

Environmental Law in Pakistan

Volume

01

Description and Analysis

Part 6

Governing Natural Resources
and the Processes and
Institutions That Affect Them

Northern Areas

IUCN
The World Conservation Union

Environmental Law

in Pakistan

01

Governing Natural Resources
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Northern Areas

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Abbreviations

AJK	Azad Jammu and Kashmir
EIA	environmental impact assessment
EPA	Environmental Protection Agency
EPO	Environmental Protection (Adaptation and Enforcement) Order 2002
IEE	initial environmental examination
IUCN	The World Conservation Union
KANA	Ministry of Kashmir Affairs and Northern Areas
NA	Northern Areas
NACLFO	Northern Areas Council Legal Framework Order 1994
NACS	Northern Areas Conservation Strategy
NALC	Northern Areas Legislative Council
NALGO	Northern Areas Local Government Order 1979
NARoB	Northern Areas Rules of Business 1994
NEQS	National Environmental Quality Standards
NWFP	North-West Frontier Province
PEPA	Pakistan Environmental Protection Act 1997
PLR	Peshawar Law Report
SCMR	Supreme Court Monthly Review

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)).

In Pakistan, therefore, environmental law 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 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

Part 6: Northern Areas

Each part of the series is divided into two volumes. The first volume reviews and analyses the law governing natural resources, as well as legislation related to the processes and activities that impact natural resource management. The second volume contains the full text of all legal instruments discussed. Each two-volume set will be available on CD-ROM, while the full text of legal instruments surveyed may be found at www.law.iucnp.org.

For a fuller understanding of environmental legislation at the sub-national level, the provincial and regional surveys should be read together with the volume on federal law. These reviews, individually and together, do not pretend to serve as an exhaustive compilation of the entire body of law related to a specific subject. Rather, these studies provide an overview of selected legal instruments thought to have the greatest actual or potential impact on natural resources and the environment.

The process of compiling, writing and editing this series will have taken more than three 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 directly govern natural resources, as well as laws 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

Northern Areas of Pakistan is situated at the junction of three mighty mountain ranges i.e., Karakorum, Himalaya and Hindu Kush. The area is rich in natural resources and biological diversity of flora and fauna species. Due to lack of awareness, absence of environmental friendly customary laws and lack of implementation of statutory laws at the far flung areas, these species have become endangered or near to extinct. The over exploitation of these species has rendered an irreversible damage to the very existence of these species, its habitat and natural beauty of the region, particularly the natural resources of forest and wild life.

Till 1970s Northern Pakistan was quite isolated from the rest of the country and had a virgin and rich cultural society but the opening of the Karakoram highway has resulted in far-reaching changes in the natural resources of the Northern Areas and also had its effects on its culture. Over-use and depletion of the natural resources has resulted in natural degradation and exhaustion of the natural resources of these areas.

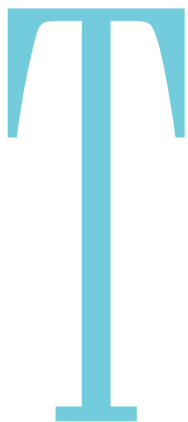
A number of statutory laws relating to natural resource management have been enacted but due to the non-accessibility of these rugged terrains it is very difficult to find all the statutory law relating to natural resource management. Furthermore some of the laws enacted are too old, do not contain any provision relating to protection, conservation and sustainable development of the environment.

The work done in this research is of great importance as it reviewed existing laws which provides knowledge base and helps in bringing forth a clear picture of the existing environmental provisions and gaps in the law. Besides the study is unique in its nature and first of its kind which comprehensively deals with the existing status and jot down the future guidelines. Work of such nature is a trailblazer for law makers, judges, lawyers, law students, government departments and civil society institutions.



Muhammad Khurshid Khan
Chairman Chief Court Northern Areas Gilgit

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The authors of other volumes in this series contributed in varying degrees to this study of Northern Areas legislation:

- Mr. Ijaz Ahmed, Partner, Mandviwalla & Zafar, Karachi; and Ms. Muneeza Kazi who, at the time she participated in the drafting, was an Associate with Mandviwalla & Zafar, Karachi (*Part 1: Federal and Part 5: Sindh*);
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Patricia F. Moore
Head, IUCN Regional Environmental Law Programme, Asia
Series General Editor

Preface

At the time that this publication went to press, the Government of Pakistan announced a package of reforms for the Northern Areas under which the Northern Areas Local Government Order 1979 is to be amended. Certain administrative and financial powers are to be delegated to the Northern Areas Administration, although the details of this arrangement have not been spelled out. A new district, Astore, is to be created and membership in the Northern Areas Legislative Council (NALC) will increase from 29 to 32. The additional three seats are reserved for technocrats who are to be elected by members of the NALC. Reserved seats for women in union, tehsil and district councils are to be increased as well. The reforms package also announces the implementation of the 1999 Supreme Court of Pakistan ruling that called for the creation of the Northern Areas Court of Appeals.

01

**Executive
Summary**



Although the Northern Areas are not defined as Pakistan territory under the 1973 Constitution, Pakistan has exercised sovereignty here since independence from British colonial rule in 1947 and the accession to Pakistan in 1951 of the tribal areas and former principalities. Today, the Northern Areas are administered directly by the Federal Government.

The Supreme Court of Pakistan's 1999 decision in the Al-Jehad Trust case reaffirms Pakistan's *de jure* and *de facto* administrative control over the Northern Areas. Residents of the Northern Areas enjoy the same fundamental rights guaranteed to all Pakistani citizens by the 1973 Constitution. The people of the Northern Areas are entitled to an independent judiciary for the enforcement of these rights, as well as to limited participation in local governance. The Al-Jehad ruling also holds that Northern Areas citizens are liable to pay taxes in Pakistan but, paradoxically, states that there is no legal obligation to grant them representation in the National Assembly.

In the Northern Areas, natural resources and their management, as well as the processes and institutions that affect them, are governed by a combination of legal instruments including common law dating back to the colonial administration of India, federal and provincial Pakistani statutes that have been extended to the Northern Areas, and laws enacted specifically for the Northern Areas.

Executive authority for the Northern Areas is vested primarily in the federal Ministry of Kashmir Affairs and Northern Areas (KANA). KANA is empowered not only to make laws for the Northern Areas but also to extend the application of federal or provincial legislation to the Northern Areas.

KANA's authority is exercised by the Chief Executive, Deputy Chief Executive and Chief Secretary, all of whom may delegate their powers. In addition to the Deputy, the Chief Executive is assisted by Advisers appointed from among the members of the Northern Areas Legislative Council (NALC), a directly elected forum comprising 24 members including a maximum of five women. Responsibility for natural resource management is divided among three portfolios, one of which is retained by the Chief Executive while the other two are held by Advisers.

The Northern Areas enjoy a degree of autonomy over their own affairs in certain sectors including natural resource management. The NALC, for instance, is empowered to adopt legislation governing land, water, fisheries, and the protection of wild birds and animals. Limited powers are also delegated to municipal and town committees. The NALC has no fiscal authority, however, nor is it authorised to override an executive veto of its legislation. In the final analysis, all powers related to natural resource management are discretionary and KANA retains final authority in such matters.

Ten years after its creation, the NALC has yet to exercise its power to regulate natural resources and their management in the Northern Areas. Instead, legal instruments currently in force are either adopted by KANA or are federal laws that have been extended to the Northern Areas. As far as laws framed specifically for the Northern Areas are concerned, these are for the most part substantially derived from existing provincial legislation which focuses on prospecting, and the exploitation, sale and distribution of natural resources rather than sustainable use or conservation.

Since 1975, additions to the regulatory framework governing natural resources have introduced mainly administrative or procedural changes. Even though a broad range of innovative natural resource management practices are currently being tested and used in the Northern Areas, the only substantive revision of the content of natural resource law in a quarter of a century has been to enable community participation in fisheries management. Two of the existing three legal entitlements for community management of natural resources were arranged by the communities themselves in exchange for otherwise surrendering sovereignty.

The most significant legal instruments extended to or adopted for the Northern Areas in the past two decades are the Environmental Protection (Adaptation and Enforcement) Order 2002 and the Northern Areas Concession Rules 2003. Apart from the regulatory framework established by these two laws, regulation of sectors that affect the sustainable use and conservation of natural resources is negligible. Despite the importance of tourism in the Northern Areas, for example, no legislation governing this sector has been adopted specifically for the Northern Areas and the only federal laws extended regulate tourist guides, and hygiene in hotels and restaurants.

The special characteristics of governance in the Northern Areas, particularly the lack of devolution of powers to local authorities, are likely to stand as the single greatest challenge to sustainable natural resource management. Another challenge that should not be minimised is the relative inaccessibility of basic legal documents. The research involved in carrying out this review has enabled the compilation of a significant number of legal texts pertaining to the Northern Areas. Our hope is that this will ease the burden for students and practitioners of environmental law in the future. Even so, many of the relevant documents could not be located while some fundamental legislation dating back to the period of Independence seems simply to have disappeared.

Another important aspect of natural resource management in the Northern Areas is customary law, discussed briefly in Section 5.1.2 of this review and comprehensively analysed in a companion volume, *Customary Laws Governing Natural Resource Management in the Northern Areas*. The conclusions of these two studies converge in highlighting the fundamental difference between

customary and statutory regimes in the Northern Areas, drawing attention to a principal deficiency in the existing statutory regime: most legal instruments governing natural resource management and use in the Northern Areas were designed to promote resource exploitation rather resource conservation, with the benefits of resource exploitation flowing to statutory institutions rather than to resource-dependent communities.

02 Methodology

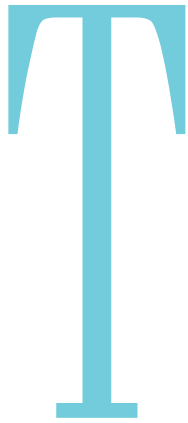


he original research framework for this series was developed jointly by IUCN Pakistan’s Environmental Law Programme and one of the authors of *Part 1: Federal*. The outline was tested and revised during the process of compiling and drafting this volume, as well as the Federal, Balochistan, North-West Frontier Province and Sindh reviews. Even though the political status of the Northern Areas differs substantially from that of the provinces of Pakistan, the conceptual basis for this study is similar to that of the federal and provincial reports.

Authors were selected to include both legal academics and practising attorneys, to provide a wide range of perspectives and approaches to the research design. A total of five authors worked on the Northern Areas review, meeting twice during the initial stages of compilation and drafting to discuss difficulties and agree on solutions. This collaboration delivered composite analyses of the hierarchy of legal instruments as well as issues related to governance that are richer and more exhaustive than each individual chapter would have been without the joint effort.

A practising attorney in Gilgit carried out the initial research and prepared a first draft while a team of practising lawyers in Lahore worked on subsequent drafts. Sources consulted during preliminary research include the Northern Areas Law Department, the Ministry of Kashmir Affairs and Northern Areas, the Pakistan Code, law reports published in Pakistan, and a variety of academic and commercial legal texts. The authors analysed legislation reported to have been extended to the Northern Areas for which texts were available. Some legal instruments from the early days of Pakistan’s administration of the Northern Areas are unavailable and known only through references in other documents. Several more recent orders and notifications are also unavailable in either printed or electronic format.

03 Hierarchy of Legal Instruments



The Northern Areas are governed by a combination of legal instruments including common law dating back to the British colonial administration of India, federal and provincial Pakistani statutes that have been extended to the Northern Areas, and legislation framed specifically for the Northern Areas. Common law concepts, such as torts, may be applied by the Northern Areas courts.

The hierarchy of laws in force in the Northern Areas is as follows:

- Selected provisions of the Constitution of the Islamic Republic of Pakistan 1973;
- Acts passed by the National Assembly or a provincial assembly and extended to the Northern Areas;
- Ordinances promulgated by the President or a provincial Governor and extended to the Northern Areas;
- Rules, regulations and orders issued by the National Assembly, or by federal or provincial ministries or departments, and extended to the Northern Areas, or framed by the Ministry of Kashmir Affairs and Northern Areas (KANA) specifically for the Northern Areas.

3.1 Constitution of the Islamic Republic of Pakistan 1973

The Northern Areas are not considered to be part of Pakistan territory as defined in Article 1 of the 1973 Constitution. Rather, since independence from British rule in 1947, Pakistan has acted as sovereign in the Northern Areas, exercising an effective and continuous display of state authority generally recognised under international law.

On the basis of a Supreme Court of Pakistan decision (see Sections 3.8.1 and 4.7.3), parts of the 1973 Constitution were extended to the Northern Areas through a 1999 amendment to the Northern Areas Council Legal Framework Order (NACLFO) 1994 (Order No. 12(34)/93-NA-I dated 12 June 1994, amended by Notification No. SRO 1169(I)/99 dated 28 October 1999). NACLFO Section 19A(1), introduced in the 1999 amendment, extends to residents of the Northern Areas fundamental civil and human rights specified in “Chapter I of Part II” of the 1973 Constitution (Articles 8 to 28). The rest of the 1973 Constitution does not apply in the Northern Areas. Of particular relevance for the purposes of this review are Articles 9 and 14, which protect natural resources such as water and air. NACLFO Section 19A(2), meanwhile, authorises the Northern Areas Chief Court to issue orders for the enforcement of fundamental rights.

3.2 Legislative Acts

Selected laws enacted by the national and provincial assemblies have been extended to the Northern Areas. Letter No. JC-1/2002 dated 18 July 2002 contains a list of federal and provincial

legislation extended to the Northern Areas. Containing 232 laws, this is the most recent and exhaustive list available.

At the same time, the NACLFO empowers the Northern Areas Legislative Council (NALC) to pass laws with respect to certain subjects mentioned in Schedule II of the Order, including land, agriculture, domestic animals, water, fisheries, and the protection of wild birds and animals. In all other matters, the Government of Pakistan is empowered to legislate for the Northern Areas. This means that all natural resource-related issues are, at least in theory, to be legislated in the Northern Areas. As of mid-2004, the NALC had not yet exercised its legislative power.

3.3 Ordinances

Ordinances are promulgated by the executive branch of the government—by the President when the National Assembly is not in session or by the Governor when a provincial assembly is not in session (under Articles 89 and 128, respectively, of the Constitution). Ordinances deal with matters not already covered by federal or provincial law and are generally promulgated when it is considered necessary to take immediate action. The President and provincial governors are awarded broad powers to assess such urgency. Ordinances have the same force and effect as an Act, but remain in force for a limited period of time: three months in the case of Governors' ordinances and four in the case of ordinances promulgated by the President. During this period, the President or provincial Governor may withdraw an ordinance, or it may be disapproved or modified by the relevant assembly. An ordinance lapses if the relevant assembly fails to adopt it within the specified period.

Federal and provincial ordinances may be extended to the Northern Areas. An ordinance issued under the Constitution of Pakistan is required to be approved by Parliament (if promulgated by the President) or the provincial legislature (if promulgated by the Governor). Once approved by the relevant assembly, an ordinance needs no further approval from any other body when extended to another region. As a result, an ordinance extended to the Northern Areas remains in force by default and needs no subsequent approval from a Northern Areas administrative body or the NALC.

