation (Section 5), and vest the management of public ferries in municipal bodies (Section 7). The law also contains provisions allowing for the collection of tolls on public ferries (Section 8). The “appropriate government”—the federal government in the case of national highways and strategic roads, and the provincial government in all other cases (Section 3A)—may make rules pursuant to this act (Section 12).

6.1.7.17 Carriers Act 1865

This act regulates the liability of common carriers in case of damage to or loss of property as a result of negligence or criminal conduct on the part of carriers or their agents. A common carrier is defined as “a person, other than the Government, engaged in the business of transporting for hire property from place to place, by land or inland navigation” (Section 2). The damage liability of carriers is limited to goods, and the law does not envisage any liability for damage to the environment. Both the federal and provincial governments have the power to notify the goods or classes of goods to which this law applies (Section 11).

6.1.7.18 Stage-Carriages Act 1861

This act regulates the licensing of horse-drawn carriages. Magistrates are empowered to issue, refuse or cancel licenses (Sections 2, 3 and 10). The law also prohibits the ill-treatment of horses used in this trade (Section 9). Powers under this act have been delegated to provincial governments (Section 20A).

6.1.7.19 Pakistan Penal Code 1860

Under Section 278 of the PPC, the punishment for “making [the] atmosphere noxious to health” is a maximum fine of 500 rupees. In addition, certain sections of Chapter XIV on public health and safety concerning “public nuisance” may be interpreted to include air and noise pollution from vehicles, as well as emissions (Sections 268, 278, 290 and 291).

6.1.8 Energy and Hydroelectric Power

Nuclear power, and the Water and Power Development Authority (WAPDA) are mentioned in the Federal Legislative List (Part I, item 18 and Part II, item 3 respectively), while electricity appears in the Concurrent List (item 34). Energy is one of the few sectors where recent legislation includes provisions for environmental protection.

According to Article 157 of the Constitution, the federal government may construct or install hydroelectric or thermal power plants, grid stations and inter-provincial transmission lines anywhere

in the country. The powers of provincial governments with respect to electricity, as specified in Article 157, include levying taxes on consumption, determining tariffs for distribution, constructing powerhouses and grid stations, and installing intra-provincial transmission lines.

Article 161 of the Constitution requires that net proceeds from federal excise duties levied on natural gas extraction at the source, and royalties collected, are paid to the province in which the well head is located. Similarly, net profits earned by the federal government from the bulk generation of hydroelectric power are to be paid to the province in which the power station is situated.

6.1.8.1 Pakistan Nuclear Regulatory Authority Ordinance 2001

This ordinance establishes the Pakistan Nuclear Regulatory Authority (Section 3), repeals the Pakistan Nuclear Safety and Radiation Protection Ordinance 1984, and dissolves the Pakistan Nuclear Regulatory Board and the Directorate of Nuclear Safety and Radiation Protection.

The definition of the term “nuclear damage” in this ordinance encompasses loss of life, personal injury and damage to property, but does not cover damage to natural resources and the environment.

Although the IEE/EIA Regulations issued under PEPA 1997 require an EIA for nuclear power plans [sic], Section 19(3) of this ordinance leaves to the discretion of the Authority whether to require applicants for a license to undertake activities involving radioactive materials and/or which produce radiation to demonstrate that the activities would not be hazardous to the environment. Section 21 provides that the Authority must authorise all construction of nuclear installations, but makes no reference to the requirement of an EIA. Prior authorisation from the Authority is, however, necessary before discharging radioactive waste into the environment (Section 22).

The Authority may inspect all measures and records pertaining to environmental monitoring and the disposal of radioactive waste (Section 29(d)) and must implement and coordinate a national programme of environmental surveillance to check the build-up of radioactivity in the environment. The purpose of such surveillance is solely to safeguard human health.

The ordinance does not acknowledge similar authority given to the Federal Agency under PEPA 1997 to license, monitor and inspect installations and activities involving radioactive substances, nor does it provide for coordination of these functions.

6.1.8.2 Pakistan Environmental Protection Agency Review of Initial Environmental Examination and Environmental Impact Assessment Regulations 2000 (SRO 339(I)/2000 dated 13 June 2000)

These regulations, framed under Section 33 of PEPA, require that specified types of energy generation and dam construction projects undergo prior environmental assessment. Schedule I lists the types of projects related to energy (Section B), and water and dams (Section F), that must undergo a prior IEE while Schedule II lists the types of projects related to energy (Section A), and water and dams (Section E), that require a prior EIA.

6.1.8.3 Regulation of Generation, Transmission and Distribution of Electric Power Act 1997

This act regulates the generation, transmission and distribution of electric power. It establishes the National Electric Power Regulatory Authority (Section 3). The Authority is given exclusive responsibility for regulating the provision of electric power services, but provincial governments may construct power houses and grid stations, lay transmission lines for use within the province, and determine the tariff for distribution of electricity within the province (Section 7). The act requires licensing for the generation (Section 15), transmission (Sections 16–19) and distribution (Sections 20–23) of electrical power. License holders are required to follow performance standards, including “safety, health and environmental protection instructions issued by the Authority or any government agency” (Section 21(2)(f)).

