

Environmental LAW in Pakistan

01

Volume 1
Description
and Analysis

Governing Natural Resources
and the Processes and
Institutions that Affect Them

North-West
Frontier Province

IUCN
The World Conservation Union

Environmental Law

01

in pakistan

Governing Natural Resources
and the Processes and
Institutions that Affect Them

N.W.F.P

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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; all social and economic conditions affecting community life; and the interrelationship between any of these elements (Section 2(x)).

In Pakistan, environmental law is thus defined in the broadest sense to include 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 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 is available on CD-ROM, while the full text of legal instruments surveyed can also be found at www.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 be exhaustive compilations of the entire body of law related to a specific subject. They are rather a selection and overview of legal instruments with 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 those that actually or potentially affect natural resource management in the country.

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

Foreword

Nature has adorned the unique landscape of the North West Frontier Province with precious natural resources like thick whispering green forests, clear and clean blue waters, vast fertile lands, rich flora and fauna and a charming variety of wild life.

What is painfully lacking at all levels, is the sense of conservation leading to ruthless exploitation of abundantly spread bounties of nature. Such ignorance and indifference have posed a serious threat to the ecological balance. Framing of laws, Rules and Regulations for preservation of natural resources is essentially needed for us and for the generations to come.

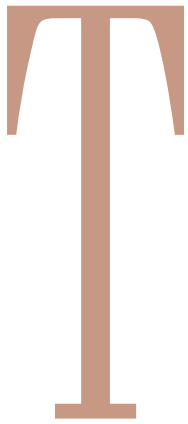
It is a fact undeniable that the existing laws in the province are too scanty to meet the standard requirements of providing protection to environment and sustainable development. Knowledge of the existence of environment related laws and rules can help provide a useful basis for advancement of the cause of conservation.

The review of existing environment related laws and rules tends to serve a dual purpose; one, of creating awareness about the relevant laws, as such, which indeed is crucial for the cause of conservation and sustainable development and, the other, of highlighting specific areas requiring retread in the wake of developments taking place subsequent to the promulgation of these laws.

This effort has to visualize the changes in laws necessitated by changes in society. The task in hand, probably first of its kind, pioneering in nature, indeed deserves commendation. All environment related Provincial Statutes in one Volume, besides satisfying the quest of research scholars, would provide necessary and useful tool to Judges and Lawyers alike for resolving environmental issues in the light of upto to date enactments.

*Justice Sardar Raza
Supreme Court of Pakistan*

Acknowledgements



The authors of Part 3: North-West Frontier Province are Professor Ahmad Ali Khan and Mr. Inayatullah Khan. Professor Ahmad Ali Khan is Dean of the Faculty of Law, Peshawar University. Mr. Inayatullah Khan is a Lecturer in the Faculty of Law, Peshawar University.

The legal documents discussed in this review were located in the libraries of the Faculty of Law, Peshawar University; Law Department, Government of the North-West Frontier Province; Peshawar High Court; and Pakistan Forest Institute. Searching the entire body of legislation, rules and administrative measures, as well as un-reported court cases, was a daunting task. It was made possible in large part by the staff of each of these libraries, who provided invaluable assistance in the collection of material.

The authors of all of the other Parts of this series contributed in varying degrees to this Part 3 on the North-West Frontier Province:

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 (authors of Part 1: Federal and Part 5: Sindh);

Professor Mir Aurang Zaib (Part 2: Balochistan);

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Mr. Zahid Hamid of Hamid Law Associates, Lahore, contributed to section 5.1.2 on Forests.

Mr. Qalander Ali Khan, District and Sessions Judge, District Tank, NWFP, also contributed to this NWFP review.

The following IUCN Pakistan staff spent countless hours researching and coordinating legal instruments and other operational aspects of this review:

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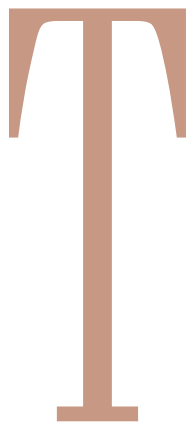
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As Editor, Ms. Firuza Pastakia assured the coherence and consistency of this final product with a fine sense for both substance and syntax.