3.4 Orders

Orders are issued by either the legislative or executive branch of government, in exercise of powers delegated under a statute. The status of an order depends on the delegated power under which it is issued. An order may deal with a broad range of substantive issues, as in the case of the NACLFO, or with a specific and limited situation as in the case of environmental protection orders that may be issued under the Pakistan Environmental Protection Act (PEPA) 1997, extended to the Northern Areas by the Environmental Protection (Adaptation and Enforcement) Order (EPO) 2002 (see Section 6.1.15.1). Executive orders are issued by the government as a matter of administration, while statutory orders are issued by government departments in pursuance of acts and ordinances, prescribing their promulgation. Administrative orders are issued by an administrative authority in exercise of a delegated power to administer a particular issue.

3.5 Rules and Regulations

Rules and regulations are issued by the executive branch of government but are not independent legal instruments. Rather, they are framed under the authority conferred by an act or ordinance, and lay down working details for the enforcement and implementation of that particular legal instrument.

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

Northern Areas Rules of Business 1994, which establish parameters for the functioning of the executive branch of government (see Section 4.2.1), and rules made under PEPA, which are automatically extended to the Northern Areas by the EPO (see Section 6.1.15.1).

Regulations, meanwhile, provide for specific measures that may be required to put into effect a law or ordinance. Regulations are also the instruments that federal and provincial governments use to govern the Federally Administered and Provincially Administered Tribal Areas, respectively. Under NACLFO Section 21, the Federal Government has the authority to make rules for its implementation and to date has issued rules that apply to the Northern Areas.

3.6 Notifications

Rules, regulations or orders issued pursuant to a particular law must be officially notified in the federal or provincial gazette. Notifications are not a separate class of legal instruments but rather serve as mechanism by which the executive branch of government promulgates rules and regulations. In certain cases, notifications also serve as a means to communicate official actions taken to accomplish a particular and limited purpose, such as designating a protected area.

3.7 Laws of West Pakistan

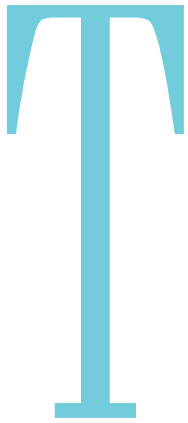
Under the Province of West Pakistan (Dissolution) Order 1970, the territory then known as the province of West Pakistan was divided into four new provinces: Balochistan, the North-West Frontier Province, Punjab and Sindh. Under the Dissolution Order, all existing legal instruments—whether applicable 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 unless repealed or amended by the new provincial assemblies. West Pakistan ordinances, issued during a period of suspension of the national and provincial assemblies, were subject to special measures and did not need to be adopted as acts. Consequently, laws and ordinances governing the former province of West Pakistan apply to all four of the current provinces of Pakistan. In practice, they function as provincial laws. This means that provincial assemblies have the power to amend, repeal or re-enact any West Pakistan statute as if it were a provincial law. Some West Pakistan acts and ordinances are among those that have been extended to the Northern Areas.

3.8 Court Decisions

3.8.1 **Al-Jehad Trust and 9 others v. Federation of Pakistan and 3 others, 1999 SCMR 1379**

In this landmark ruling, the Court observes that under the NACLFO the NALC has been given no more than the functions of a local government and that the people of the Northern Areas therefore have not been allowed to exercise their right to govern through their chosen representatives (also see Section 4.7.3).

04 Governance



The Northern Areas are administered directly by the Federal Government. The Northern Areas Council Legal Framework Order (NACLFO) 1994 awards the Northern Areas limited autonomy over their own affairs in certain sectors including natural resource management (NACLFO Section 17(1) read with Schedule II). This autonomy is subject to limitations imposed from time to time by the Federal Government.

4.1 Brief History of Governance in the Northern Areas

4.1.1 Before 1947

The territory that today comprises the Northern Areas was once part of the princely state of Jammu and Kashmir. It was administered by the British Government of India through a political agent, appointed in 1877. At the time of Independence, the area was retroceded to the then Maharaja of Kashmir. Since the population of Jammu and Kashmir was predominantly Muslim, it was widely expected that the area would become part of Pakistan following Independence. Instead, the Maharaja chose to accede to India. When news of this decision reached Gilgit, it created a public uproar. On 28 October 1947, the Gilgit Scouts took control of Gilgit. Soon thereafter, on 1 November, the Maharaja's governor was taken into custody. On the same day, a Revolutionary Council (*Inqilabi Council*) was formed, which governed the Northern Areas for 15 days.

On 2 November 1947 the Pakistan flag was raised in Gilgit. In response to a request from the Revolutionary Council, the Government of Pakistan took over the administration of the Northern Areas, appointing a civilian political agent with effect from 16 November 1947. The political resident in the North-West Frontier Province (NWFP) was directed to act as political agent for Gilgit Agency and the princely states in the Agency. At the time, Gilgit Agency covered the areas of Ghizar, Gilgit, Hunza and Nagar. Prior to Independence, Darel and Tangir were part of the tribal areas. After Independence, Darel and Tangir were included in Gilgit Agency and later elevated to the status of a subdivision

4.1.2 After 1947

The status of the Northern Areas, in the context of the disputed territory of Azad Jammu and Kashmir, was the subject of resolutions adopted by the United Nations Security Council and the United Nations Commission for India and Pakistan in 1948 and 1949. On 28 April 1949, the Government of Pakistan, the Azad Kashmir Government, and the All Jammu and Kashmir Muslim Conference signed an agreement granting administrative control of the Northern Areas to Pakistan.

All of the territory that is today included in the Northern Areas acceded unconditionally to Pakistan after Independence, with one exception: in 1951 the tribal areas that now form part of Diamir District signed an agreement with the Government of Pakistan, retaining certain rights of self-governance.

Authority for Gilgit Agency was transferred in 1950 from the NWFP government to the Ministry of Kashmir Affairs. In 1952 the post of Political Resident and Chief Adviser for the Azad Kashmir Government was created under the Ministry of Kashmir Affairs. The Joint Secretary Kashmir Affairs Division was given additional charge as Resident for the Northern Areas. In 1967 a separate Resident for the Northern Areas was appointed and stationed at Gilgit. Throughout the legislative history of the Northern Areas, the terms ‘Resident’ and ‘Commissioner’ have been used interchangeably although no legal instruments exist to substantiate this usage. During the period 1972–74, the princely states of the former Gilgit Agency and Baltistan were abolished.

The Northern Areas are divided into the following districts:

- Diamir with sub-divisions Astore, Chilas and Darel-Tangir;
- Ghanche with sub-divisions Khaplu and Mashabrum (previously known as Baltistan);
- Ghizar with sub-divisions Gupis-Yasin and Punial-Ishkoman (previously part of Gilgit);
- Gilgit with sub-divisions Gilgit, Hunza and Nagar; and
- Skardu with sub-divisions Kharmang, Shigar and Skardu (previously known as Baltistan).

Laws which applied or were extended to Gilgit Agency, and which remain in force today, now apply to the districts and sub-divisions of Ghizar and Gilgit. Similarly, legislation that applied or was extended to Baltistan, and that remains in force, now applies to the districts and sub-divisions of Ghanche and Skardu.

4.2 Federal Authority in the Northern Areas

In 1999, the Supreme Court of Pakistan held that the Government of Pakistan exercises *de facto* and *de jure* administrative control in the Northern Areas (see Section 4.7.3).

4.2.1 Executive

Executive authority for the Northern Areas is vested primarily in the federal Minister for Kashmir Affairs and Northern Areas (KANA). According to NACLFO Section 2(j), the Chief Executive, Deputy Chief Executive and Chief Secretary of the Northern Areas are awarded the status of the Provincial Government for the Northern Areas—powers formerly exercised by the Resident and Commissioner. The NACLFO does not specifically override contradictory provisions of older laws in force in the Northern Areas. It is understood, however, that all references to the Resident or Commissioner of the Northern Areas today refer to the Chief Executive. The Chief Executive does not reside in the Northern Areas, but governs from Islamabad.

The Chief Executive of the Northern Areas exercises the fiscal powers of the federal Ministry of Finance as well as the administrative powers of the Establishment Division (Northern Areas Rules of Business [NARoB] 1994, Rule 5). This leaves no system of checks and balances in place to regulate executive power and financial management in the Northern Areas. According to Rule 5-A, the Chief Executive may delegate powers to a subordinate officer, allowing an individual below the rank of minister to make all financial decisions related to the Northern Areas. Under Notification No. 3/6/99-NA.II dated October 2002, the Chief Executive delegated administrative and financial powers pursuant to the NARoB. These powers are purely administrative and have no substantive bearing on natural resources or natural resource management.

Under the Federal Rules of Business 1973, the Ministry for Kashmir Affairs, the Northern Areas, States and Frontier Regions has two divisions (Rule 3(1) read with Schedule I, item 16):

- Kashmir Affairs and the Northern Areas Division, and
- States and Frontier Regions Division (SAFRON).

In 2004, the Federal Government notified the Ministry of Kashmir Affairs and Northern Areas, without the SAFRON Division. The 1973 Federal Rules of Business have not been amended to reflect this change.

KANA derives its administrative and policy-making powers from the Federal Rules of Business 1973 (Rule 3(3) read with Schedule II, item 19). It is required to submit periodic reports on the Northern Areas to the President of Pakistan (Rule 15-A(3) read with Schedule VII, item 8). As of mid-2004, no such report had been submitted.

Under the 1973 Federal Rules, KANA has two ‘attached departments’ to deal with the Northern Areas (Rule 4(4) read with Schedule III, items 76 and 77):

- the Office of the Administrator for the Northern Areas, and
- the Chief Court for the Northern Areas.

An attached department is defined in Rule 2(ii) as a department directly related to a division. Such departments are declared by the Federal Government under Rule 4(4) read with Schedule III.

4.2.2 Legislative

Under the Federal Rules of Business 1973 (Rule 3(3) read with Schedule II, item 19(3)), KANA is empowered to make laws for the Northern Areas. It may also extend any federal or provincial law to the Northern Areas. A federal law extending to the whole of Pakistan does not automatically come into force in the Northern Areas. For it to take effect here, KANA must issue a notification extending its application. Some laws extended in this manner have not been redrafted to refer specifically to the Northern Areas and their institutions, leading to potential for confusion. For example, where the text of a law refers to the “Provincial Government”, in the context of the Northern Areas that authority is exercised by KANA. Meanwhile, under the NACLFO, the Northern Areas Legislative Council (NALC) has limited powers to legislate in 49 prescribed areas.

4.2.3 Judicial

Prior to 1994, the Federal Government appointed a Judicial Commissioner to the Northern Areas. The NACLFO abolished this office. The current structure of the Northern Areas judiciary is discussed in Section 4.4.

4.3 Structure of Government in the Northern Areas

4.3.1 Executive

According to the NARoB, government authority is exercised by the Chief Executive, Deputy Chief Executive and Chief Secretary, all of whom may delegate their powers. Currently, the Chief Executive retains control of the Home Department, Prison Department, Law Department, and Planning and Development Department, while other areas are administered by delegated officials. The Chief Executive is assisted by a Deputy Chief Executive as well as Advisers.

4.3.1.1 Deputy Chief Executive

Within the NACLFO itself, contradictions exist with respect to this post. Section 2(f) defines the post of Deputy Chief Executive as being elected by the NALC, while Section 4 states that the Chief Executive is to appoint the Deputy Chief Executive from amongst the members of the NALC.

NACLFO Section 4(c) awards the Deputy Chief Executive the status of a federal minister. Under the NARoB (Rule 6(2) read with Part C, Schedule V), department secretaries are to submit periodic reports to the Deputy Chief Executive.

Governmental authority in the Northern Areas is exercised with no system of checks and balances and no provisions for accountability of the Deputy Chief Executive. The NALC is not empowered to remove the Deputy Chief Executive, nor is there a provision allowing for a vote of no-confidence.

4.3.1.2 Advisers

Under both the NARoB (Rule 7) as well as the NACLFO (Section 5(1)), the Chief Executive, in consultation with the Deputy Chief Executive, is to appoint Advisers from amongst members of the NALC. Advisers monitor the functioning of departments (NACLFO Section 5(3)). They hold office at the discretion of the Chief Executive (NACLFO Section 5(2)) and enjoy the status equivalent to that of a provincial minister (NACLFO Section 5(1)).

The NACLFO limits the number of Advisers to a minimum of three and a maximum of five (Section 5(1)). The upper limit was raised to six under the Northern Areas Council Legal Framework (Amendment) Order 2002 (Notification No. 1(11)/93-NA.II dated 19 November 2002), which also requires that at least one Adviser is a woman.

In October 2002, the Chief Executive of the Northern Areas assigned portfolios to the Deputy Chief Executive and five Advisers (Notification No. F.3/6/99 NA.II dated October 2002):

- Services and General Administration, Works (Deputy Chief Executive);
- Agriculture, Fisheries, Animal Husbandry (Adviser);
- Minerals, Industries, Tourism Development, Health (Adviser);
- Education, Finance, Revenue (Adviser);
- Forests, Zakat, Wildlife (Adviser); and
- Local Government, Rural Development, the Northern Areas Transport Corporation (Adviser).

Northern Areas Departments are formed under the NARoB (Rule 3(3) read with Schedule II). Each Department is staffed by a Secretary and other officials designated by the Federal Government (NARoB Rule 4). The departmental framework for the Northern Areas is described in Schedule I of the NARoB. However, Rule 3(2) and 3(4) also allow for the composition of Departments to be reorganised, and this has been done from time to time in order to streamline the conduct of government business.

As of mid-2004, no Adviser had been appointed to oversee the Planning and Development Department. Instead, the Secretary of the Planning and Development Department was reporting to the Chief Secretary and Chief Executive.

An Environment Cell in the Planning and Development Department was created by the permission (noted on the file itself) of the Deputy Chief of the Department; no notification was issued. In 1999, a new Environment Section was created in the Planning and Development Department (Office Order No. P&D-4(2)/96 dated 18 March 1999) to develop the Northern Areas Conservation Strategy. This Section was also given responsibility for the management of agriculture, forests and other natural resource sectors.

Subsequently, the Pakistan Environment Protection Act (PEPA) 1997 was extended to the Northern Areas via the Environmental Protection (Adaptation and Enforcement) Order 2002 (KANA Order No. F.No. 10(S), 2002-NAII dated 21 August 2002). PEPA requires the establishment of an Agency or Department to execute its provisions. As of 2004, the federal Finance Ministry was considering the creation of a full-fledged Environmental Protection Department to implement the provisions of PEPA in the Northern Areas. Until the issue is decided, an officer of the Planning and Development Department has been given additional charge as Director, Environment Protection, for the Northern Areas, reporting to the Secretary of the Planning and Development Department (Office Order No. P&D-4(2)/2000 dated 3 May 2001).

Before 1994, administrative rules governing the Northern Areas were made by KANA. In that year, the Federal Government promulgated the NARoB, pursuant to the Federal Rules of Business 1973, Schedule II, item 19(3). Under the NARoB, KANA must still approve all rules enacted. This means that the NARoB do not alter the administrative set-up in the Northern Areas and KANA retains rule-making authority. The NACLFO establishes the framework for the government of the Northern Areas. Notifications issued under the NACLFO distribute department portfolios among the Advisers, while the NARoB provide for the distribution of business among the departments.