The Authority must encourage the development of industry standards and uniform codes of conduct for generation, transmission and distribution facilities, including for construction practices and standards (Section 35). The law empowers the Authority to make rules for the safe and effective supply of electric power, and to ensure that operations are carried out in a manner that does minimal damage to the environment (Section 46(2)(j)). The Authority may also make regulations in accordance with the act and any rules (Section 47).

6.1.8.4 West Pakistan Water and Power Development Authority Act 1958

This act and its subsequent amendments provide for the unified and co-ordinated development of the freshwater and power resources of Pakistan. It establishes WAPDA (Section 3) and sets out its powers and functions.

WAPDA is responsible for irrigation, water supply and drainage; the recreational use of water resources; the generation, transmission and distribution of power; the construction, maintenance and operation of power houses and grids; flood control; the prevention of waterlogging, and reclamation of waterlogged and salted lands; and inland navigation (Section 8). Subject to the provisions of other laws, WAPDA also controls the underground water resources of any region in Pakistan, as well as the operation of all power houses, grids and ancillary facilities.

Under Section 8(2)(vi), WAPDA may frame schemes to provide for “the prevention of any ill-effects on public health” as a result of its own activities. This clause serves, indirectly, to regulate water quality. In addition, WAPDA is empowered to take limited steps for natural resource conservation. Under Section 13(2)(d)(ii), it may direct owners of private land to “undertake anti-erosion operations, including conservation of forests and re-afforestation [sic]”. Similarly, Section 13(2)(e) allows WAPDA to “restrict or prohibit by general or special order” the clearing or division of land in the catchment area of a river.

Although the act provides for the prevention of adverse effects on public health, it does not specifically provide for regulating or monitoring the impacts of its own operations on natural resources

or the environment. Amendments adopted in 1964, 1967, 1998 and 1999 deal with purely administrative issues.

6.1.8.5 Electricity Control Ordinance 1965

This ordinance allows the federal government to impose restrictions on the production, distribution and use of electricity during an emergency. The federal government may delegate its powers (Section 7).

6.1.8.6 Karachi Electricity Control Act 1952

This act delegates to the Sindh provincial government powers to control the production, distribution and use of electricity in Karachi. The provincial government has the authority to sub-delegate its powers (Section 4). Following the promulgation of the Sindh Local Government Ordinance 2001, certain powers related to electricity have been devolved to the local government. The status and extent of the provincial government's powers under the 1952 Act remain to be clarified.

6.1.8.7 Electricity Act 1910

Together with the Regulation of Generation, Transmission and Distribution of Electric Power Act 1997, this 1910 law regulates the supply and use of electricity. Provisions of the 1997 act override any conflicting provisions in the 1910 act. Provincial governments also have regulatory powers, including the authority to intervene in cases of default.

The 1910 law was amended in 1998 and 1999. The Electricity (Amendment) Ordinance 1998 substantially increases penalties and fines for offences. These punitive measures are, however, aimed at curbing power theft and ensuring the smooth supply of electricity.

6.1.9 Tourism

The subject of tourism is mentioned in the Concurrent Legislative List (item 42), allowing both federal and provincial governments to legislate for the sector. Federal tourism laws are more than a quarter century old, and pertain largely to the regulation and control of government agencies and institutions responsible for tourism. These laws govern specific services, rather than setting national standards and guidelines for the development of the industry as a whole.

Provisions in PEPA and the IEE/EIA Regulations related to "environmentally sensitive areas" potentially apply to tourism activities. In addition, the IEE/EIA Regulations specify that tourism development projects must obtain environmental clearances.

6.1.9.1 Pakistan Environmental Protection Agency Review of Initial Environmental Examination and Environmental Impact Assessment Regulations 2000 (SRO 339(I)/2000 dated 13 June 2000)

These regulations, framed under Section 33 of PEPA, require tourism projects to undergo prior environmental assessment. Projects involving the provision of public facilities related to tourism are required to submit an IEE (Schedule I, Section I). Large-scale tourism development projects, meanwhile, require a prior EIA (Schedule II, Section H).

6.1.9.2 Pakistan Hotels and Restaurants Act 1976

This act regulates the standard of service and facilities provided by hotels and restaurants. The law allows government officials to prohibit the conduct of any trade, profession or industry that endangers public health or causes a public nuisance in the vicinity of a hotel (Section 16). This provision could be used to protect natural resources and the environment. The federal government is empowered to make rules for the purpose of this act (Section 29).

6.1.9.3 Pakistan Hotels and Restaurant Rules 1977

These rules establish a Hotels and Restaurants Committee, and specify its functions (Section 3). They provide for the classification of various hotels according to health and hygiene standards (Section 6). By making registration and licenses mandatory, the rules provide for a regulatory mechanism. They do not provide for the actual operation of hotels and restaurants, nor do they address the potential for environmental damage caused by such commercial establishments, including the indiscriminate disposal of waste. Besides establishing basic health and hygiene standards, the rules contain no provisions that directly relate to natural resource management.