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01

**Executive
Summary**



he subject of ecology is mentioned in the constitutional Concurrent Legislative List, allowing both federal and provincial governments to legislate on most natural resources. In practice, this has meant that the Federal Government has for the most part abstained from legislating natural resource conservation and use except in cases that affect international trade or national security. Lawmaking to regulate natural resource use is primarily left up to the relevant Provincial Government.

North-West Frontier Province (NWFP) laws governing natural resources were all promulgated post-Independence, beginning in 1948. A few pre-Independence laws also remain in force. Almost half of the legal instruments in force today were adopted in the 1970s, mostly in the form of ordinances, rules and regulations. Not surprisingly, the majority of NWFP statutes on natural resources deals with forests. Legislation adopted prior to the 1990s focuses largely on regulating natural resource exploitation. It is only in the late 1990s that NWFP legislation begins to include references to sustainable development. The term itself is first defined in a 2002 Ordinance for the forest sector.

Executive authority in a number of areas—including many sectors related to natural resource management—has undergone significant changes in recent years. Administrative and enforcement powers in a wide range of areas were reallocated under the NWFP Local Government Ordinance (LGO) 2001 (see section 4.3.2.1). However, a number of pre-2001 acts, ordinances and regulations have not been amended to reflect the new administrative structure, and must therefore be read together with the LGO.

Laws relating to land tenure are fundamental for the management and conservation of natural resources. The most far-reaching legal instruments governing land use and tenure are related to agriculture and irrigation. The basic law on land acquisition for public purposes is a federal one that dates back to 1894 and makes no mention of natural resource conservation. However, the language of the 1894 law and others is vague enough to permit interpretation favouring conservation and sustainable use until legal reform affirmatively provides for such matters.

When Pakistan attained independence from British rule in 1947, the Forest Act 1927 was in force in most of the country, including the NWFP. The NWFP Hazara Act 1936 was enacted specifically for the Hazara division, while in 1974 the 1927 Act was extended to the Provincially Administered Tribal Areas (PATA) of Chitral, Dir, Kalam, Swat and Malakand. The 1927 Act does not apply to the

Federally Administered Tribal Areas (FATA) which cover 2.76 million hectares along the country's border with Afghanistan.

Since the subject of forests is not mentioned in either of the constitutional legislative lists, the residuary rule applies, making forestry an exclusively provincial subject. Provincial assemblies may amend the Forest Act 1927 or enact new forest laws for their respective provinces. In 2002, the NWFP became the first province to reform its forest law. The NWFP Forest Ordinance 2002 repealed the 1927 Forest Act in its application to the NWFP, along with the Hazara Forest Act 1936, Kohat Mazri Control Act 1953 and North-West Frontier Province (Sale and Sawing of Timber) Act 1996. All rules and notifications issued under the repealed laws remain in force to the extent that they are consistent with the 2002 Ordinance.

The two legal instruments governing fisheries in the NWFP are both exploitation-oriented, dealing primarily with fishing licenses and leases. These instruments are more than 25 years old and do not provide for conservation or sustainable management of the province's fisheries resources.

One modern and one pre-Independence law regulate wild non-fish fauna in the province. Like the fisheries regime, the law for wildlife is also exploitation-oriented. The 1975 NWFP Wildlife Act does not specify the office or authority responsible for the management, protection or conservation of wildlife, providing only for the establishment of the NWFP Wildlife Management Board whose functions are merely advisory. The 1975 Act regulates hunting but contains no provisions to ensure the protection or sustainable use of wild animal resources, or the conservation of ecosystems that support their habitat. The law allows for the designation of protected areas, including "national" parks, all of which are the responsibility of provincial governments. There is no national system of protected areas in Pakistan.