The NARoB define inter-departmental organisation and operations as well as the functions, powers and discretionary authority of various departments. All correspondence between Northern Areas Departments and the federal and provincial governments is to be carried out through KANA. Schedules I–VII of the NARoB contain provisions for the distribution of business among Departments and the delegation of financial and administrative powers to the Chief Executive.

4.3.1.3 Chief Secretary

As the principal civil servant in the Northern Areas, the Chief Secretary is the official head of the Secretariat and coordinates the activities of all departments. The Chief Secretary is responsible for all matters affecting “public tranquillity”, and is authorised to call for information from any Department and review cases (NARoB Rules 9(c) and 9(d)). It is worth mentioning that the language used in other legislation, including terms such as “national interest” and “public interest”, has been interpreted widely to include matters ranging from vehicle noise emissions to the maintenance of law

and order. As such, the term “public tranquillity” could be given a similar, wide-ranging interpretation.

4.3.2 Legislative

Created under the NACLFO, the NALC is a directly elected forum comprising 24 members including six each elected from Baltistan (Skardu), Diamir and Gilgit districts and three each from Ghanche and Ghizar districts. Among the 24 members, there may be a maximum of five women. At the same time, the Chief Executive may appoint other individuals to participate in the proceedings of the NALC (NACLFO Section 6(2)). Councillors are elected for a term of five years, but the NALC may be dissolved sooner through a resolution passed by two thirds of its members.

Elections for the NALC were first held on 3 November 1999. Between that date and July 2000, the NALC convened three times without a Speaker. The Speaker took oath in July 2000 and from then until April 2004, the NALC met on 18 occasions. Convening the NALC is at the discretion of the Chief Executive (NARoB Rule 5(2) read with Schedule V, Part A).

The NALC has no power over budgetary allocations. The annual budget for the Northern Areas is presented to the NALC, but for information only. The NALC is, however, empowered to legislate on a number of other subjects including the protection of wild birds and animals, fisheries, public health and sanitation as well as certain matters related to taxation (NACLFO Section 17 read with Schedule II). Bills passed by the NALC must be approved by the Chief Executive (NACLFO Section 17A). If such a bill is rejected by the Chief Executive, the NACLFO contains no provision for the NALC to override the executive veto. In case of an inconsistency between a law passed by the NALC and federal law, the latter overrides (NACLFO Section 17C). The Federal Government may, by order, legislate on topics not mentioned in the NACLFO.

Administrative matters to be decided by the Chief Executive are submitted through the Secretary KANA, who may “record his recommendations” before submitting the case to the Chief Executive (NARoB Rule 8). This power is not restricted to administrative matters alone, but applies to legislative and financial issues as well.

4.3.2.1 Speaker

The Speaker elected by the NALC enjoys the status equivalent to that of a provincial minister (NACLFO Section 4-A, inserted via an Amendment Order dated 1 July 2000).

4.3.2.2 Deputy Speaker

The office of Deputy Speaker was created under the Northern Areas Council Legal Framework (Amendment) Order 2002 (Order No. 1(11)/93-NA.II dated 19 November 2002) which adds Section 4AA to the NACLFO, outlining the responsibilities of the incumbent. The Deputy Speaker is elected by the NALC from amongst its members and enjoys the status equivalent to that of a provincial minister.

4.4 Judicial

The NACLFO, amended on 28 October 1999 and 1 July 2000, provides for a judicial system in the Northern Areas. Section 19C outlines the following judicial hierarchy:

- Court of Appeals, equivalent to the Supreme Court of Pakistan;
- Chief Court, equivalent to a provincial High Court; and
- subordinate judiciary including civil courts, and District and Sessions courts.

4.4.1 Court of Appeals

The appellate court was created under the Northern Areas Court of Appeals (Establishment) Order 1999 (SRO 1170(I)/99 dated 28 October 1999), which gives the Court of Appeals jurisdiction to hear and determine appeals against judgements, decrees and orders of the Chief Court. As of mid-2004, the Court of Appeals had not actually been set up. In the interim, decisions of the Chief Court are final.

4.4.2 Chief Court

The 1973 Constitution does not provide for the creation of the Chief Court, which was established through statute and enforced through a court judgement (see Section 4.7.3).

In 1994, the post of Judicial Commissioner was abolished and a Chief Court for the Northern Areas was created (KANA Notification No. NA. II-2/17/94 dated 17 November 1994). The Chief Court of the Northern Areas is an attached department of KANA (Federal Rules of Business 1973, Rule 4(4) read with Schedule III, item 77). Its status is equivalent to that of a provincial High Court. Since, under the 1973 Constitution (Article 201), decisions of provincial High Courts are only binding on subordinate courts, provincial legal rulings have persuasive rather than authoritative force before the Northern Areas Chief Court.

The Chief Court, comprising one Chairman and two members, is empowered to rule on constitutional issues relating to fundamental rights that have been extended to the Northern Areas under NACLFO Section 19A(2). The Chief Court also serves as the appellate court for decisions taken by District and Sessions Judges in the Northern Areas.

NACLFO Section 20 provides that no court shall have jurisdiction to question the validity of an act done or any order or resolution passed pursuant to it. It is worth noting, however, that this section does not preclude a judicial review of matters relating to violations of fundamental rights under NACLFO Section 19A. Acts outside the scope of statutory and/or delegated powers may always be subject to judicial REVIEW.

4.4.3 District and Sessions Courts

A District and Sessions Court operates in each district. Notification No. REG-HC.NTF-6/65/III dated 7 August 1965 appoints session judges, district magistrates and additional district magistrates as “special judges”. Notification No. LA-RES-9(1)76 dated 5 January 1977 transfers all appeal cases from the Ulema Board to the District Court, in order to “avoid unnecessary litigation and harassment to the public at large.”

4.4.4 Civil Judges

There are 10 civil judges in the Northern Areas who exercise the powers of judicial magistrates.

4.5 Police

The Northern Areas police force differs from law enforcement agencies elsewhere in Pakistan both in the way that it is structured and in terms of composition (see Section 4.7.1). Northern Areas police constables and officers must be residents of or domiciled in the Northern Areas. The NARoB cover the maintenance of law and order, and crime prevention and detection under the Home, Services and General Administration and Law Department (Rule 3(3) read with Schedule II).

The police’s responsibilities are outlined in the Police Act 1861 which has been extended to the Northern Areas (Office Memorandum No. LA-COMM-9(7)/91 dated 14 May 1991, attached to a list

of laws extended to the Northern Areas). Previously, the Police Act had been extended to Hunza (Notification No. REG-NC.NTF-3/75 dated 22 March 1975) as well as Puniyal-Ishkoman and Gupis-Yasin (Notification No. REG-HC.NTF-32/72 dated 1 November 1972). Specific powers are delegated to the police by various statutes and through notifications. For example, police officers have been given powers of search and arrest under the Northern Areas Fisheries Act 1975.

4.6 Local Government

The Northern Areas Local Government Order (NALGO) 1979, amended in 1991, provides for the establishment and functioning of local government. It sets out the compulsory and discretionary functions of municipal and town committees. Compulsory functions include planting and protecting trees in public places, as well as matters related to public health, water supply, drainage, articles of food and drink, animals and cattle, education, public safety, town planning, building control, and streets (NALGO Section 30 read with Schedule V). Optional functions include environmental pollution, animal husbandry, developing gardens, parks and forest management (NALGO Section 30 read with Schedule V). KANA has the power to direct local councils to act in order to carry out the purposes of the Order (NALGO Section 65).

Selected municipal laws from the provinces of Punjab and Sindh have also been extended to the Northern Areas, though none of the 2001 provincial Local Governance Ordinances has been extended. As a result, while local government has been devolved elsewhere in the country, the system in the Northern Areas is unchanged, with control continuing to rest in the hands of the Federal Government.

4.7 Court Decisions

Four decisions of the Pakistan Supreme Court are particularly significant for governance in the Northern Areas. A 1993 judgment of the Azad Jammu and Kashmir (AJK) High Court highlights the sensitive nature of the debate over the status of the Northern Areas with respect to AJK, more than 50 years after the accession of the Northern Areas to Pakistan. The 1999 decision of the Supreme Court of Pakistan in the Al-Jehad Trust case addresses the issue of the rights of the citizens of the Northern Areas under the 1973 Constitution.

4.7.1 Muhammad Riaz v. Secretary, Ministry of Kashmir Affairs and Northern Areas, Islamabad and others, 2002 PLC (CS) 498

Regarding the reorganisation of the Northern Areas police, the Court holds that the Northern Areas police force “has its own establishment from Constable right up to the Inspector-General of Police. The Constable and Officers of the Police of the Northern Areas consist of persons, resident/domiciled in the Northern Areas.”

4.7.2 Fouzia Saleem Abbas and 3 others v. Federation of Pakistan, 2000 SCMR 1569

In this case, decided in 2000 following the 1999 Al-Jehad judgement, the Supreme Court notes that decisions of the Northern Areas Chief Court may not be appealed. The Supreme Court observes that to petition a higher forum for leave to appeal, or to lodge and appeal against orders or judgements of the Chief Court, may require amendments in Notification No. II-2/17/94 dated 17-11-1994 as well as the Constitution, statutes, orders and notifications.

4.7.3 Al-Jehad Trust and 9 others v. Federation of Pakistan and 3 others, 1999 SCMR 1379

This case establishes that Pakistan exercises *de jure* as well as *de facto* administrative control over the Northern Areas. According to this ruling, residents of the Northern Areas enjoy full citizenship of Pakistan and as such are entitled to the safeguards provided by the fundamental rights enshrined in the 1973 Constitution. This case also establishes that Northern Areas residents are liable to pay taxes as may be competently imposed. It further states that there is no legal obligation to extend to the Northern Areas representation in Parliament. Northern Areas residents are, however, entitled to participate in local governance and have an independent judiciary for the enforcement of fundamental rights, among other things.

With respect to an independent judiciary, the court observes that the Chief Court of the Northern Areas can be equated with a provincial High Court, with jurisdiction to entertain constitutional petitions. The ruling directs that a higher forum for appeal against the orders of the Chief Court should be provided. In discussing this issue, the Supreme Court refers to its own decision in the Shakoor Muhammad case 16 years earlier, in which it found that the Court of Judicial Commissioner for the Northern Areas was not equivalent to a provincial High Court and, therefore, there was no opportunity for appealing its judgements, decrees, final orders or sentences in the Supreme Court of Pakistan under Article 185 of the 1973 Constitution.

Finally, with regard to the NALC, the Court observes that the Council has been effectively entrusted with the functions of a local government, which cannot be equated with an elected government of a province.

Five years before the Supreme Court's decision in the Al-Jehad Trust case, the NACLFO had been amended to abolish the post of Judicial Commissioner and create the Northern Areas Chief Court. After the Al-Jehad Trust decision, the NACLFO was amended again, specifying the structure of the judiciary in the Northern Areas and creating a Court of Appeal.

4.7.4 Malik Muhammad Miskeen and 2 others v. Government of Pakistan and 10 others, PLD 1993 Azad J&K 1

Three petitioners—two resident in Tangir in the Northern Areas and one belonging to Muzaffarabad in AJK—challenged the authority of Pakistan's administration of the Northern Areas and asked the AJK High Court to direct the AJK Government to take over the administration of the Northern Areas. The petitioners claimed that the Northern Areas are part of AJK, that their separation from AJK is illegal, and that exclusion of the Northern Areas from AJK deprives the residents of these areas from legitimate rights of representation in government, as well as other basic rights and civil liberties.

In this ruling, the High Court decides in favour of the petitioners and orders the AJK Government to take over the administration of the Northern Areas. The decision was appealed and has not been implemented.

4.7.5 Shakoor Muhammad and another v. The State, 1983 SCMR 542

The issue under consideration was whether the Supreme Court could act as a court of appeal for cases decided by the Judicial Commissioner for the Northern Areas.

The judgement holds that since the Court of Judicial Commissioner for the Northern Areas, at Gilgit, is not shown to be a provincial High Court as envisaged under Article 175 of the Constitution, the Supreme Court of Pakistan does not have appellate jurisdiction under Article 185 of the Constitution.

05

Natural

Resources and
Natural Resource
Management

Responsibility for natural resource management in the Northern Areas is divided among three offices: the Adviser for Agriculture, Fisheries and Animal Husbandry; the Adviser for Forests, Zakat and Wildlife; and the Director, Environment Protection (see Section 4.3.1.2). These officials enjoy the authority to regulate, conserve and use forest and wildlife resources. They are responsible for the development of fisheries as well as the enforcement and implementation of forest and wildlife laws.

5.1 Legal Instruments

Some federal and provincial laws related to natural resources have been extended to the Northern Areas while others have been drawn up specifically for the region. In some cases, legislation dating back to the late nineteenth century remains in force today. Since environmental issues were not a matter of public concern at the time, it comes as no surprise that such laws fail to address natural resource conservation. A number of natural resource laws were also framed specifically for the Northern Areas after the abolition of princely states in the region. These legal instruments deal primarily with prospecting, exploitation, and the sale, use and distribution of natural resources, with only rare provisions related to conservation. Legal instruments adopted prior to the Northern Areas Council Legal Framework Order (NACLFO) 1994 refer to posts that no longer exist. These laws must be read together with the NACLFO to understand which offices and officials have jurisdiction for specific aspects of natural resource management.

Procedural legal instruments also provide some coverage for natural resource management. The Northern Areas Code of Criminal Procedure Order 1991 (KANA Order No. 9(1)/90-NA-I dated 21 December 1991) extends the Code of Criminal Procedure 1898 to all of the Northern Areas. Under Section 133 of the Code, magistrates are empowered to issue a conditional order requiring that a nuisance be removed within a specific period of time. A magistrate may order a person not to repeat or continue engaging in an activity that constitutes a public nuisance. In urgent cases, an “order absolute” under section 144 may be issued for “immediate prevention or speedy remedy” in cases of public nuisance. The definition of “nuisance” may be extended to include damage to natural resources.

5.1.1 Land Tenure

Following the Federal Government’s 21 August 1972 announcement abolishing the *rajgiri* (principality) system in the area (cited in Notification No. REG-HC.NTF-32/72 dated 1 November 1972, which is a list of laws applied to the new subdivisions), the four districts of Ishkoman, Gupis, Puniyal and Yasin were reconstituted as two new subdivisions, Puniyal-Ishkoman and Gupis-Yasin.

The government also announced reforms for the Gilgit and Baltistan (now Ghanche and Skardu) regions, abolishing the *jagirdari* (feudal) system of land ownership in the entire area (Notification No. REG-MISC-23/1972 and No. LA-COMM-9(22)/83 dated 12 October 1972). The law abolishing the *jagirdari* system applies only to large holdings where absentee landlords lease out land to tenants for cultivation, and not to smaller private holdings owned by individual farmers who normally till the land themselves (Circular No. SEC-44/72-RES dated 20 February 1975). The abolition of *jagirdari* in turn led to the need for laws such as the Land Acquisition Act 1894 to be extended to the Northern Areas in order to regulate land ownership.