6.1.9.4 Pakistan Tourist Guides Act 1976

This act regulates the working of tourist guides and provides for a professional code of conduct (Section 5). The law establishes a Tourist Guide Regulatory Committee which performs an advisory role (Section 3). Guides cannot operate without a license (Section 4). The federal government has the power to make rules and may delegate its powers (Sections 11 and 12).

6.1.9.5 Travel Agencies Act 1976

This act establishes a licensing mechanism, and seeks to regulate the operations of travel agents by establishing rules and a code of conduct (Section 16). Travel agencies cannot operate without a licence (Section 4). The functions of travel agencies under this act include transport, lodging and conducting guided tours (Section 2(f)). The law does not provide for ecotourism nor does it contain any provisions related to the protection of natural resources from potential damage caused by the tourist industry.

6.1.10 Import and Export

Import and export are federal subjects, included in the Federal Legislative List (Part I, item 27). Existing laws do not contain provisions to discourage the import of goods that damage the environment, or to encourage the import of environmentally friendly products. There are no provisions requiring data on imported goods that would permit a determination of their potential effect on the environment. The Export Processing Zone Authority Ordinance 1980 is the only legislation governing this sector that contains a specific provision on pollution prevention and control.

6.1.10.1 Pakistan Environmental Protection Act 1997

Under PEPA, the import of hazardous waste is prohibited (Section 13). The Federal Agency is empowered to regulate the import and handling of hazardous substances (Section 14). Penalties for violations of Section 13 may extend to 1 million rupees, and for violations of Section 14 to 100,000 rupees (Section 17).

6.1.10.2 Export Processing Zones Authority Ordinance 1980

This ordinance establishes the Export Processing Zones Authority (Section 4), which is responsible for setting up and managing export processing zones. The Authority develops the infrastructure in these areas, and may prepare and implement schemes for environmental control and the prevention of pollution (Section 10). The term “environmental control” is not defined in the law.

6.1.10.3 Customs Act 1969

See 6.1.5.4 above.

6.1.10.4 Import of Goods (Price Equalization Surcharge) Act 1967

This act empowers the federal government to regulate the prices of certain goods by imposing a surcharge on imports, to be levied in addition to customs duties and other taxes already applicable (Section 3). The law is meant to equalise the prices of equivalent goods imported at different prices, with the less expensive goods liable to a surcharge. The surcharge applies to goods listed in the schedule, which mentions mostly raw materials for industry, as well as items notified by the federal government from time to time (Section 6A).

6.1.10.5 Imports and Exports (Control) Act 1950

This is the principal law governing the import and export sector, and gives the federal government wide-ranging powers to restrict and control imports and exports. Under this act, the government establishes a licensing system to regulate all practices and procedures related to the import and export of specified goods.

6.1.11 Phytosanitary, Quarantine

Quarantine at ports is on the Federal Legislative List (Part I, item 19), while the prevention of infectious or contagious diseases and pests in humans, animals and plants is on the Concurrent List (item 22). Laws governing this sector serve as the country’s first line of defence against plant, animal and insect invasive alien species, and the diseases they may carry. Existing legislation pre-dates the Convention on Biological Diversity by more than a decade and does not provide for the comprehensive regulation of such species.

6.1.11.1 Pakistan Animal Quarantine (Import and Export of Animals and Animal Products) Ordinance 1979

This ordinance regulates the import, export and quarantine of animals and animal products in order to prevent the introduction and spread of disease (Section 3). The federal government may appoint a quarantine officer to inspect animals and animal products. The quarantine officer has the power to detain or release quarantined specimens, conduct tests, order the destruction of diseased or infected specimens, order the disinfecting of any premises, and deport or prohibit the import of diseased animals (Section 6). The federal government may make rules and delegate its powers to provincial governments, officers or authorities (Sections 13 and 14).

6.1.11.2 Pakistan Plant Quarantine Act 1976

This act implements the provisions of the International Plant Protection Convention (1951). The federal government regulates the movement of plants into the country as a means to prevent the import of agricultural pests and disease (Section 3). The federal government may make rules and delegate its powers (Sections 9 and 10).

6.1.11.3 Pakistan Penal Code 1860

Under the PPC, non-compliance with quarantine rules is a punishable offence (Section 271).

6.1.12 Inter-Provincial Trade

This subject is included in the Federal Legislative List (Part I, item 27). According to the Constitution, the federal legislature may impose restrictions on free trade between provinces or within a province, “as may be required in the public interest” (Article 151(2)). Moreover, provincial assemblies are explicitly prohibited from framing laws that restrict trade, and from imposing any tax that “discriminates” against goods manufactured in other provinces (Article 151(3)). The provinces may, however, with prior consent from the president, frame laws to impose “reasonable” restrictions in the interest of public health, “public order or morality”; to protect animals and plants from disease; or to alleviate shortages of “essential” goods and commodities (Article 151(4)).

6.1.13 Research Institutions

Federal “agencies and institutes” for research are included in the Federal Legislative List (Part I, item 16). Such institutions are empowered to undertake a wide range of activities, but none is explicitly instructed or encouraged to focus on natural resources or environmental issues.