The Water and Power Development Authority, created in 1958, has sweeping cross-sectoral powers to administer most aspects of freshwater resource use, including the conservation of forests and catchment areas. Only two recent legal instruments, the LGO 2001 and the River Protection Ordinance 2002, deal with the dumping of human waste and other pollutants into freshwater sources. Existing law provides for drinking water supply—but not purification—in rural areas, but does not cover urban areas.

NWFP legislation governing processes and institutions that affect natural resources is on the whole relatively modern. Nevertheless, with few exceptions, contemporary concepts of sustainable management have not been integrated into legislation for sectors that substantially impact natural resources, such as agriculture and mining.

Rural and urban development in the NWFP is governed by a significant number of legal instruments covering issues as diverse as river management and housing schemes. Existing legislation creates institutional authorities to administer development schemes but provides few criteria or guidelines for administration.

Considering that agriculture is not included in either the Federal or Concurrent Legislative List, there is little NWFP-specific legislation for the sector. The NWFP Agriculture Authority Ordinance was purely administrative and the Authority it established was in any case dissolved by the NWFP Agriculture Development Authority (Dissolution) Ordinance. Except for these two legal instruments, one repealing the other, laws governing the agriculture sector have been framed by the Federal Government or adopted from the British colonial administration, and operate as provincial laws.

Mineral oil and natural gas are included in the Federal Legislative List. Other types of minerals, and mining itself, are not mentioned in either list, although the Concurrent List mentions the regulation of labour and safety in mines and oilfields. Exploitation of minerals other than oil and natural gas, therefore, is a provincial subject. Laws that pre-date the 1973 Constitution provide that radioactive

minerals, oil and gas are regulated by the Federal Government, and all other mines by the relevant Provincial Government. Existing legislation governing extractive industry in the NWFP provides limited, discretionary protection for trees but does not require or provide guidelines for managing the effects of mining operations on natural resources.

Legislation for the non-extractive industry sector in the NWFP focuses on licensing, pricing and other administrative matters. It includes no substantive provisions to regulate the impacts of the sector's processes and activities on natural resources.

The provinces do not have broad powers of taxation and are for the most part financially dependent on the Federal Government. However, provincial governments may impose taxes in areas specified in the Constitution, the limits of which are prescribed by federal law. Items taxable at the provincial level in the NWFP include land and agricultural produce, vehicles and the transfer of immovable property. The Provincial Government has the power to grant tax exemptions.

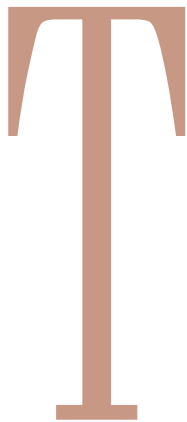
The few NWFP laws that regulate investment are more than a quarter century old and contain no provisions for investment incentives that would encourage natural resource conservation and sustainable development. Legal instruments governing transport deal solely with truck and bus stands, and traffic control in the city of Peshawar. Here again, no mention is made of environmental impacts such as congestion or pollution.

Although NWFP legislation governing the energy and hydel sector is relatively recent, the law deals purely with administrative matters. No criteria are provided for siting, constructing and operating hydel schemes in the province.

Some of the country's most popular tourist areas are located in the NWFP. Yet the tourism industry remains unregulated, with no legally-binding guidelines or criteria established for developing projects in this sector.

Decisions of the Peshawar High Court related to natural resources deal with forest resources and specifically the application of the Hazara Forest Act 1936, which has now been repealed by the NWFP Forest Ordinance 2002.

02 Methodology



he original research framework for the series was developed jointly by one of the authors of Parts 1 and 5, and the Series General Editor. The outline was tested and revised during the process of compiling and drafting this volume, as well as the Federal, Balochistan, Sindh and Northern Areas reviews.

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

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

Resources tapped to research NWFP statutes included the Pakistan Code, law reports published in Pakistan, and a variety of academic and commercial legal texts. Laws are amended frequently and not all the amending statutes are published in the resources generally available, making it difficult—and in certain cases impossible—to definitively ascertain the latest status of a law. While even the oldest laws may be found in the Pakistan Code, rules and regulations framed pursuant to provincial acts and ordinances are not included. Some rules and regulations that are evidently still in force were identified only through references in other sources.