Legal instruments governing property rights in the Northern Areas include the Gilgit and Baltistan Right of Prior Purchase Act 1938, North-West Frontier Province Tenancy Act 1950 and Northern Areas Allotment of Government Land Rules 1975, as well as the Punjab Settlement Manual and Punjab Land Record Manual which are updated annually. The only laws directly related to natural resource management are the Land Acquisition Act 1894 which allows the government to take over land for public purposes and the Northern Areas Nautor Rules 1978 which aim to bring into cultivation tracts of uncultivated wasteland.

Changes in land use invariably affect natural resources and ecosystems, and must be monitored in order to regulate their environmental impact. To some extent, the law provides for a system of checks and balances involving both the government and the people. In the case of the Nautor Rules 1978, for instance, the provisions of Rule 10 call for an inquiry to be conducted into the effect of breaking up *nautor* lands. Rule 10(v), in particular, which mentions public parks, plantations and areas of archaeological importance, could be interpreted to take into account conservation priorities. Similarly, the definition of public purpose provided in the Land Acquisition Act 1894 is wide enough to allow for conservation and could enable the government to acquire land for the purpose of establishing sanctuaries, protected areas or national parks. The Act does not provide for protection against environmental damage caused by the means employed by government officials for surveying.

In cases where the government seeks to acquire land for a purpose that is likely to adversely affect natural resources, the people may seek the remedy of the Chief Court under writ jurisdiction for the enforcement of fundamental rights under NACLFO Section 19A(2). For instance, the right to earn a livelihood is mentioned in the NACLFO and may be called upon in cases where complainants rely on the land and natural resources for sustenance.

5.1.1.1 KANA notification No. 22(4)/86-NA.I dated 3 December 1988

This notification relaxes the ban on the allotment of *khalisa sarkar* land (land that is considered to be no man's land and is owned by the government), permitting the sale or allotment of such land to government departments, bodies and agencies "in the public interest". Given that the term public interest has been interpreted under Pakistan law to include a wide range of concerns, the opportunities this Notification provides for government procurement of land in the Northern Areas have potentially significant implications for natural resource management.

5.1.1.2 Northern Areas Nautor Rules 1978

Nautor is a term applied to lands that were classified as wasteland under the British colonial administration's land settlement schemes but were used as village common property resources. Issued in accordance with *Ailaan* (announcement) No. 38 dated 14 July 1932 and Order No. 21 dated 10 January 1936 (cited in Order No. G-1/(7)/78 KANAD dated 5 August 1980), the Northern Areas Nautor Rules 1978 consolidate the law related to *nautor* lands and repeal all prior rules on this subject.

Under the Rules, *nautor* lands are defined to include land that has never been in the possession of or allotted to any community or landowner, or which lies outside the boundaries of a village. The system of classification differs in the case of settled and unsettled areas. *Nautor* in areas where settlement records have been prepared includes all areas shown as *khata khalisa* (verifying records) at the time of settlement during the period 1916–18 but which were not included in the Government Land Allotment Rules 1975 that have been extended to the Northern Areas (Office Memorandum No. LA-COMM-9(7)/91 dated 14 May 1991, item 94). In unsettled areas that were part of the princely states under the *rajgiri* system, as well as Chilas and the former tribal areas of Darel and Tangir, *nautor* includes areas which have never been in the possession of or allotted to a community or landowner, as well as all ‘*beruni* line’ areas (areas which lie outside a village boundary), whether in a settled or unsettled area (Rule 5).

The Rules lay down procedures for the allotment of *nautor* lands. A preliminary enquiry is required prior to the allotment of *nautor* lands (Rule 10). Consideration is to be given to a number of matters, including whether or not the breaking up and cultivation of *nautor* land will damage or disturb existing monuments, camping grounds, places of archaeological or historical interest, public parks, graveyards, canals, thoroughfares, plantations or grazing areas (Rule 10(v)). Other issues, such as the impact on wildlife habitat or subsoil resources, are not taken into account. Applications are to be scrutinised by the Assistant Collector and sanctioned by the Collector.

Although the Rules do not specifically prevent the use of allotted land for any other purpose, all the provisions here imply that *nautor* lands are only allotted for cultivation. Land that remains uncultivated two years after allotment is to be granted to another landowner (Rule 14), while individuals cultivating *nautor* land without permission may be ejected without the payment of compensation (Rule 15).

From a literal interpretation of the law, it appears that one must already qualify as a landowner in order to receive *nautor* land.

**5.1.1.3 Northern Areas
Nautor Rules Amendment
(Order No. G-1/(7)/78
KANAD dated 5 August
1980)**

This Order amends procedural details of the 1978 Nautor Rules (see Section 5.1.1.2). Applications, which were previously forwarded to the Assistant Collector for inquiries, are now to be sent directly to the Collector who may initiate an inquiry (Section 11). Points of consideration while making an inquiry have been amended to include the rights of the “general public” (Section 11(2)(a)). The amendment allows the government to invite objections to allotments from *khewatdars* (land owners). But perhaps most important of all, Section 21 is added, allowing the government to grant exemptions to any or all provisions of the Rules.

5.1.1.4 Land Acquisition Act 1894

This federal law was extended to the Puniyal-Ishkoman and Gupis-Yasin subdivisions (Notification No. REG-HC.NTF-32/72 dated 1 November 1972) and subsequently applied to all of the Northern Areas (Office Memorandum No. LA-COMM-9(7)/91 dated 14 May 1991, attached to a list of laws).

This Act regulates the acquisition of land for public purposes and companies, and determines compensation. Authorised officials may survey and mark land for acquisition after issuing a preliminary notification. They are permitted to cut any standing crop or jungle, and mark the soil by digging trenches. After hearing objections from interested parties, the government may issue a notification declaring the land fit for acquisition. Land may be acquired temporarily or on a permanent basis. In the case of temporary acquisition, the period of acquisition cannot exceed three years. Although this is a federal law, provincial governments have been delegated all powers under this Act, including the power to make rules. In the case of the Northern Areas, this power is exercised by the Ministry of Kashmir Affairs and Northern Areas (KANA).

The definition of public purpose provided in the Land Acquisition Act does not expressly include the protection or conservation of natural resources. The term as it is employed in the Land Acquisition Act has, however, been interpreted by the Balochistan High Court to include “whatever furthers the general interest of the community as opposed to the particular interest of the individual” (Abdul Ghaffar and 2 Others v. Province of Baluchistan and 4 Others, KLR 1983 Civil Cases 427).

5.1.2 Forests/Timber

Throughout most of Pakistan, the management of forests and wasteland is the responsibility of the state. This, however, is not the case in the Northern Areas where over three quarters of the forest area is *guzara* land (wasteland, or land used for subsistence) owned by tribal communities and managed under government supervision. This arrangement is part of the agreement signed in 1951 allowing tribal areas to retain a certain degree of autonomy (see Section 4.1.2).

Existing forest laws have not been extended to the Northern Areas in a systematic way. Instead, orders and notifications issued over a period of several decades applied the Forest Act 1927 to various parts of the Northern Areas. By 1991, though, the law had been extended to all of the Northern Areas.

The Northern Areas Forest Rules 1983 apply to protected forests in the districts of Gilgit and Baltistan (now Ghanche and Skardu), as well as the Astore subdivision of Diamir district. They regulate the cutting of trees, removal of timber and forest produce, clearing of forest land for cultivation, and pasturing of livestock. Certain species of trees are also declared to be reserved. The Gilgit Private Forest Regulations 1970 provide for the management of private forests in Chilas, Darel and Tangir.

Across the Northern Areas, the use and management of natural resources is also controlled through a traditional village-level institution known as *zaitu*. The word refers to the individuals who carry out these tasks as well as the system itself. Before the 1970s, this institution existed in both the tribal and *rajgiri* systems with more or less similar roles. In some areas, the *zaitu* is responsible only for

the protection of agricultural crops while in other areas the individual carries additional responsibilities such as the protection and regulation of irrigation water. In most areas, the *zaitu* is responsible for ensuring that every household in the village sends its livestock to graze in pastures so that standing crops are not damaged by domestic animals.

5.1.2.1 Northern Areas Cattle Trespass Act 1976 (Notification No. LA-RES-NTF-9(1)/76 dated 20 September 1976)

Traditionally, the problem of cattle trespass was controlled through the *zaitu*, who was empowered to impound livestock found damaging crops or water channels. Following the abolition of the *rajgiri* system, customary traditions of the area were sought to be replaced by law. To this end, the federal Cattle Trespass Act 1871 was extended to the Northern Areas as the Northern Areas Cattle Trespass Act. This law aims to control damage caused to land and facilities in both urban and rural environments. In rural areas, natural vegetation and cultivated land are protected from being damaged by grazing.

The Act consolidates and amends the law relating to cattle trespass, providing protection against damage to private and public property, including privately cultivated land, plantations, drainage works, public roads and pleasure grounds. Government officials are authorised to seize and impound cattle found to be trespassing on such land, and to impose on the owners of the animals a maximum fine of 15 rupees per head of cattle. Since this amount is negligible by today's standards, the penalty fails to serve as an effective deterrent.

The Act provides for the establishment of pounds and the appointment of pound keepers as well as complaints against the illegal seizure and detention of livestock. The local government (originally referring to the Resident or Commissioner for the Northern Areas, and now meaning the Chief Executive of the Northern Areas) may delegate its authority or that of the District Magistrate to a local authority (Section 27). A local authority is defined in Section 2(v) as "any body of [sic] person for the time being invested by law with the control and administration of any matters within a special local area."

The Act contains no provisions for rule making.

5.1.2.2 Forest concessions granted to villagers of Ghizar, Hunza and Nagar (Notification No. REG-HC.NTF-9/75-I dated 24 July 1975)

Under this notification, the Government of Pakistan formally allowed villagers of the Ghizar, Hunza and Nagar areas to retain some of the concessions and privileges they enjoyed prior to the 1972 abolition of principalities in the Northern Areas. These concessions, all of which are granted free of charge, include permission to take timber for the construction or repair of houses or community projects, and to remove dead fallen or standing trees as well as firewood. Villagers are allowed to graze livestock, except in parts of the forest that have been closed, and to remove minor forest products for the collection of which no contracts have been given to third parties (Sections 1–10). These rights, which apply only to the agricultural or domestic use of forest products, are granted to landowners, tenant farmers and artisans (Section 11).

Besides awarding concessions to local residents, this notification deals with forest management (Section 12). Government officials as well as right sholders are responsible for preventing forest offences and reporting crimes that have been committed. In addition, both government officials and local right sholders are responsible for fire prevention and control. Those failing to cooperate in the prevention of forest offences face prosecution and the possibility of losing their forest concessions. Section 13, meanwhile, deals with the employment of local communities. Preference is to be given to local residents when labour is hired to carry out work in the forests.

5.1.2.3 Gilgit Private Forest Regulation 1970 (Notification No. REG-HC.NTF-15/71 dated 4 February 1971)

This Regulation provides for the management of private forests in Chilas subdivision, including Darel and Tangir in Gilgit Agency. Private forests are defined as forests owned by an individual or individuals and notified as such.

Forest officers appointed under Section 3 are empowered to manage forests in accordance with approved working plans. It is worth noting that private forests are to be managed in agreement with the owners (Section 5).

Offences under this Regulation include setting fires, clearing land for cultivation and interfering with the management of private forests, and are punishable with a maximum six months' imprisonment and/or a fine of 500 rupees, in addition to the payment of compensation for damage caused (Section 7(1)). These offences are more or less the same as those stipulated in Section 35 of the 1927 Forest Act, which deals with private forests. This Regulation also introduces a system of collective punishment, imposing a fine on villagers or tribe members suspected of committing an offence (Section 7(2)).

Section 4 provides for rules to govern a number of matters including hunting, shooting and fishing; grazing; burning lime, making charcoal, quarrying stone or minerals; and the sale and removal of forest produce.

5.1.2.4 Forest Act 1927

Various notifications issued over a period spanning several decades have extended the Forest Act 1927 to different parts of the Northern Areas, including Gilgit Agency (Office Memorandum No. LA-MISC-42/59 dated 19 October 1959, item 16) and the subdivisions of Punial-Ishkoman and Gupis-Yasin (Notification No. REG-HC.NTF-32/72 dated 1 November 1972, item 53). By 1991, the Forest Act had been extended to all of the Northern Areas (Office Memorandum No. LA-COMM-9(7)/91 dated 14 May 1991, item 54). There is no single legal instrument that extends the Forest Act 1927 to all of the Northern Areas.

Although it was enacted more than 75 years ago, the Forest Act 1927 remains the basic charter for forest management across Pakistan, with the exception of the North-West Frontier Province

(NWFP). 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 Northern Areas continue to manage forest resources under the 1927 Act.

Designed to protect forest areas and regulate forest produce, the 1927 Act provides for the creation of various classes of forests 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. In the case of the Northern Areas, the term government refers to the Chief Executive, Deputy Chief Executive and the Chief Secretary.

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, and offenders may also be required to pay compensation for damage caused. This Section 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.

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

All 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 right sholders.

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 has been caused by fire 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. Section 35 allows for the protection of privately-owned forests when regulation “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(1)). 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 1927 Act 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 with 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 right sholders 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).

**5.1.2.5 Forest Act
Amendment Order 1993
(KANA Order No. 26(8)/92-
NA-I and LA-COMM-
9(7)/92 dated 25 February
1993)a**

This Amendment Order makes a number of procedural changes to the Forest Act 1927. It awards divisional forest officers and higher forest officials the powers of a magistrate (Section 2(a)). The 1993 Order also amends Sections 26, 33 and 42 of the 1927 Act, increasing punishments for forest offences.

**5.1.2.6 Northern Areas
Forest Rules 1983
(KANA Notification No. D-
5(4)/81-VII dated 9 May 1983)**

Section 32 of the Forest Act 1927 allows a provincial government to make rules governing protected forests. In the case of the Northern Areas, these powers are exercised by the Chief Executive, Deputy Chief Executive and Chief Secretary.

The Northern Areas Forest Rules 1983 apply to protected forests in Astore, Baltistan (Skardu and Ghanche) and Gilgit, regulating matters such as cutting trees, removing timber and forest produce, and clearing for cultivation. The fact that a regulatory mechanism has been introduced to manage the clearing of forests for the purpose of cultivation implies that such activities are not prohibited in the areas covered by these Rules.

The Northern Areas Forest Rules 1983 deal with a number of other aspects of protected forest management, including forest offences and the issuing of licenses. Camels, sheep and goats are not permitted to graze in protected forests. Under Rule 10(1), those holding traditional or customary rights to pass through the forest or access water are assured that their rights will be honoured. Rule 10(2) makes use of forest resources conditional upon the capacity of the forest itself. This provision could serve as a conservation clause, preventing the overuse of forest resources, except that standards to limit concessions are not available.

**5.1.2.7 KANA Notification
No. D-5(4)/81-VI dated 9
May 1983**

This notification allows the Northern Areas authorities to exercise powers under Section 29 of the Forest Act 1927, using the provisions of Chapter IV to declare all forests and wasteland to be protected. The rights of individuals and communities are not affected.

5.1.3 Fisheries

Laws regulating the fisheries sector in the Northern Areas deal with many issues related to the management and use of fish resources, particularly trout species which abound in the region and are amongst its most prized resources. At the same time, it is worth noting that these laws focus primarily on exploitation. Nevertheless, by specifying the species and size of fish that may be caught and the period during which fishing is permitted, the existing legal regime provides some safeguards against overfishing. The use of explosives to kill fish is prohibited. (Legal instruments regulating the use of explosives generally are discussed in Sections 6.1.15.10 and 6.1.15.11.)