6.1.13.1 Pakistan Environmental Protection Act 1997

Among the functions that PEPA assigns to the Federal Agency is the responsibility to set up systems to conduct and promote research into pollution prevention and control (Section 6(1)(i)).

6.1.13.2 Pakistan Space and Upper Atmosphere Research Commission Ordinance 1981

This ordinance establishes the Space Research Council and the Pakistan Space and Upper Atmosphere Research Commission. The Council is a policy-making body (Section 4), while the Commission prepares and submits proposals, conducts surveys, and undertakes research and development to implement the policies of the Council (Section 9). The Council has wide powers under the law, although it has no express responsibilities related to environmental research. The federal government may make rules to carry out the purposes of this ordinance (Section 23).

6.1.13.3 Pakistan Agricultural Research Council Ordinance 1981

This ordinance deals exclusively with the establishment of the Pakistan Agricultural Research Council and the conduct of its business. The functions of the Council include agricultural research; the generation, collection and dissemination of information related to agriculture; and maintaining a reference and research library (Section 4). The law empowers the federal

government to make rules and the Council to make regulations (Sections 25 and 26).

6.1.13.4 Pakistan Science Foundation Act 1973

This act establishes the Pakistan Science Foundation, which sets up scientific and technological information centres, sponsors research, gathers statistics, and liaises with international scientific research institutions (Section 4). The Foundation may make regulations for the conduct of its own affairs (Section 18).

6.1.13.5 Pakistan Atomic Energy Commission Ordinance 1965

This ordinance establishes the Pakistan Atomic Energy Commission, which promotes the peaceful use of atomic energy and is responsible for development projects involving nuclear power stations (Section 6). The law also establishes a Council, which is a policy making and supervisory body (Section 9). The federal government may make rules to carry out the purposes of this ordinance (Section 19). The Commission may, with prior sanction from the federal government, make rules to regulate its own business (Section 20). This law essentially provides for the corporate functioning of the Atomic Energy Commission.

6.1.14 Drugs, Pharmaceuticals

Drugs and medicines generally, and opium, poisons and dangerous drugs in particular, are on the Concurrent Legislative List (items 19, 20 and 21). The Drugs Act of 1976 regulates pharmaceutical drugs, while the Control of Narcotic Substances Act 1997 deals with the cultivation and harvesting of cannabis, coca, and opium poppy. Legal instruments governing forests at the provincial level regulate the harvesting of medicinal plants, specifically in the case of the NWFP where the legal regime governing forests was amended in 2002, and by implication in the other provinces and the Northern Areas where the Forest Act 1927 remains in force.

6.1.14.1 Control of Narcotic Substances Act 1997

This act prohibits the cultivation and harvesting of narcotic plants: cannabis, coca and opium poppy (Section 4). Penalties for violations are imprisonment for up to seven years and/or a fine to be determined by the court (Section 5).

6.1.14.2 Drugs Act 1976

This act, as amended, empowers the federal government to regulate the import, export, manufacture, storage, distribution, advertising and sale of pharmaceutical drugs. The federal government compiles and publishes the National Formulary which lists the drugs that may be imported, manufactured or sold in the country (Section 8). This law deals with a number of other related matters including the establishment of appellate boards, committees, and special courts; quality control boards; institutes and drug testing laboratories (Section 15); the powers of drugs inspectors (Section 18); the cancellation or suspension of licenses and registration (Sections 41 and 42); and exemptions (Section 36). The federal and provincial governments have the power to make rules (Sections 43 and 44); the Drugs (Import and Export) Rules 1976 were issued pursuant to the federal power.

6.1.15 Other Legal Instruments

6.1.15.1 Pakistan Environmental Protection Act 1997

The purpose of PEPA is to protect and improve the environment, and promote sustainable development by preventing and controlling pollution. The law defines the term environment to include natural resources, but PEPA does not mention them. Among its provisions, however, are several that are potentially significant for natural resource conservation and management, in particular the requirement for IEE/EIA.

PEPA establishes the Pakistan Environmental Protection Council (Section 3), as well as environmental protection agencies at the federal and provincial level (Sections 5 and 8). It allows for the creation of environmental tribunals (Section 20) and allows provincial high courts to designate environmental magistrates (Section 24). None of these institutions or offices carries direct responsibility for natural resource management, although each has varying roles in assuring air and water quality.

Discharges or emissions in excess of the NEQS or other standards established under PEPA are prohibited (Section 11(1)). The federal government may levy a pollution charge on parties found to be violating the NEQS (Section 11(2)). Under the law, the handling of hazardous substances requires a license (Section 14).

PEPA requires that an environmental assessment is carried out for new projects (Section 12), defined comprehensively to include all major activities that may have an impact on the environment (Section 2(xxxv)). The types of environmental clearance required for different projects are specified in the IEE/EIA Regulations 2000. Provincial sustainable development funds are to be established to provide financial assistance to suitable projects (Section 9). Meanwhile, the Federal Agency may issue an environmental protection order to prevent an actual or potential adverse environmental effect (Section 16).