03 Hierarchy of Legal Instruments

3.1 Constitution of the Islamic Republic of Pakistan 1973

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

The period beginning 12 October 1999 was the most recent occasion on which the Constitution was held in abeyance, and the National Assembly and Provincial Assemblies were suspended. Pakistan was governed through a series of amendments to the Provisional Constitutional Order (PCO) issued on 14 October 1999, which awarded legislative power to the Chief Executive and provincial Governors. In the period 1999–2002 during which the assemblies remained suspended, the Chief Executive and Governors issued Ordinances (see section 3.3, below). The Legal Framework Order (LFO) promulgated on 21 August 2002 amended and revived the Constitution. The PCO is no longer in force and the validity of the amendments is contested. Elections for the Provincial Assemblies and the National Assembly were held on 10 October 2002, while elections for the Senate were held on 24 February 2003. Unlike the usual procedure for legislative ratification, federal and provincial Ordinances issued during the 1999–2002 period are protected under the PCO and LFO, do not have to be adopted by the National or Provincial Assemblies, and remain in force. No Ordinances were issued on matters related to the environment, natural resources or their management during this period.

3.2 Legislative Acts

First in the hierarchy of sub-constitutional legal instruments are Acts passed by the legislative branch of government—the National and Provincial Assemblies. Here, federal law controls. Under Article 143 of the Constitution, if legislation passed by a Provincial Assembly is in conflict with a law enacted by the National Assembly, the federal statute overrides the provincial one to the extent of the inconsistency. Interestingly, some federal laws operate as provincial statutes for one of the following reasons: (1) legislative power has shifted from the federal to provincial level during one of several constitutional changes; or (2) the National Assembly has been authorised to frame a law on a provincial subject by provincial consent, under Article 144 of the Constitution, which also allows the provinces to subsequently amend or repeal such laws. In addition, certain laws framed in the colonial era currently operate as provincial statutes because their subject matter no longer appears on either of the Legislative Lists in the Fourth Schedule of the Constitution (see section 4.1.1, below).

3.3 Ordinances

Ordinances are promulgated by the executive branch of government—by the President when the National Assembly is not in session or by the Governor when the 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 Governor have broad powers to assess such urgency. Ordinances have the same force and effect as an Act of the National or Provincial Assembly, but remain in force for a limited period of time—three months in the case of governors' Ordinances and four in the case of presidential Ordinances. During this period, the President or Governor may withdraw an Ordinance, or it may be disapproved or modified by the relevant assembly. An Ordinance lapses if the National or Provincial assembly fails to adopt it within the specified period. Once an Ordinance is adopted, it becomes an Act. In some, but not all, cases, the legislative history of an Ordinance or Act may be indicated in its text.

3.4 Rules and Regulations

Rules and Regulations are also issued by the executive branch of government but are not independent legal instruments. Rather, they are issued pursuant to a particular Act or Ordinance for the purpose of implementing specific provisions of that legal instrument. They may be issued by the Federal Government or a Provincial Government, or by a delegated actor or agency, depending on the legal instrument they are made to implement.

Rules are the principles to which an action or procedure is intended to conform and are always framed in the exercise of powers delegated under a statute. Examples of statutory Rules include the federal and provincial Rules of Business, which establish parameters for the functioning of the executive (see sections 4.1.2 and 4.3.2).

Regulations provide for specific measures required to put an Act or Ordinance into effect. The federal and provincial governments also use Regulations to govern the Federally Administered Tribal Areas and Provincially Administered Tribal Areas, respectively. Article 247 of the Constitution gives the President or provincial Governor the authority to make Regulations "for the peace and good government" of the tribal areas.

3.5 Orders

Orders may deal with a broad range of substantive issues, such as the Provisional Constitutional Order and Legal Framework Order, or with a specific and limited situation as in the case of Environment Protection Orders that can be issued under the Pakistan Environmental Protection Act 1997. Administrative Orders are issued by a designated authority in exercise of a delegated power to administer a particular issue. The status of an Order depends on the delegated power under which it is issued.