A 1975 Act provides for establishing fish sanctuaries and a 1999 amendment enables community participation in fisheries management. The licensing system established under the laws is useful but fails to provide any qualifications or requirements for a license. No legal instrument provides fish species with protection from thermal effluents emanating from hydel plants.

**5.1.3.1 Northern Areas
Fisheries Act 1975
(Notification No. REG-
HC.NTF-5/75 dated April
1975)**

Enacted after the introduction of direct federal rule in the Northern Areas, the 1975 Act consolidates the law relating to fisheries. It does not specifically repeal the extension of the 1897 Fisheries Act to Gilgit (Notification No. LA-MISC-42/59 dated 19 October 1959, item 11), and the subdivisions of Punial-Ishkoman and Gupis-Yasin (Notification No. REG-HC.NTF-32/72 dated 1 November 1972, item 48). According to the doctrine of implied repeal, however, a new law overrides an older one and the 1897 Fisheries Act, therefore, no longer applies.

The 1975 Act provides for the management and protection of some of the richest fisheries resources in the country. It aims to control indiscriminate exploitation and introduces a regulatory mechanism. Fishing is only permitted under a licence (Section 7), while the use of explosives (Section 4) and poison (Section 5) is prohibited. The Act specifies the species and size of the fish that may be caught, along with months during which fishing is permitted (Sections 6 and 7 read with Schedule I). Fisheries inspectors are awarded powers of search, arrest and detention to enforce the provisions of this Act.

The provincial government may declare any public water to be a sanctuary or fish reserve, delegate its authority to a subordinate officer and make rules pursuant to this Act. In the case of the Northern Areas, this authority is exercised by the Chief Executive, Deputy Chief Executive and Chief Secretary.

5.1.3.2 Fisheries Act amendment (KANA Notification No. F.O(1)/98.NA.I dated 1 April 1999)

The promulgation of the Northern Areas Council Legal Framework Order 1994 brought about considerable changes in the structure of local government, requiring amendments to the Fisheries Act 1975. This Notification amends the 1975 Act, vesting executive authority for the purposes of this Act with the Chief Executive for the Northern Areas instead of the Resident or Commissioner. Similarly, administrative powers of the Director of Fisheries are awarded to the "sectoral head of the fisheries sector the Northern Areas", instead of the Deputy Commissioners of the five districts of the Northern Areas.

Besides administrative changes, this notification amends Section 5 of the 1975 Act to include a prohibition on killing fish by means of electricity. The use of explosives and poison to catch or destroy fish is already prohibited by Sections 4 and 5 the 1975 Act. In addition, maximum fines for offences under various sections of the 1975 Act are doubled, from 5,000 rupees to 10,000 rupees for offences under Sections 4, 5 and 9, and from 500 rupees to 1,000 for offences under Sections 6, 7, 8 and 10.

This Amendment also introduces community participation, allowing local communities or village organisations to manage fisheries resources in waters that lie within the limits of their own villages (Section 7(7)).

5.1.3.3 Northern Areas Fisheries Rules 1975 (Notification No. REG-HC.NTF.6/75 dated 4 April 1975)

Issued under Section 23 of the Northern Areas Fisheries Act 1975, the Northern Areas Fisheries Rules 1975 deal with licences, fishing gear and methods that may be used, as well as the size of fish that may be caught, and lists waters in which fishing is permitted. Erecting fixed engines, constructing weirs or dams and diverting water is prohibited.

The subject of trout fishing is dealt with in some detail. Trout waters in the Northern Areas are clearly demarcated and divided into 23 reaches. A separate licence is required for trout fishing and the Assistant Director Fisheries determines the number of such licenses that may be issued at any one time. The Rules specify the size and weight of trout that may be caught, as well as the maximum number of fish that may be taken at a time.

Section 23 of the Northern Areas Fisheries Act 1975 contains a detailed list of the subjects for which the government may make rules. These Rules cover all of the topics mentioned except for "rewards to persons who render help in detection of offences under the Act". The Rules do not specify any criteria for licences to be granted, which defeats the very purpose of devising such a mechanism.

5.1.3.4 Fisheries Rules amendment (KANA Notification No. F.12(5)/2001-NA-II dated 13 July 2002)

This notification introduces amendments, substitutions and additions to the Northern Areas Fisheries Rules, covering license fees and closed seasons.

5.1.3.5 Fisheries Rules amendment (KANA Order No. 9(6)/90-NA-I dated 29 November 1990)

Three separate KANA Orders are issued under this serial number and on the same date. One of these documents amends Rules 7 and 19 of the 1975 Fisheries Rules, substantially increasing licence fees. The other two deal with the appointment of fisheries officials.

5.1.3.6 Notification No. REG-HC.NTF-4/75 dated 17 April 1975

This notification appoints fisheries inspectors under Section 3(l) of the 1975 Fisheries Act.

5.1.4 Wildlife/Fauna, Non-Timber Flora

The fragile ecosystem of the Northern Areas provides a rich habitat for a number of indigenous and migratory species. Under the Northern Areas Rules of Business 1994 the management, conservation, regulation and use of forest and wildlife resources is the responsibility of the “Food and Agriculture and Fisheries Department” (Rule 3(3) read with Schedule II, item 3(13)), headed by a secretary (Rule 10(1)(c)). More recently, the Chief Executive of the Northern Areas assigned a number of advisory portfolios, among them the portfolio of “Forests and Zakat and Wildlife” (KANA Order No. F.3/6/99-NA.II dated October 2002), indicating that the administrative set-up has been reorganised.

5.1.4.1 Northern Areas Forest Rules 1983

These Rules primarily govern the management of forests. Under Rule 9, however, hunting and shooting in protected forests is to be regulated under the Northern Areas Wildlife Preservation Act 1975 and pursuant rules.

5.1.4.2 Northern Areas Wildlife Preservation Act 1975

This Act provides for the establishment of national parks, wildlife reserves and wildlife sanctuaries; the constitution of a Northern Areas Wildlife Board; and the issuing of hunting licenses and certificates of lawful possession. It regulates hunting, prohibits the use of inhumane methods and imposes certain other limitations, such as time of day, season and area in which hunting is permitted. The First Schedule to the Act contains a list of animals divided according to the categories of “small game” and “big game”.

The Act requires *lambardars* (village headmen) to inform government authorities regarding the commission of wildlife offences in their area. Jurisdiction for the prosecution of wildlife offences is provided for and the local government for the Northern Areas is authorised to delegate magisterial powers to forest officers. The local government may also delegate all or any of its responsibilities to an officer; make amendments and alterations to

the First Schedule; grant exemptions from the provisions of this Act for scientific or public purposes; and make rules to bring into effect the provisions of this Act. In the Northern Areas, local government functions are carried out by municipal and town committees under the direction of KANA (see Section 4.6).

The 1975 Act repeals the Protection of Wild Birds and Animals Act 1912 in its application to the Northern Areas (Section 46).

**5.1.4.3 Notification
L.A.(RES)-9(1)/76 dated 2
October 1976**

This notification empowers forest and wildlife officials under various sections of the 1975 Northern Areas Wildlife Preservation Act. Divisional forest officers, divisional forest officers (wildlife) and subdivisional forest officers (wildlife) of the Northern Areas department of forests are awarded powers under Section 39 of the Northern Areas Wildlife Preservation Act, except for the power to compound offences. Section 39 of the 1975 Act bestows on these officers the power of a civil court as well as the authority to compel the attendance of witnesses and examine evidence; hold an enquiry into offences under the 1975 Act; prosecute cases; issue search warrants; and release detainees on bond.

Similarly, range officers and wildlife rangers are given powers under Sections 30 and 31 of the 1975 Act. Under Section 30, officers may inspect any animal, trophy or meat; enter and search any land, building or tent; search baggage; confiscate any contraband animal, trophy or meat; and arrest suspected offenders. Section 31 awards officers the power to release detainees on bond.

**5.1.4.4 Wild Birds and
Animals Protection Act
1912**

This law was extended to Gilgit in 1959 (Notification No. LA-MISC-42/59 dated 19 October 1959, item 10), to the subdivisions of Punial-Ishkoman and Gupis-Yasin in 1972 (Notification No. REG-HC.NTF-32/72 dated 1 November 1972, item 47), and to Hunza in 1975 (Notification No. REG-NO.NTF-3/75 dated 22 March 1975, item 19). Although the Northern Areas Wildlife Preservation Act 1975 repeals the application of the 1912 Act in the Northern Areas, a "Protection of Wild Birds and Animals Act" is listed in official documents issued as recently as 1991 and even 2002, attached to lists of laws extended to all of the Northern Areas (KANA Office Memorandum No. LA-COMM-9(7)/91 dated 14 May 1991, item 49; Letter No. JC-1/2002 dated 18 July 2002, item 49).

The 1912 law was enacted to provide for the protection and preservation of certain wild bird and animal species. It contains just nine sections and applies only to a limited number of birds and animals as specified in the Schedule. Perhaps the most important protection mechanism introduced by this law is to allow the provincial government to declare the whole year or any part of it in any territory to be "close time" during which capturing and trading in any species is prohibited (Section 3). Maximum penalties under this Act are a fine of 50 rupees for first offences, with repeat offenders liable to a fine of 100 rupees and/or one month imprisonment.

Magistrates are empowered to confiscate animals or animal parts taken illegally. No similar provision exists in the 1975 Act.

5.1.4.5 Notification No. REG-HC.NTF-42/74 dated 1 July 1974

This notification, issued under the Wild Birds and Animals Protection Act 1912, places an immediate ban on hunting, capturing and trading of “wild birds and wild animals” in all of the Northern Areas for a period of two years. It could not be verified whether this notification was nullified by the Northern Areas Wildlife Preservation Act 1975, whether it was ever renewed, or whether similar legislation was subsequently enacted.

5.1.4.6 Prevention of Cruelty to Animals Act 1890

This federal Act operates as a provincial law and delegates all powers to provincial governments. It was extended initially to Gilgit in 1959 (Notification No. LA-MISC-42/59 dated 19 October 1959, item 17), and to the subdivisions of Punial-Ishkoman and Gupis-Yasin in 1972 (Notification No. REG-HC.NTF-32/72 dated 1 November 1972, item 54). By 1991, it had been extended to all of the Northern Areas (Office Memorandum No. LA-COMM-9(7)/91 dated 14 May 1991, item 55).

The law prohibits cruelty to “domestic or captured” animals. It does not define domestic animals but the subject matter of the Act suggests it refers mainly to livestock and draught animals. Section 6C, which prohibits animal fights and baiting, suggests that the protection clauses of this law may be applied to other animals as well.

5.1.5 Protected Areas

Legislation currently in force does not recognise the rights of communities living around protected areas nor provide specific management guidelines nor clear guidelines for zoning within protected areas.

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)

The Environmental Protection (Adaptation and Enforcement) Order (EPO) 2002 (KANA Order No. F.No. 10(S), 2002-NA.II dated 21 August 2002) extends the application of the Pakistan Environmental Protection Act (PEPA) 1997 to the whole of the Northern Areas. Section 2 of the EPO states that all rules, regulations and orders issued under PEPA are also to apply to the Northern Areas. As such, these Regulations, issued under Section 33 of PEPA, automatically extend to the Northern Areas.

Under these Regulations, the “Federal Agency” (which, in the case of the Northern Areas, refers to the Planning and Development Department) is empowered to implement Regulation 21 and Schedule I, item I, by designating “environmentally sensitive areas”. The relationship between “environmentally sensitive areas” and protected areas established under the Northern Areas Wildlife Preservation Act 1975 (Section 5.1.5.2) is not specified.

5.1.5.2 Northern Areas Wildlife Preservation Act 1975

This law identifies three categories of protected areas: national parks, wildlife reserves and wildlife sanctuaries. A national park is defined in Section 2(k) as a comparatively large area of outstanding beauty or natural interest, designated for the purpose of protecting flora and fauna. Public access to a national park is at the discretion of the Chief Wildlife Warden (Section 6). A wildlife reserve is defined in Section 2(o) as any area declared as such by the provincial government for the purpose of wildlife protection or breeding, where capturing animals is prohibited. A wildlife sanctuary is defined in Section 2(p) as an area closed to hunting, shooting or trapping, and declared as an undisturbed breeding ground for the protection of natural resources.

A number of activities are prohibited in a national park, including taking up residence within its perimeters; cultivation; damaging or destroying land or vegetation; hunting, killing or capturing a wild animal; carrying a firearm; introducing an exotic species or domestic animal; causing a fire; polluting the water; picking flowers or removing plants, animals, stones or other natural objects; damaging or defacing buildings, monuments, notice boards, trees, rocks or other natural or man-made objects; and littering. The same restrictions apply to wildlife reserves and sanctuaries (Sections 8 and 9).

In the last 20 years, Pakistan has designated two national parks in the Northern Areas: Khunjerab National Park in Gojal tehsil of Gilgit District and the Central Karakoram National Park which lies mostly in Skardu District with some of its area falling within Gilgit District. Prior to the abolition of the principality system in 1972, the areas that are now designated national parks in Khunjerab and Central Karakoram were part of the princely states of Hunza and Shigar.

5.1.6 Freshwater

There is no single legal instrument that provides for comprehensive management of freshwater resources in the Northern Areas. Water resources are governed by one law that is more than 125 years old, along with isolated provisions of the Forest Act 1927, Northern Areas criminal law orders and PEPA.

5.1.6.1 Environmental Protection (Adaptation and Enforcement) Order 2002 (KANA Order No. F.No. 10(S), 2002-NA.II dated 21 August 2002)

The EPO extends to the whole of the Northern Areas all the provisions of the Pakistan Environmental Protection Act (PEPA) 1997 as well as all rules, notifications and orders issued under the 1997 Act (also see Section 6.1.15.1).

Under PEPA, the term “environment” is defined to include water (Section 2(x)(a)). 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 (see SRO 742(I)/93 dated 24 August 1993; 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 environmental damage. Meanwhile, Section 12, which calls for an initial environmental examination (IEE) or environmental impact assessment (EIA) for all projects, can be used to ensure that new development does not damage natural resources, including freshwater (also see Sections 6.1.1.2 and 6.1.15.1).

**5.1.6.2 Northern Areas
Penal Code Order 1991
(KANA Order No. 9(1)/90-
NA.I dated
21 December 1991)**

The Pakistan Penal Code (PPC) 1860 was extended to the subdivisions of Puniyal-Ishkoman and Gupis-Yasin in 1972 (Notification No. REG-HC.NTF-32/72 dated 1 November 1972, item 1), and to Hunza in 1975 (Notification No. REG-NO.NTF-3/75 dated 22 March 1975, item 2). Almost 20 years later, the Northern Areas Penal Code Order 1991 extended the 1860 PPC to the whole of the Northern Areas.

The PPC 1860 deals specifically with the pollution of water in Chapter XIV on public health and safety. Here, “fouling” and “corrupting” the water of a public spring or reservoir is 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 and applies only to reservoirs and public springs. In any case, the provision has never been enforced because the terms “fouling” and “corrupting” are not defined, and no standards for this type of pollution have been determined. Other sections of this chapter may be interpreted to include the protection of water resources, including Section 268 on public nuisance and Section 269 on negligence likely to spread infectious disease.