Offences related to pollution by motor vehicles, littering, waste disposal, and violation of rules and regulations, are to be tried by environmental magistrates (Section 24). More serious offences are to be tried by environmental tribunals, to be constituted under Section 20. Government agencies and local bodies may be held accountable for environmental offences (Section 19).

Most provisions of PEPA are operationalised by means of rules and regulations. To date, the federal government has issued a number of rules and regulations, some of which indirectly affect natural resources. Those adopted as of mid-2005 are discussed below.

6.1.15.2 Environmental Samples Rules 2001 (SRO 527(1)/2001 dated March 2001)

These rules, framed under PEPA, allow authorised officers to enter and inspect premises (Section 4), and to take samples of effluents or emissions (Section 7(1)). Procedures for taking, storing and transporting samples are described.

6.1.15.3 National Environmental Quality Standards (Self-Monitoring and Reporting by Industry) Rules 2001 (SRO 528(1)/2001 dated April 2001)

These rules, framed under PEPA, place certain obligations on industry to monitor and report to the Federal Agency emissions, effluents discharged and other data sets.

6.1.15.4 Pollution Charge for Industry (Calculation and Collection) Rules 2001 (SRO (1)/2001 dated 01 July 2001)

These rules, framed under PEPA, prescribe the method for calculating and collecting levies that may be imposed in the form of an industrial pollution charge. In the process of determining the pollution level of an industrial unit, inspection teams must include not more than two representatives each drawn from any two of the authorised NGOs listed in Schedule II (Section 5).

6.1.15.5 Provincial Sustainable Development Fund Board (Procedure) Rules 2001 (SRO 526(1)/2001 dated 18 July 2001)

These rules, framed under PEPA, provide procedures for the operation of a Sustainable Development Fund and the establishment of a Sustainable Development Board.

6.1.15.6 National Environmental Quality Standards (Certification of Environmental Laboratories) Regulations 2000 (SRO 258(1)/2000 dated 10 February 2000)

These regulations, framed under PEPA, prescribe procedures for the certification of laboratories where tests may be conducted on soil, air, water and other samples.

6.1.15.7 Pakistan Environmental Protection Agency Review of Initial Environmental Examination and Environmental Impact Assessment Regulations 2000 (SRO 339(I)/2000 dated 13 June 2000)

These regulations, issued under Section 33 of PEPA 1997, are to be read with PEPA Section 12. They contain detailed procedures that must be followed in the IEE/EIA process, such as conducting public hearings, issuing notices, recording decisions and accepting or rejecting an EIA/IEE. Section 5(a) requires that an EIA is carried out for any project likely to cause an “adverse environmental effect”.

Schedule I to the regulations sets out the types of small-scale projects that require an IEE. These include the designation of “environmentally sensitive areas”; urban development operations including water supply and treatment installations and waste disposal facilities; the establishment of specified types of farms; commercial mineral extraction projects; industries, and manufacturing and processing activities; highway construction projects; and hydel, water management and dams.

Schedule II specifies the types of large-scale projects that require an EIA. These include urban development projects; mining,

smelting and processing operations; industries, and manufacturing and processing activities; highway construction projects, airports and railway installations; hydel, water management and dams; and tourism development projects.

The regulations provide for the monitoring of projects after completion. Section 18 requires owners to submit an annual report to the Federal Agency. This report must summarise operational performance with an emphasis on adequate maintenance and measures to mitigate adverse effects on the environment. The Federal Agency is authorised to cancel the approval of any project at any time on the basis of such reports or its own investigations, if it is found that conditions of approval have been violated or false information provided (Section 19).

**6.1.15.8 Public Health
(Emergency Provisions)
Ordinance 1994**

This ordinance deals with emergencies during which urgent measures are required to protect public health or prevent the spread of infectious disease. The appropriate government—the federal government in relation to port authorities, the federal government or cantonment local government in relation to cantonments, and the provincial government for all other authorities (Section 2(a))—may order a local authority to take the necessary measures to protect public health (Section 3). The law also empowers the appropriate government to direct a local authority to supply water to any area during an emergency (Section 7). The appropriate government may make rules, by-laws and regulations (Sections 10 and 11), and issue “directions” in order to carry out the purposes of this ordinance (Section 8). The law deals primarily with administrative rather than substantive issues.

**6.1.15.9 Explosive
Substances Act 1908**

This law regulates the possession and use of explosive substances, including materials for the manufacture of explosives as well as machinery, tools and materials that can be used to cause an explosion (Section 2). Causing an explosion is punishable with a maximum sentence of life in prison, whether or not the event causes any injury to persons or damage to property (Section 3). The same maximum penalty applies to making or possessing explosives with intent to cause an explosion (Section 4). Although the law does not specify conditions under which it is legal to possess explosive materials, possession of such substances for a purpose that is not “lawful” is an offence (Section 5), implying that some form of regulatory mechanism is to be put in place. Powers under this act have been delegated to provincial governments, which may restrict or allow the courts to proceed with the trial of suspected offenders (Section 7). The 1908 law deals exclusively with causing explosions or intent to cause explosions.

**6.1.15.10 Explosives
Act 1884**

This law deals with manufacture, possession, sale, use and transport of explosives. The government may prohibit the manufacture, possession or import of any explosive substance, except with a licence (Section 5), or ban outright the manufacture,

import or possession of any material deemed to be of “so dangerous character [sic]” that it is “expedient for the public safety” to impose such restrictions (Section 6). Under this law, the maximum penalty for illegally manufacturing, possessing or importing explosives is 5,000 rupees.

The government may declare any substance deemed particularly dangerous to life or property, owing to its explosive properties, or any of the processes involved in its manufacture to be an explosive within the meaning of this act (Section 17). Such materials may include a wide range of chemical substances that are explosive in nature, although the term “dangerous” itself has not been defined. No regulatory compliance measures are introduced for the handling of hazardous materials.

6.2 Court Decisions

6.2.1 Pollution of Environment Caused by Smoke, Emitting Vehicles, Traffic Muddle (HR No. 4-K of 1992), 1996 SCMR 543

This interim order issued by the Supreme Court calls for measures to streamline the process of checking motor vehicles in Karachi, as a first step towards eliminating air and noise pollution in the city. The order is based on reports from mobile checking carried out in 1992–93, also at the order of the Supreme Court.

6.2.2 Environmental Pollution in Balochistan (HR No. 31-K/92(Q)), PLD 1994 SC 102

The Supreme Court takes *suo moto* action in this case, after seeing a report in a daily newspaper which stated that nuclear waste was to be dumped in coastal areas of Balochistan. The Court views this as a violation of Article 9 of the Constitution and orders the chief secretary of Balochistan to conduct an inquiry to determine whether coastal land in that province, or in any area within the territorial waters of Pakistan, had been or was being allotted to any persons for the purpose of converting such areas into a dump site. If any such allotment had been made or applied for, full particulars were to be supplied to the Court.

The Court orders that authorities with responsibility for allotting coastal land insert a condition in the legal document granting an allotment providing that the allottee shall not use the land for dumping, treating, burying or destroying by any device waste of any nature including industrial or nuclear waste in any form, and that the Balochistan Development Authority should obtain a similar undertaking from those to whom land has already been allotted.

6.2.3 General Secretary, West Pakistan Salt Miners Labour Union, Khewra, Jhelum v. Director Industries and Mineral Development, Punjab, Lahore (HR No. 120 of 1993), 1994 SCMR 2061

The petitioners seek enforcement of the right of area residents to clean water, free of pollution from coal mining being carried out in the same water catchment area. It is alleged that if the mines are allowed to continue their activities, which extend into the catchment area, the water course, reservoir and the pipelines will be contaminated.

Relying on the earlier Shehla Zia case, the Supreme Court issues a number of directions to the concerned parties and departments. It orders the mouth of the mine to be shifted, within four months, to a safe distance from the stream and reservoir so that that these water sources are not polluted by mine debris, carbonised materials and waste water from the mines. The Court appoints a five-member commission to ensure that these orders are carried out.

6.2.4 Shehla Zia and others v. WAPDA (HR No. 15-K of 1992), PLD 1994 SC 693

In this landmark case, the Supreme Court prevents, as an interim measure applicable to date, the construction of a high-voltage grid station in the green belt of a residential locality in Islamabad.

On behalf of residents of the area in which WAPDA proposed to construct the grid station, a letter is sent to the Supreme Court raising two questions: whether any government agency has the right to endanger the life of citizens by its actions without the latter's consent, and whether zoning laws vest rights in citizens which cannot be withdrawn or altered without the citizens' consent.

Since conclusive evidence of the effect of electro-magnetic fields on human health is not available, the Supreme Court does not make a definitive ruling. Rather, the Court invokes the principles of prudence and precaution in issuing a notice to WAPDA, agreed by both parties, appointing a commissioner to study WAPDA's plan and report on the likelihood of any adverse effects on the health of residents of the locality and, if necessary, to suggest any alteration or addition which may be economically possible for construction and location of the grid station. The Court also directs the government to establish an authority or commission composed of internationally recognised, impartial scientists, whose opinion or permission should be obtained before any new grid station is allowed to be constructed. The Court directs that in the future, prior to installing or constructing any grid station or transmission line, WAPDA must issue public notices in the newspapers, and on radio and television, inviting objections, and may only finalise the plan after considering such objections.

The Supreme Court holds that the right to a clean environment is the fundamental right of all citizens of Pakistan, covered by the "right to life" and the "right to dignity" under Articles 9 and 14 of the Constitution, respectively. Article 9 of the Constitution provides that no person shall be deprived of life or liberty save in accordance with law. The Supreme Court rules that the word "life" covers all facets of human existence. Although the word has not been defined in the Constitution, the court holds that it does not mean, and cannot be restricted to mean, vegetative or animal life alone, nor does it mean mere existence from conception to death. The Court holds that life includes all such amenities and facilities that a person born in a free country is entitled to enjoy with dignity, legally and constitutionally. The Supreme Court also accepts the importance of the Rio Declaration on the Environment and Development, and the precautionary principle included in its Principle 15.