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 the pollution of water.

5.1.6.3 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. It is difficult to enforce this provision since the term “poison” has not been defined.

5.1.6.4 Canal and Drainage Act 1873

This Act regulates matters related to irrigation, navigation and drainage, and was extended to Gilgit Agency in 1959 (Notification No. LA-MISC-42/59 dated 19 October 1959, item 5). By 1991, it was applicable to all of the Northern Areas (KANA Office Memorandum No. LA-COMM-9(7)/91 dated 14 May 1991, item 45). The specific notification extending this law to the whole of the Northern Areas could not be located.

This federal Act operates as a provincial law. All powers under the Act, including the power to make rules, have been delegated to the provinces. In the case of the Northern Areas, this authority is exercised by the Chief Executive, Deputy Chief Executive and Chief Secretary.

The law entitles the provincial government to use and control water from all rivers and streams flowing in natural channels, and from all lakes and other natural bodies of still water. The provincial government may prohibit obstructions and order their removal if they appear to be causing injury to land, public health or public convenience.

The Act provides for the construction and maintenance of works related to canals, empowering canal officers to enter and survey land for this purpose. Canal officers hold magisterial powers as well as the legal authority to control encroachments and distribute irrigation water. Inquiries and proceedings under the Act are deemed judicial proceedings. Divisional canal officers may detain and fine vessels violating the provisions of this Act by causing danger to a canal or to other vessels.

The provincial government may order any river, stream, lake, or water body to be used for a “public purpose” at any time (Section 5). The law also specifies rates to be charged for canal water supplied for the purpose of irrigation, and provides for charges to be levied and penalties incurred on account of waste or unauthorised use. Under the provisions of Section 70(5), it is an offence to “corrupt” or “foul” the water in a canal. Offenders are liable to a fine of 500 rupees and/or one month in prison. Enforcement of this provision is difficult, however, since the terms “corrupt” and “foul” have not been defined. Even if enforcement were not an issue, penalties under the law are outdated. The Act contains no provisions for the sustainable use of freshwater resources or for their preservation.

5.1.7 Coastal and Marine

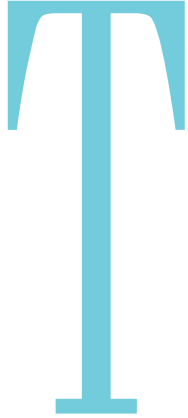
Not relevant for the Northern Areas.

5.2 Court Decisions

There are no decisions of the Northern Areas courts that deal with natural resources.

06

**Processes and
Institutions That
Affect Natural
Resources and
Natural Resource
Management**



he processes and institutions that affect natural resource management are governed by six Northern Areas department portfolios in the hands of the Deputy Chief Executive and five advisors (KANA Order No. F.3/6/99-NA.II dated October 2002).

Supervisory responsibilities are divided between these officials as follows:

- services and general administration, and works;
- agriculture, fisheries and animal husbandry;
- minerals, industries, health and tourism;
- education, finance and revenue;
- forests, zakat and wildlife; and
- local government, rural development and the Northern Areas Transport Corporation.

6.1 Legal Instruments

With the exception of the Pakistan Environmental Protection Act (PEPA) 1997, extended to the Northern Areas via the Environmental Protection (Adaptation and Enforcement) Order (EPO) 2002, and the Northern Areas Concession Rules 2003, most of the limited number of legal instruments governing processes and institutions that affect natural resources in the region are more than 25 years old. Although the majority of laws currently applicable in the Northern Areas pre-dates modern legislative trends, application of the Review of Initial Environmental Examination and Environmental Impact Assessment (IEE/EIA) Regulations 2000 brings most sectors and their activities under the scope of PEPA.

6.1.1 Urban and Rural Development

According to the Northern Areas Local Government Order 1979, municipal committees are responsible for streets and building control. On the ground, however, this work is carried out by the Northern Areas Public Works Department, while the Gilgit Municipal Committee is responsible for keeping roads and streets clean. A town engineer is also employed in each municipal committee. For the most part, the activities of the committees appear to be restricted to granting approval for the construction of private buildings. Government bodies, meanwhile, reportedly fail to obtain the approval of the municipal committees before constructing their own buildings.

The EPO extends PEPA and all pursuant rules, orders and notifications to the Northern Areas (see Section 6.1.15.1). Under this law, a two-stage environmental screening process has been put in place to regulate the establishment of new projects. PEPA Section 12 states that an initial environmental examination (IEE) or environmental impact assessment (EIA) is required prior to implementation of a new project. In the Northern Areas, responsibility for enforcing the provisions of PEPA rests with the Planning and Development Department.

The federal Land Acquisition Act 1894 (see Section 5.1.1.4) in its application to the Northern Areas has not been amended or updated to reflect modern standards and requirements for land use planning and zoning, or to ensure that an EIA/IEE is conducted prior to land acquisition. At present, the EIA/IEE regime applies only to the implementation stage of a project and not to the process of land acquisition that takes place prior to implementation.

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

Small-scale urban development projects are included in Schedule I, Section I, and require an IEE, whereas large-scale projects are included in Schedule II, Section H, and require an EIA. 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 (Schedule I, Section H), while large-scale operations requiring an EIA are specified in Schedule II, Sections F and G, respectively (also see Section 6.1.15.1).

The Regulations provide for the monitoring of projects after completion. Regulation 18 requires owners to submit an annual report to the “Federal Agency” (which, in the case of the Northern Areas, is the Planning and Development Department). This report must summarise operational performance with an emphasis on adequate maintenance and measures to mitigate adverse affects on the environment. The Planning and Development Department 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 (Regulation 19).

Regulation 21 empowers the Planning and Development Department to designate “environmentally sensitive areas”, but does not specify how such areas relate to urban and rural development, to protected forests designated under several of the legal instruments governing forests (Section 5.1.2), or to other types of protected areas designated under the Northern Areas Wildlife Preservation Act 1975 (Section 5.1.4.2).

**6.1.1.2 Northern Areas
Town Area Committees
Building By-Laws 1979
(Notification No.
LA-RES-9(1)/79 dated
25 June 1979)**

These by-laws prescribe rules for the construction of buildings and contain no provisions specifically related to natural resource management. Only two by-laws take any environmental or public health and safety concerns into account: Section 5 which prohibits the use of flammable materials for roofing and Section 6 which requires that sewerage drains passing through a building are covered.

6.1.2 Agriculture

Only two laws related to agriculture in the Northern Areas are important from the perspective of natural resource management. One law on pesticides and the other on agricultural finance suggest that priority is given to productivity at the expense of ecological sustainability and environmental safety.

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 be undertaken prior to the establishment of specified types of farms (also see Section 6.1.15.1).

6.1.2.2 Agricultural Pesticides Ordinance (Extension to the Northern Areas) Order 1995 (KANA Order No. F&A-1(38)/95 dated 28 September 1995 and 18 October 1995)

This Order extends the Agricultural Pesticides Ordinance 1971 to the Northern Areas. The 1971 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. 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. The definition of "weed", however, 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".

Offences under the Ordinance are relatively severe, with a minimum of six months in prison and a fine of 500,000 rupees for a first offence.

6.1.2.3 Agricultural Development Bank Ordinance 1961

This federal law was extended to the Northern Areas via the Northern Areas Adaptation of Laws Order 1981 (KANA Order No. NA-9(2)/81 and LA-COMM-9(7)/81 dated 10 December 1981, item 19). It provides for the establishment of the Agricultural Development Bank of Pakistan (ADBP) and contains procedures for providing loans to farmers. In issuing credit, the ADBP is to give

preference to the needs of small agriculturists. Now operating under a new name (Zarai Taraqati Bank Limited), the bank promotes microcredit schemes in the Northern Areas. The Ordinance contains no provisions requiring loan recipients to use methods and materials with minimal adverse impacts on the environment and natural resources.

6.1.3 Extractive Industry — Mining, Petroleum

Mining activity, principally focusing on gems, marble and coal, is the backbone of the Northern Areas economy. Mining operations and the transportation of machinery and materials impact most other natural resources, particularly freshwater, fisheries and forests.

The 2003 Concession Rules place a number of environment-related obligations on companies undertaking mineral exploration. PEPA and the IEE/EIA Regulations extended to the Northern Areas specify that mining is subject to the IEE/EIA regime. (Legal instruments governing the use of explosives are discussed in Section 6.1.15.)

6.1.3.1 Northern Areas Concession Rules 2003

These Rules establish a comprehensive regulatory framework for private-sector mining development in the Northern Areas, covering all minerals except for radioactive minerals, mineral oil and natural gas. Three categories of mining licenses are established: a reconnaissance licence, exploration licence and mineral deposit retention licence.

Environmental provisions in the 2003 Rules are at best fragmentary. Rule 36 prohibits the cutting or injuring of trees on unoccupied and unreserved land without written permission from the Licensing Authority or a designated officer. This and other prohibitions may be relaxed upon permission from the Licensing Authority but the Rules do not specify procedures or criteria for granting such exemptions. Nor is any mention made of local communities who reside in the vicinity of mining operations.

The holder of an exploration licence or mineral deposit retention licence may apply for a mining lease. At this stage, the applicant is required to submit detailed information regarding environmental protection measures. Meanwhile, under Rule 37, licence holders whose operations cause damage to “mineral property” as a result of “unscientific working, lack of supervision or any other omission or commission” are liable to pay compensation.

The 2003 Rules permit mineral exploration in a protected forest. Under Rule 69, mining operations within reserved or protected forests are subject to “such conditions as [the] government may from time to time by general or special order prescribe.” Other than this clause, the only other requirement is that “before the commencement of work within reserved or protected forests, thirty days notice shall be given to the Divisional Forest Officer of the intention to commence operations.” Trees may be felled in such areas, provided that this information is stated in the lease at the outset (Rule 70).

Rule 111(1) supports the government's commitment to honour international environmental obligations, stating that companies "will be expected to ensure that their mining operations are carried out in an environmentally acceptable and safe manner and that such operations are properly monitored." Mining companies are required to "take adequate steps to prevent and minimise environmental damage and to make good any damage caused, during and on completion of mining operations" (Rule 111(2)). Companies are required to submit an EIA and environmental management plan for each stage of their operations; carry out site rehabilitation as necessary; comply with applicable laws and internationally acceptable environmental standards; and ensure adequate compensation for injury to persons or damage to property caused by the effects of mining operations. They are also required to submit periodic environmental reports detailing measures taken to ensure compliance with environmental requirements (Rule 111(3)).

**6.1.3.2 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, specified types of mining and mineral processing projects are required to undergo a prior EIA or IEE. Schedule I, Section D, lists the types of small-scale commercial extraction projects that require a prior IEE. Schedule II, Section C, lists the types of large-scale mining, smelting and processing operations that require a prior EIA.

6.1.4 Non-Extractive Industry

Non-extractive industry in the Northern Areas ranges from community-based enterprises to large factories, although small and medium enterprise make up the bulk of the industrial sector. The only law extended to the Northern Areas that deals directly with non-extractive industry is the Factories Act 1934, which governs labour relations but does not address issues related to natural resources. Under PEPA, factories and industrial activity are subject to the IEE/EIA regime. Implementing rules extended to the Northern Areas place obligations on industries to self-monitor and report on the pollutants they discharge, and enable the government to impose pollution charges.

**6.1.4.1 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 provide that specified types of manufacturing and processing projects must undergo prior IEE or EIA. Schedule I, Section C, lists the types of small-scale industries and activities that require a prior IEE. Schedule II, Section B, lists the types of large-scale industries and activities that require a prior EIA (also see Section 6.1.15.1).

6.1.4.2 Factories Act 1934

The federal Factories Act 1934, extended to the Northern Areas via the Northern Areas Adaptation of Laws Order 1981 (KANA Order No. NA-9 (2)/81 and LA-COMM-9(7)/81 dated 10 December 1981, item 12), 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). Section 13 requires that factories be kept clean and that “effluvia arising from any drain, privy or other nuisance” be removed at regular intervals. 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.

6.1.5 Taxation

The Supreme Court ruling in the Al-Jehad Trust case (see Section 4.7.3) states that residents of the Northern Areas are, for all intents and purposes, citizens of Pakistan. Like any other citizens, they have the right to invoke fundamental rights. At the same time, the decision in the Al-Jehad Trust case affirms that Northern Areas residents are liable to pay taxes and levies competently imposed. The Northern Areas Council Legal Framework Order (NACLFO) 1994 stipulates the same, stating that Northern Areas citizens are subject to all taxes levied by the Government of Pakistan (NACLFO Section 19B, inserted via a 1999 Amendment Order). As such, all taxes applicable to citizens of Pakistan apply to citizens of the Northern Areas.

6.1.5.1 Northern Areas Council Legal Framework Order 1994 (KANA Order No. 12 (34)/93-NA-1 dated 12 June 1994)

Section 19B of the NACLFO concerns the payment of taxes. In addition to federal taxes, residents of the Northern Areas are liable to taxes imposed by the Northern Areas Legislative Council (NALC). According to Schedule II, the NALC may frame laws to impose taxes on agricultural income and agricultural land (item 32); land and buildings (item 36); advertisements (item 37); goods and passenger traffic on roads and waterways (item 38); vehicles and boats (item 39); animals (item 40); luxury goods and entertainment (item 43); and professions, trades and employment (item 44). The NALC may also legislate on the inheritance of agricultural land (item 34), estate duties (item 35) and tolls (item 41).

6.1.6 Investment

No relevant legal instrument found for the Northern Areas.

6.1.7 Transport

The transportation sector, particularly the siting and construction of roads, has significant impact on natural resource management. The National Highway Authority Act 1991, which has been extended to the Northern Areas, does not obligate the Authority to monitor or take into account the environmental impact of highways. This sector is also an important and growing source of

atmospheric pollution in the Northern Areas. With the exception of PEPA, which has been extended to the Northern Areas, all of the legal instruments regulating vehicular pollution are more than three decades old.

6.1.7.1 Environmental Protection (Adaptation and Enforcement) Order 2002 (KANA Order No. F.No. 10(S), 2002-NA.II dated 21 August 2002)

The EPO extends the provisions of PEPA to the Northern Areas. PEPA prohibits the operation of motor vehicles that emit air pollutants or noise in excess of levels determined in the National Environmental Quality Standards (NEQS) (see SRO 742(I)/93 dated 24 August 1993; SRO 549(I)/2000 dated 8 August 2000). In the Northern Areas, enforcement of the NEQS is the responsibility of the Planning and Development Department.

The NEQS set limits on various types of pollution including carbon monoxide emissions from both new and used vehicles as well as smoke and noise emissions. Limits for carbon monoxide are 4.5–6%, exceeding international standards of 2–3%. There is no mention of nitrogen oxides, sulphur oxides, lead and benzene emissions. For noise emissions, the limit is 85 decibels 8 meters from the source. Motor vehicles are defined to include land vehicles, chassis and trailers, but not vehicles running on fixed rails (PEPA Section 2(xxvii)). The provisions of PEPA apply only to land vehicles.

The federal Environmental Protection Agency (EPA), in consultation with the Planning and Development Department, establishes standards for the quality of ambient air, water and land in the Northern Areas. While different standards may be set for emissions from various sources and for different areas and conditions (Section 6(1)(g)(i)), if such standards are less stringent than the NEQS, prior approval must be obtained from the Pakistan Environmental Protection Council.

Section 11 expressly prohibits emissions of air pollutants or noise in excess of the NEQS or, where applicable, standards established under Section 6(1)(g)(i). In the Northern Areas, the Federal Government operating through the Planning and Development Department, may levy a pollution charge calculated and collected in accordance with prescribed procedure. With respect to motor vehicles, the Planning and Development Department 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).

Penalties for contravention of or failure to comply with the provisions of Sections 11 and 15 are punishable with a maximum fine of 100,000 rupees, with an additional fine of up to 1,000 rupees for each additional day that the infraction continues. Repeat violations may lead to imprisonment for up to two years.

**6.1.7.2 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, are automatically extended to the Northern Areas by the EPO. The Regulations require that specified types of transport projects undergo a prior environmental assessment. Schedule I, Section E, lists the types of small-scale highway construction projects that require a prior IEE while Schedule II, Section D, lists the types of large-scale highway construction projects that require a prior EIA. Airports and railway installations also require a prior EIA.

**6.1.7.3 Motor Vehicle
Ordinance 1965
(Cited in KANA Order No.
NA-4(1)/80 dated 19 May
1982)**

A “Motor Vehicles Act”, mentioned in a number of memos and notifications, was extended to all of the Northern Areas by 1991. According to these official documents, a Motor Vehicles Act (no date is mentioned; the reference may be to the Motor Vehicles Act 1939) applies to:

- Gilgit (Notification No. LA-MISC-42/59 dated 19 October 1959, item 2);
- Punial-Ishkoman and Gupis-Yasin (Notification No. REG-HC.NTF-32/72 dated 1 November 1972, item 39); and
- all of the Northern Areas (Office Memorandum No. LA-COMM-9(7)/91 dated 14 May 1991, item 42).

The Motor Vehicles Ordinance and Rules 1970 were extended to Hunza (Notification No. REG-NO.NTF-3/75 dated 22 March 1975, item 9). The West Pakistan Motor Vehicles (Northern Areas) (Amendment) Order 1990 is referred to in Office Memorandum No. LA-COMM-9(7)/91 dated 14 May 1991 (item 201), but a copy of the 1990 Order is not available. Other legal instruments, such as the West Pakistan Motor Vehicles (Northern Areas) (Amendment) Order 1982 (KANA Order No. NA-4(I)/80 and LA-COMM-9(7)/81 dated 19 May 1982), mention the 1965 Motor Vehicles Ordinance as already having been extended to the Northern Areas, but the specific notification doing so could not be located.

The 1965 Ordinance contains provisions for licensing, permits, vehicle registration and ownership. Other provisions specifically deal with vehicular pollution. The 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)). Violations are punishable with a fine of 500 rupees and confiscation of the vehicle (Section 111-A). The Ordinance contains no other provisions related to environmental management.

**6.1.7.4 Pakistan Penal
Code 1860**

Under Section 278 of the Pakistan Penal Code, the punishment for “making [the] atmosphere noxious to health” is a maximum fine of 500 rupees.

6.1.8 Taxation

There is no legislation specific to the Northern Areas that governs this sector. The IEE/EIA Regulations 2000 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.

6.1.9 Tourism

Laws governing this sector pertain largely to the regulation and control of government agencies and institutions responsible for tourism. The Travel Agencies Act 1975 establishes a licensing mechanism and seeks to regulate the operations of travel agents by establishing rules and a code of conduct. The Tourist Guides Act 1975 regulates the working of tourist guides, providing sanctions and penalties for violations. The federal Ministry of Tourism issues permits for expeditions to the Northern Areas. Under PEPA and the IEE/EIA Regulations, tourism development projects are subject to an EIA. Provisions in PEPA and IEE/EIA Regulations that deal with environmentally sensitive areas also potentially apply to tourism activities.

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)

Schedule II, Section H, of these Regulations provides that large-scale tourism development projects must undergo a prior EIA.

6.1.9.2 Northern Areas Hotels and Restaurant Rules 1982 (KANA Notification No. G-14(100)/77 and LA-COMM-9(22)/83 dated 4 July 1982)

This notification extends the Pakistan Hotels and Restaurant Rules 1977 to the whole of the Northern Areas.

The Rules establish a Hotels and Restaurants Committee and specify its functions. They provide for the classification of various hotels according to health and hygiene standards. The Rules also provide for a regulatory mechanism by making registration and licenses mandatory. 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.

6.1.9.3 Tourist Guides Act (Adoption) Order 1982 (KANA Order No. G-14(100)/77 dated 4 July 1982) and Notification No. LA-RES-9(3)/76 dated 15 June 1978

The Tourist Guides Act 1976 appears to have been extended to the Northern Areas on at least two occasions. This 1976 Act regulates the operations of tourist guides and establishes a Tourist Guide Regulatory Committee which performs an advisory role and assists in the preparation of a code of conduct for tourist guides. Guides cannot operate without a license. The Federal Government has the power to make rules and may delegate its powers (Sections 11 and 12).

6.1.9.4 Pakistan Hotels and Restaurant Act 1976

This federal law was extended to the Northern Areas via notification No. LA-RES-9(2)/76 dated 15 June 1978. The 1976 Act regulates the standard of service and facilities provided by hotels and restaurants. Under Section 16, government officials may prohibit the conduct of any trade, profession or industry that endangers public health or causes a public nuisance in the vicinity of a hotel. Given that most hotels in the Northern Areas are located near forested areas, this provision could be used to protect natural resources.

6.1.9.5 Travel Agencies Act 1976

This federal law was extended to the Northern Areas via notification No. LA-RES-9(4)/76 dated 15 June 1978. Travel agencies cannot operate without a licence. The functions of travel agencies under the Act include transport, lodging and conducting guided tours. The law does not provide for ecotourism nor does it contain any provisions regarding the protection of natural resources from potential damage caused by the tourist industry.

6.1.10 Import/Export

The principal law governing this sector is the federal Import and Exports (Control) Act 1950. Under this Act, the government establishes a licensing system to regulate all practices and procedures related to the import and export of specified goods. The Planning and Development Department is empowered to regulate the movement of hazardous waste into and out of the Northern Areas.

6.1.10.1 Imports and Exports (Control) Act 1950

This federal law was extended to the Northern Areas via the Northern Areas Adaptation of Laws Order 1981 (KANA Order No. NA-9(2)/81 and LA-COMM-9(7)/81 dated 10 December 1981, item 16) and is also listed in Office Memorandum No. LA-COMM-9(7)/91 dated 14 May 1991 (item 134). It allows the Federal Government to restrict and control imports and exports. In the case of the Northern Areas, federal authority is exercised by the Chief Executive, Deputy Chief Executive and Chief Secretary. Given the importance of regulating the import of harmful and polluting substances, the 1950 Act gives wide-ranging powers to control and penalise such practices.

6.1.11 Phytosanitary/Quarantine

No relevant legal instrument found

6.1.12 Inter-Provincial Trade

No relevant legal instrument found

6.1.13 Research Institutions

No relevant legal instrument found

6.1.14 Drugs/Pharmaceuticals

The basic law regulating this sector in Pakistan is the Dangerous Drugs Act 1930, which was extended to Gilgit (Notification No. LA-MISC-42/59 dated 19 October 1959, item 15); Puni-al-Ishkoman and Gupis-Yasin (Notification No. REG-HC.NTF-32/72 dated 1 November 1972, item 52); and eventually to the whole of the Northern Areas (Office Memorandum No. LA-COMM-9(7)/91 dated 14 May 1991, item 53). By 1991, the Drugs Act 1976 had also been extended to the Northern Areas (Office Memorandum No. LA-COMM-9(7)/91 dated 14 May 1991, item 171). Neither of these laws makes any provision for regulating the environmental impact of drugs derived from medicinal plants native to the Northern Areas.

6.1.15 Other Legal Instruments

Except for the EPO, which extends the application of PEPA to the Northern Areas, laws reviewed in this section do not apply directly to the sectors discussed above. Rather, these instruments have an indirect influence on natural resource management in the Northern Areas.

6.1.15.1 Environmental Protection (Adaptation and Enforcement) Order 2002 (KANA Order No. F.No. 10(S), 2002-NAII dated 21 August 2002)

This Order extends PEPA to the whole of the Northern Areas. The Northern Areas Planning and Development Department is responsible for the implementation of PEPA.

Definitions used in PEPA are detailed. Industrial activity is defined in Section 2(xxii) 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”. This definition provides wide scope for the regulation of industrial activity.

Pollution is defined in Section 2(xxxiii) as “the contamination of air, land or water by the discharge or emission of effluents or wastes or air pollutants or noise or other matter which either directly or indirectly or in combination with other discharges or substances alters unfavourably the chemical physical, biological, radiational, thermal or radiological or aesthetic properties of the air, land or water or which may, or is likely to make the air, land or water

unclean, noxious or impure or injurious, disagreeable or detrimental to the health, safety, welfare or property of persons or harmful to biodiversity.” This standard, though seemingly expansive, is vague because the phrase “alters unfavourably” is not defined.

The NEQS are automatically extended to the Northern Areas through the EPO. Discharges or emissions in excess of the NEQS or other standards established under PEPA are prohibited. The Federal Government, operating in the Northern Areas through the Planning and Development Department, may levy a pollution charge on parties found to be violating the NEQS (Section 11(2)). To ensure compliance with the NEQS, the Planning and Development Department is empowered to direct motor vehicle owners to install pollution control devices (Section 15(2)).

According to Section 12, all projects require clearance from the government after approval of an IEE or EIA. Meanwhile, Section 16 allows the Planning and Development Department to issue an environmental protection order to prevent an actual or potential adverse environmental effect. The import of hazardous waste is prohibited (Section 13) and the handling of hazardous substances requires a license (Section 14). Government agencies and local bodies may be held accountable for environmental offences (Section 19).

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, which are to be constituted under Section 20. No such tribunal has been established for the Northern Areas.

Provincial Sustainable Development Funds are to be established to provide financial assistance to suitable projects (Section 9). PEPA allows for the establishment of a Northern Areas Sustainable Development Fund.

Most provisions of PEPA are operationalised by means of rules and regulations. Those adopted as of mid-2004, and therefore automatically applicable in the Northern Areas, are discussed in Sections 6.1.15.2–6.1.15.8.

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

These Rules prescribe procedures allowing the Planning and Development Department to take samples of effluents or emissions in the presence of representatives of non-governmental organisations. Procedures for storing and transporting samples are also 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 place certain obligations on industry to monitor and report to the Planning and Development Department 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 prescribe the method for calculating and collecting levies that may be imposed in the form of an industrial pollution charge.

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

These Rules provide procedures for the operation of a Sustainable Development Fund and the establishment of a Sustainable Development Board.

**6.1.15.6
Provincial Sustainable
Development Fund
(Utilization) Rules 2001
(SRO (1)/2001 dated
January 2002)**

These Rules describe the procedures for utilisation of fund moneys and notices/approvals required for disbursal.

**6.1.15.7
National Environmental
Quality Standards
(Certification of
Environmental Laboratories)
Regulations 2000
(SRO 258(1)/2000 dated 10
February 2000)**

These regulations prescribe procedures for the certification of laboratories where tests may be conducted on soil, air, water and other samples. Only tests from certified facilities are admissible as evidence (section 6).

**6.1.15.8
Pakistan Environmental
Protection Agency Review
of Initial Environmental
Examination and
Environmental Impact
Assessment
Regulations 2000
(SRO 339(I)/2000 dated 13
June 2000)**

See Sections 6.1.1.1, 6.1.2.1, 6.1.3.2, 6.1.4.1, 6.1.7.2 and 6.1.9.1.

**6.1.15.9
West Pakistan Regulation
and Control of
Loudspeakers and
Sound Amplifiers
Ordinance 1965**

This provincial Ordinance, extended to the Northern Areas (Office Memorandum No. LA-COMM-9(7)/91 dated 14 May 1991, item 118), aims to control noise pollution. It places express prohibitions on the use of loudspeakers in certain instances and qualified restrictions in others. The Ordinance permits the use of loudspeakers in a “moderate tone”, but does not define the term. Fines under the Ordinance are negligible (one month in prison and/or a fine of 200 rupees) and have not been revised since 1965.

Restrictions are placed on the use of loudspeakers and amplifiers near a place of worship during prayer times, or in the vicinity of hospitals, educational institutions, offices, courts or public institutions. In such areas, loudspeakers may not be used in a manner that is likely to disturb the working of such places, or in a manner that causes injury or annoyance to residents of an area. The Ordinance allows the use of loudspeakers and amplifiers for the purposes of the *azaan* (call to prayer) and *khutba* (sermon) in a moderate tone. The number of loudspeakers in mosques has neither been fixed nor limited. NEQS standards do not apply since they prescribe criteria for noise pollution issuing from vehicles (see Section 6.1.7.1).

**6.1.15.10
Explosive Substances
Act 1908**

By 1991, this Act was in force in the Northern Areas (Office Memorandum No. LA-COMM-9(7)/91 dated 14 May 1991, item 28). This federal law regulates the possession and use of explosive substances, including materials for manufacturing explosives as well as machinery, tools and materials that can be used to cause an explosion. Although the law does not specifically define lawful possession, “unlawful possession” of explosive substances is an offence, 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). In the case of the Northern Areas, these powers are exercised by the Chief Executive, Deputy Chief Executive and Chief Secretary.

**6.1.15.11
Explosives Act 1884**

This federal law was not explicitly repealed by the 1908 Explosive Substances Act, although many of its provisions are similar. It was extended to the subdivisions of Puniyal-Ishkoman and Gupis-Yasin in 1972 (Notification No. REG-HC.NTF-32/72 dated 1 November 1972, item 11), and by 1991 was in force in the whole of the Northern Areas (Office Memorandum No. LA-COMM-9(7)/91 dated 14 May 1991, item 12). Specific notifications extending this law to parts of the Northern Areas other than Puniyal-Ishkoman and Gupis-Yasin could not be located.

The government (which, in the case of the Northern Areas, refers to the Chief Executive, Deputy Chief Executive and Chief Secretary) may prohibit the manufacture, possession or import of any explosive substance deemed likely to affect public safety. The

maximum penalty under this law for illegally manufacturing, possessing or importing explosives is 5,000 rupees.

The government may declare any substance deemed specially 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. 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

Decisions of the provincial High Courts are not binding on the Northern Areas judiciary, but carry persuasive value (see Section 4.4.2).

6.2.1 Anjum Irfan v. Lahore Development Authority, PLD 2002 Lahore 555

The Lahore High Court holds that every factory is required to make effective arrangements for the disposal of waste and effluents in accordance with Rules framed under Factories Act 1934, which require effluents to be discharged into the public drainage system with the prior approval of the health authorities. The direct discharge of effluent into rivers or the sea is actionable at the instance of those who are aggrieved by the pollution caused. The Court suggests various measures for combating pollution including the use of solar energy and planting trees, and notes the role of the media in creating awareness and coordination between the concerned government departments.