6.2.5 Human Rights Case No. 9-K/1992 (unreported case before the Supreme Court of Pakistan)

In 1992, the Karachi Administration Women's Welfare Society writes a letter to the Supreme Court stating that the use of open storm water drains for the disposal of sewage, and the contamination from sewage as a result of damaged drains and pipes, constitute a violation of the fundamental rights of the people living in the area.

The Supreme Court converts the letter into a human rights case and constitutes a commission which reports that the complaints in the petition are valid. The Court calls for remedial measures to be taken, including the repair of the water and sewerage pipes.

07

Summary and Conclusions

7.1 Governance

Since the subject of environmental pollution and ecology is on the Concurrent Legislative List of the Constitution, both federal and provincial governments may enact legislation governing natural resources. Case law upholds the constitutional distribution of subject matter jurisdiction generally, but not in the specific context of natural resource management.

In substantial areas of the country, including the tribal areas and the Northern Areas, federal and provincial legislation does not automatically apply unless the government with jurisdiction over a particular area explicitly extends the application of laws to that area. For example, the Forest Act does not apply to FATA.

With few exceptions, federal statutes governing natural resources delegate rule-making and other implementation powers either to provincial governments or to bodies and authorities specifically established for such purposes. Case law makes it clear that delegated authority is not final and can be reverted to the delegating authority. None of the cases deals specifically with the delegation of authority for natural resource management.

Even where powers are expressly delegated, gaps in the rules of business on the subject matter jurisdiction of ministries and the functions of their sub-divisions mean that no operational basis exists for integrated natural resource management. A framework for integrated management could be created by the Pakistan Environmental Protection Council and the Pakistan Environmental Protection Agency, under a broad interpretation of PEPA.

7.2 Natural Resources

Although “ecology” is mentioned in the Concurrent Legislative List, and despite the fact that Pakistan is a Party to all biodiversity-related international agreements, there is no general federal legislation on the conservation, development and sustainable use of natural resources. Rather, federal statutes on the subject regulate prospecting and exploitation of resources to ensure their continued availability for future exploitation.

In practice, all laws governing natural resources operate as provincial laws. The only exceptions are laws governing marine fisheries that lie outside Pakistan’s territorial waters, statutes governing the allocation of freshwater resources, and an act that prohibits cutting trees in strategic areas. Aside from an ordinance that makes it possible to establish protected areas in the Islamabad Capital Territory, there is no federal legislation on protected areas. The IEE/EIA regulations issued under PEPA empower the Federal Agency to designate “environmentally sensitive areas”, with no guidance on how these areas would relate to provincially established protected areas. Another significant omission from existing federal legislation is the absence of provisions enabling citizen participation in managing and conserving natural resources.

Most federal laws emphasise administrative detail and provide scant substantive direction, failing to provide either a general or sectoral framework for coordinating sustainable development with sustainable resource exploitation. The limited exception is legislation on marine fisheries. Laws governing closely related resources such as freshwater and fisheries do not provide for integrated management.

7.3 Processes and Institutions

Federal statutes governing the processes and institutions that affect natural resources focus on regulating these processes in order to ensure their orderly conduct and achieve commercial objectives. Laws governing these sectors tend to establish institutions and provide significant detail on how such entities are to be managed, but provide scant substantive content and do not provide for environmental considerations in conducting such activities. For example, the Agricultural Pesticides Ordinance contains no provisions regarding the effects of continuous use of a pesticide over long periods of time, or the regulation of its precipitation in the soil or groundwater. Similarly, the Mines Act covers all aspect of mining operations except for the safe disposal of waste, the mitigation of adverse environmental effects of mining and the issue of mine closure.

Notable exceptions are laws on export processing zones, electric power generation and merchant shipping. Even so, environmental provisions in the statutes on export processing zones and electric

power generation are vague and general, failing to provide clear guidelines or limitations. The most recent legal instrument regulating nuclear installations does not acknowledge similar authority given to the Federal Agency under PEPA to license, monitor and inspect installations and activities involving radioactive substances, nor does it provide for coordination of these functions. Meanwhile, environmental provisions in the law on export processing zones are discretionary rather than mandatory. The Merchant Shipping Ordinance is more specific, referring to the provisions of an international agreement, while an amendment to the Karachi Port Trust Act obliges users of the port to ensure a pollution-free environment and makes them liable for clean-up costs.

But even laws that are seemingly unrelated to natural resources could be used to encourage sustainable development and sustainable use. Creative interpretation of the definition of “public purposes” provided in the Land Acquisition Act, for instance, could allow the government to acquire land for conservation. In addition to the fees and charges provided for in PEPA, excise revenues could be levied specifically to fund natural resource conservation, restoration and rehabilitation. The tariff structure of central taxes and duties could be creatively deployed to encourage environment-friendly commercial activities, and discourage the import of goods that are likely to cause environmental damage. In the same way, laws regulating agricultural, veterinary and domestic chemicals and drugs could require classification and labelling systems to advise regulators and users alike on the proper control and use of these substances in order to avoid harm to the environment generally and to natural resources in particular. Federal research institutions could be given incentives to develop systems for the comprehensive monitoring of environmental loadings and socio-economic activities that impact natural resources. Such institutions could also be provided incentives to undertake activities aimed at promoting an understanding of the mechanisms of environmental change and predicting their impacts.