6.2.2 Abdul Qayyum v. Director General (EPA), 1999 PLR 640

The petitioners filed a writ petition against the EPA in response to noise and other emissions from industrial units located in their residential area. The petitioners had approached the EPA several times to control this pollution using its powers under PEPA, but the EPA had failed to do so.

The EPA, in its comments, claimed that it had recommended the industries be shifted to another area. It failed to prosecute the offenders because it concluded that discharges and emissions were within prescribed limits.

Disposing of the petition, the Court holds that the provisions of PEPA are comprehensive and that agencies and authorities created under the Act have been given the powers to lay down standards to enforce these provisions. The Court issues a *mandamus* direction to the EPA to deal with the matter in accordance with the provisions of PEPA.

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

This interim order passed by the Supreme Court calls for effective and remedial measures to streamline the process of checking motor vehicles at designated places in Karachi as a first step towards eliminating air and noise pollution in the city.

6.2.4 Rana Ishaque v. DG, EPA and others, WP No. 671/95

Under this ruling, issued in response to a writ petition, the Lahore High Court restrains 121 industrial units in the Punjab, excluding those that had already installed treatment plants, from discharging effluents into drains and canals. Following this ruling, most industries have started to install treatment plants to avoid litigation.

6.2.5 General Secretary, West Pakistan Salt Mines Labour Union (CBA) Khewra, Jhelum v. The Director, Industries and Mineral Development, Punjab, Lahore, 1994 SCMR 2061

The petitioners sought enforcement of the right of area residents to clean water, free of pollution from coal mining being carried out upstream. It was alleged that if the mines were allowed to continue their activities, which extended into the catchment area, the water course, reservoir and the pipelines would be contaminated.

Relying on the earlier Shehla Zia case (see Section 6.2.6), the 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 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.

6.2.6 Shehla Zia and others v. WAPDA, PLD 1994 SC 693

In this landmark case, the Supreme Court of Pakistan 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. 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. 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, only vegetative or animal life, or mere existence from conception to death. The Court holds that life includes all such amenities and facilities which 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.

6.2.7 Human Rights Case No. 9-K/1992 (unreported case before the Supreme Court of Pakistan discussed in IUCN, Environmental Public Interest Cases in Pakistan, 1998 at 49-57)

In 1992, the Karachi Administration Women’s Welfare Society (KAWWS) wrote a letter to the Supreme Court stating that the use of open storm water drains for the disposal of sewerage, and contamination from sewerage 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 converted the letter into a Human Rights Case.

The Supreme Court 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.

6.2.8 United Welfare Association, Lahore against Lahore Development Authority, Writ Petition No. 9297 of 1991 before the Lahore High Court, Lahore

A writ petition was filed in the Lahore High Court in which the intervention of the Court was sought to remove asphalt plants from certain localities in Lahore on account of the serious health hazard they posed to area residents. After considering the recommendations of a Friend of the Court, the Director General of the Lahore Development Authority issued orders to shift the asphalt plants.

07

Summary and Conclusions

7.1 Governance

Although the Northern Areas are not defined as Pakistani territory under the 1973 Constitution, Pakistan has exercised sovereignty since Independence in 1947 and the subsequent accession to Pakistan in 1951 of the tribal areas and former principalities. Since 1950, the highest executive authority for the Northern Areas has been the federal Minister for Kashmir Affairs and Northern Areas (KANA), who governs from Islamabad as Chief Executive.

A 1999 decision of the Supreme Court of Pakistan, the Al-Jehad Trust case, affirmed Pakistan's *de jure* and *de facto* administrative control over the Northern Areas, establishing that residents of the Northern Areas enjoy the same fundamental rights guaranteed by the 1973 Constitution to all citizens of Pakistan. This ruling holds that citizens of the Northern Areas are liable to pay taxes in Pakistan but, paradoxically, that there is no legal obligation to grant them representation in the National Assembly or a voice in deciding what those taxes may be.

Under the Northern Areas Council Legislative Framework Order (NACLFO) 1994, citizens of the Northern Areas are to elect a Northern Areas Legislative Council (NALC) whose Speaker and Deputy Speaker enjoy a status equivalent to that of a provincial minister. The NALC has no fiscal authority but does have the legislative power to govern specified issues, including matters related to most renewable natural resources. Any legal instruments adopted by the NALC must, however, be approved by the Chief Executive. The NALC does not have the authority to override an executive veto. Moreover, in cases where inconsistent legislation has been adopted by the NALC, federal law prevails.

KANA retains the power to make laws and rules governing the Northern Areas and may extend any federal or provincial law to the Northern Areas. Over the years, KANA has extended laws to various parts of the Northern Areas on a piecemeal basis with the result that some federal laws apply to some areas but not to others. Notifications issued in 1991 and 2002 for the most part correct this situation but some anomalies remain.

There are also statutory inconsistencies with respect to executive powers exercised in the Northern Areas. While the Chief Executive is the highest authority in the Northern Areas, the Deputy Chief Executive also, by statute, holds the status of a federal minister. The NACLFO is contradictory concerning the selection of the Deputy Chief Executive, providing in one article that members of the NALC are to elect the person to fill the post, and in another article that the Chief Executive appoints the Deputy from among the members of the NALC.

As of mid-2004, the Environment Section of the Northern Areas administration was part of the Planning and Development Department, a portfolio which at the time was retained by the Chief Executive. The Environmental Protection (Adaptation and Enforcement) Order (EPO) 2002, which extends the Pakistan Environmental Protection Act (PEPA) 1997 to the Northern Areas, requires that a Department is established to execute its provisions. Until such a Department is created, responsibility for implementing the provisions of PEPA in the Northern Areas is delegated to an officer of the Planning and Development Department.

The last amendment to the Northern Areas Local Government Order (NALGO) 1979 was made in 1991, a full decade before local governance was devolved from the provincial level elsewhere in Pakistan. Municipal and town committees have both compulsory and discretionary functions. All of the natural resource-related functions—pollution control, protected areas and forest management—are optional. KANA retains the power to direct local committees to act.

The 1973 Constitution does not provide for a superior judiciary in the Northern Areas, which was established by statute and expanded following the 1999 decision in the Al-Jehad Trust case. A

subsequent Order in the same year provided for the establishment of a Northern Areas Court of Appeals, equivalent to the Supreme Court of Pakistan, which has yet to be set up.

The basic principles of governance and structures of government in the Northern Areas evolved relatively slowly over a period of nearly 50 years. In the mid-1990s, statutes granted a measure of autonomy to the Northern Areas and at the end of the 20th century a decision of the Supreme Court of Pakistan spurred that process, at the same time giving rise to a fundamental question related to equity in representation. As of mid-2004, the Northern Areas enjoy substantial judicial autonomy which can, however, only be exercised when the federal executive authority acts to establish the apex court created by statute. Other statutes award the Northern Areas limited legislative authority, particularly with respect to some renewable natural resources, but no executive or fiscal autonomy.

7.2 Natural Resources and Natural Resource Management

The NACLFO empowers the NALC to adopt legislation governing land, water and fisheries, as well as the protection of wild birds and animals. Ten years after its creation, however, the NALC has yet to exercise its power to regulate natural resources and their management. All such laws currently in force were either adopted by KANA, or are federal or provincial laws that were extended to the Northern Areas. Legislation framed specifically for the Northern Areas is for the most part substantially derived from existing provincial laws and reflects those laws' focus on prospecting, exploitation, sale and distribution of natural resources rather than conservation and sustainable use.

After the principalities and the feudal system were abolished in the Northern Areas in the 1970s, the federal Land Acquisition Act 1894 was extended to regulate land ownership. This Act does not explicitly provide for conservation but defines the term "public purpose" broadly enough to include conservation. That same broad interpretation could also be used to justify the acquisition of land for public purposes that lead to the unsustainable use of natural resources. The 1978 Nautor Rules provide for an inquiry to be conducted before the allotment of wasteland or village common property, including urban parks but not specifically including rural natural areas. A subsequent Order in 1980 provides for the rights of the general public but at the same time allows the government to grant exemptions to any of the Rules.

Forests are the most extensively regulated natural resource in the Northern Areas. The Forest Act 1927 was extended gradually and by 1991 applied to all of the Northern Areas. A 1983 KANA Notification empowers the Northern Areas authorities to declare all forests and wasteland to be protected. This Notification also states that rights of individuals and communities in lands so designated are not affected, but does not provide guidance on how this arrangement would be managed in practice. In addition to legal instruments that apply to all of the Northern Areas, there are also older Notifications still in force that provide specific forest management regimes in designated regions that correspond to the current districts.

The Northern Areas are home to some of the richest freshwater fisheries resources in Pakistan. Consequently, this sector is covered by a substantial regulatory framework. The 1975 Northern Areas Fisheries Act provides for establishing fish sanctuaries and a 1999 amendment enables community participation in fisheries management. Rules issued in 1975 provide for a licensing system without establishing any criteria for granting licenses, while a subsequent amendment substantially increases license fees.

Even though freshwater fisheries are such an important resource for the Northern Areas, the only law that regulates freshwater resources is more than 125 years old and was extended to the Northern Areas in 1959. PEPA provides for controlling the pollution of water, while the Forest Act 1927 and the Northern Areas Penal Code Order 1991 contain penalties for polluting freshwater

resources. None of these laws contains provisions creating incentives for the wise use of water resources.

The 1975 Northern Areas Wildlife Preservation Act regulates hunting and provides for the designation of wildlife reserves and sanctuaries, where hunting is restricted or prohibited. The 1975 Wildlife Preservation Act repeals the 1912 Wild Birds and Animals Protection Act, yet the latter is listed in 2002 as being in force in the Northern Areas. The 1912 Act allows for the confiscation of illegally taken birds and animals, a measure which the 1975 fails to include.

Although Pakistan has no national system of protected areas, the Northern Areas Wildlife Preservation Act 1975—like provincial wildlife laws—establishes national parks as one of three categories of protected areas. The other categories are wildlife reserves and wildlife sanctuaries. In the case of the Northern Areas, PEPA empowers the Planning and Development Department to designate “environmentally sensitive areas” but the 1975 Act was not amended to reflect this fact. Meanwhile, PEPA itself does not specify how its provisions relate to those of the 1975 Act.

Since 1975 the great majority of the additions to the regulatory framework governing natural resources has served to introduce administrative or procedural changes. Even though a broad range of innovative natural resource management practices is currently being tested and used in the Northern Areas, in a quarter of a century the only substantive revision to the content of natural resource law here has been to enable community participation in fisheries management.

Developments in the theory and practice of natural resource management indicate that resources are best managed at the level closest to the resource itself—the community. Public participation and incentives for sustainable use are under-represented in the regulatory regime in force in the Northern Areas. Legal instruments explicitly enable public participation in natural resource management in just three cases: the inquiry required before allotment of *nautor* land, with a guarantee of the rights of the general public; the provision for community participation in fisheries management; and the 1975 Notification, applying to villagers of three communities belonging to former principalities, which provides for significant community participation in the sustainable management of forest resources.

The 1975 Notification allows villagers to retain certain concessions and privileges they had enjoyed under their former system of government. Similarly, in 1951 the tribal areas were allowed to retain certain rights of self-governance, including natural resource management, as a condition of their accession to Pakistan. Thus, two of the three legal entitlements for community management of natural resources in the Northern Areas were arranged by the communities themselves in exchange for otherwise surrendering sovereignty.

7.3 Processes and Institutions That Affect Natural Resources and Natural Resource Management

The most significant legal instruments extended to or adopted for the Northern Areas in the past two decades are PEPA and the Northern Areas Concession Rules 2003. Other than the framework established by these two instruments, regulation of sectors that affect sustainable use and conservation of natural resources in the Northern Areas is negligible. In the agriculture sector, for example, no laws have been adopted specifically for the Northern Areas. Only two federal laws have been extended to the Northern Areas: one governing agricultural credit, which makes no mention of conditions that would require borrowers to employ methods with minimal adverse impacts on natural resources; and the other related to pesticides, which fails to take into account any measures for controlling or monitoring the use of pesticides.

Both PEPA and the Concession Rules 2003 provide for the systematic assessment of environmental impacts. Although Rule 111 of the Concession Rules requires minimising and mitigating any damage caused by mining operations, the Rules also permit mining operations to be carried out in protected forests, leaving the conditions for authorising such activity up to the discretion of the government. The Review of Initial Environmental Examination and Environmental Impact Assessment (IEE/EIA) Regulations 2000, issued pursuant to PEPA, require that assessments are undertaken of the environmental impacts of specified small- and large-scale schemes in all sectors. The Concession Rules also require an EIA, but at the same time establish a time frame for beginning operations in protected forests that may not be consistent with an EIA review.

The IEE/EIA Regulations require assessment of tourism development projects. Despite the importance of the tourism industry in the Northern Areas, no laws have been adopted specifically for the Northern Areas and the only federal laws extended regulate tourist guides and public hygiene in hotels and restaurants.

7.4 Governance and Natural Resource Management

The special characteristics of governance in the Northern Areas, and in particular the lack of devolution of powers to local authorities, are likely the greatest challenge to sustainable natural resource management. All responsibilities for pollution control and natural resource management that have been allocated to municipal authorities are discretionary, and ultimate authority remains with KANA. While there are a few outstanding examples of legal instruments that enable community participation in natural resource management, the majority of the laws in force in the Northern Areas enables resource exploitation, providing penalties for unauthorised use but few incentives for sustainable use.

Another challenge that should not be minimised is the relative inaccessibility of basic legal documents. The process of carrying out this review has enabled the compilation of a significant number of texts, which is expected to ease the burden for students and practitioners of environmental law in the future. Nevertheless, a number of documents could not be located. Indeed, some fundamental legal texts dating back to the period of Independence seem simply to have disappeared.

The extension of PEPA to the Northern Areas offers significant opportunities for promoting good governance of natural resources. Even though this law deals primarily with pollution control, it enables the designation of environmentally sensitive areas, providing a potential link for future efforts to reform the legal instruments that directly govern natural resources.

Another important aspect of natural resource law in the Northern Areas—customary law—is mentioned in Section 5.1.2 of this review and analysed separately in a companion volume, *Customary Laws Governing Natural Resource Management in the Northern Areas*. The conclusion of that study highlights the fundamental difference between customary and statutory regimes in the Northern Areas, a point that is also identified in this document as a principal deficiency in the existing statutory regime: most statutory legal instruments governing natural resource management and use in the Northern Areas were designed to promote resource exploitation rather resource conservation, with the benefits of resource exploitation flowing to statutory institutions rather than resource-dependent communities. The convergence of the conclusions of these two reviews points to significant opportunities for harmonisation and legal reform to minimise inequity and maximise the benefits of natural resource management and use.

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Environmental Law Programme
1 Bath Island Road
Karachi 75530, Pakistan
Tel.: ++92-21-5861540/41/42
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The last four decades of the 20th century brought about major changes in the Northern Areas. The region opened to the outside world in a way that it never had before. Modern modes of communication and transportation and interaction with people from outside the area have led to many — and sometimes conflicting — developments affecting natural resource use. Natural resources will be as important for the future of the Northern Areas as they have been for its past. The law governing natural resource management in Northern Areas is compiled and analysed in these volumes — a unique source to be used now, to ensure the future.