Although it does not govern natural resources directly, PEPA affects them indirectly by providing a framework for controlling and mitigating pollution. In requiring environmental clearances for specified types of new projects and activities, PEPA can introduce environmental protection and natural resource conservation into sectors where existing laws do not otherwise provide for it. Effective implementation of PEPA’s pollution control provisions and compliance with NEQS would contribute significantly to improving the quality of natural resources.

PEPA’s support for natural resource conservation and management remains limited, however, for a number of reasons. Its provisions do not override those of other statutes and, despite PEPA’s scope, it is difficult to implement the provisions of the law through departments and agencies other than the Federal Agency in the absence of clear obligations for doing so. The EIA regime is limited to new projects. Existing activities, therefore, are not subject to its requirements and it does not deal with the cumulative effects of projects over time. The law does not make it mandatory for pollution charges levied on industry to be used to mitigate environmental damage or restore degraded resources. The provisions of PEPA are primarily reactive, although an environmental protection order (Section 16) may be used proactively. The law does not provide a framework for integrating its provisions with natural resource legislation, for example to ensure pollution-free water for fisheries.

7.4 Governance and Natural Resource Management

For all its benefits, the distribution of powers between the federal government and the provinces complicates the process of managing natural resources and regulating the processes that affect them. For instance, the mining of nuclear substances and petroleum products lies within the exclusive domain of the federal government, while the management of natural resources and protected areas affected by such mining is most likely to be under the control of a provincial government. In the event of a conflict, federal law will prevail. Local government bodies have been

given certain environmental and natural resource responsibilities, but there is no legal framework providing for coordination between local bodies, provincial environmental protection agencies and other authorities responsible for natural resources.

Related to the absence of a legal framework enabling public participation is the lack of access to the information that is held by various government authorities, regarding natural resources and their management.

Given the gaps in the statutory regime, it is fortunate that in the Shehla Zia case the Supreme Court of Pakistan declared the right to a healthy environment to be part of the fundamental constitutional right to life guaranteed to all citizens. Although the case was concerned with pollution rather than natural resources, the Supreme Court's endorsement of the constitutional right to a healthy environment, and of the precautionary principle, provides a solid basis for exerting similar rights with respect to natural resources and using the courts to advance the law in this field.

The World Conservation Union (IUCN)

Created in 1948, The World Conservation Union (IUCN) brings together 81 States, 114 government agencies, 800 plus NGOs, and more than 11,000 scientists and experts from 181 countries in a unique worldwide partnership. IUCN's mission is to influence, encourage and assist societies throughout the world to conserve the integrity and diversity of nature and to ensure that any use of natural resources is equitable and ecologically sustainable.

IUCN is the world's largest environmental knowledge network and has helped over 75 countries to prepare and implement national conservation and biodiversity strategies. IUCN is a multi-cultural, multilingual organization with some 1000 staff located in 62 countries. Its headquarters are in Gland, Switzerland.

IUCN Pakistan has five programme offices in cities from the north to the south, multiple field offices and a large portfolio of projects. It is one of the 7 Country Offices of IUCN's Asia Programme, covering 17 countries with a workforce of nearly 500.

<http://www.iucn.org>

The designation of geographical entities in this book, and the presentation of the material, do not imply the expression of any opinion whatsoever on the part of IUCN concerning the legal status of any country, territory, or area, or of its authorities, or concerning the delimitation of its frontiers or boundaries.

The views expressed in this publication do not necessarily reflect those of IUCN.

Published by: IUCN, Environmental Law Programme.



Copyright: ©2005 International Union for Conservation of Nature and Natural Resources.
Reproduction of this publication for educational and other non-commercial purposes is authorised without prior permission from the copyright holder, providing the source is fully acknowledged.

Reproduction of the publication for resale or for other commercial purposes is prohibited without prior written permission from the copyright holder.

Citation: IUCN Pakistan (2005). Environmental Law in Pakistan — Federal. IUCN Pakistan, Environmental Law Programme, Karachi, Pakistan. 78 pp.

Series General Editor: Patricia F. Moore

Series Editor: Firuza Pastakia

ISBN: 969-8141-78-2

Design: Creative Unit (Pvt) Ltd.

Layout: Azhar Saeed, ECK Group, IUCN Pakistan.

Printed by: The Times Press (Pvt) Ltd.

Available from: IUCN-The World Conservation Union
Environmental Law Programme
1 Bath Island Road
Karachi 75530, Pakistan
Tel.: ++92-21-5861540/41/42
Fax: ++92-21-5861448, 5835760

During the last two decades, environmental law in Pakistan has matured into a legal discipline with its own identity. It is defined in the broadest sense to include the management of biological and other natural resources as well as the control of pollution and hazardous materials. The environmental legal regime in force in the country today consists of legislation enacted over a period of more than 125 years, covering subjects that range from species to sectors to activities. The law governing natural resource management in Pakistan is compiled and analysed in these volumes—a unique resource to be used now, to ensure the future.