3.6 Notifications

Notifications are not a separate class of legal instrument. They are the mechanism by which the executive branch of government promulgates Rules and Regulations. In certain cases, Notifications also serve as a means to communicate specific official actions taken to accomplish a particular, 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 that was formerly 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 until such time as they were repealed or amended by the new Provincial Assemblies. West Pakistan Ordinances issued when the assemblies were suspended were protected, similar to those issued between October 1999 and August 2002, and did not need to be formally adopted by the relevant assembly. Consequently, Acts and Ordinances governing the former province of West Pakistan apply to all four of the current provinces of Pakistan. In practice, they function as individual provincial laws. As such, a Provincial Assembly has the power to amend, repeal or re-enact any former West Pakistan statute as if it were a provincial statute.

04 Governance

Under Article 7 of the 1973 Constitution, the "State" is defined as the Federal Government; the Parliament or Majlis-e-Shoora (known as the National Assembly); Provincial Governments; Provincial Assemblies; and other authorities empowered by law to impose a tax or cess (a "cess" is a portion of land-produce apportioned to the government). The term "Government", meanwhile, refers to the executive authority at either federal or provincial level. The Constitution provides for the federal and provincial levels of authority, and their powers are further delineated by statute. Authority for local governance is provided solely by statute. Article 247 provides for the governance of the Federally Administered Tribal Areas (FATA) and Provincially Administered Tribal Areas (PATA) designated in Article 246.

4.1 Federal

The Constitution specifies the respective jurisdictions and division of powers between various branches of government.

4.1.1 Legislative

Articles 141 and 142 of the Constitution deal with the respective legislative powers of the federal and provincial governments. Subject matter jurisdiction is distributed between the federal and provincial governments by means of Legislative Lists contained in the Fourth Schedule of the Constitution.

Under Article 141, the National Assembly may legislate for the whole or any part of Pakistan, while a Provincial Assembly is confined to framing laws for all or part of its own province. The National Assembly has exclusive jurisdiction over subjects mentioned in the Federal Legislative List in the Fourth Schedule. Article 142 restricts the legislative powers of a Provincial Assembly to matters mentioned in the Concurrent Legislative List. This Article also confers on provincial assemblies exclusive jurisdiction to legislate any subject that is not specified in either the Federal or Concurrent List. This is referred to as the residuary legislative power of the Provincial Government. Article 143 provides that where federal and provincial laws are inconsistent, federal law prevails to the extent of the inconsistency. Under Article 144, residuary power may be assigned to the National Assembly if two or more provincial assemblies pass resolutions to this effect.

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

In addition to the powers specifically delegated to provincial governments by the Constitution, federal laws may also authorise provincial governments to exercise certain powers of the Federal Government or make rules to carry out the purposes of a law.

Acts of the national and provincial assemblies do not automatically apply to the constitutionally designated FATA and PATA. Under Article 247 of the Constitution, the President may extend the provisions of a federal law to FATA and the Governor of a province, with the approval of the President, may make regulations for the PATA under that province's jurisdiction (also see section 3.4).

Under Article 232, in a declared emergency the Federal Government may assume legislative authority over a province.

4.1.2 Executive

The Federal Government is empowered to exercise its authority in two ways: through administrative authorities directly under its control and through provincial governments. In the latter case, Article 146 of the Constitution provides for delegation of federal powers to the provinces. Sub-section (1) allows the Federal Government to entrust any of its functions either conditionally or unconditionally to a provincial government, with the consent of that government. Conversely, Article 147 allows the provinces to entrust their functions to the federation or its officers. Under Article 149, the Federal Government has the discretion to direct provinces to take specific actions.

The President exercises executive authority over FATA and the Governor of the North-West Frontier Province has executive authority, subject to approval of the President, over PATA in the province, under Article 247. Article 145 allows the Federal Government to direct a provincial Governor to act as its Agent for areas that are not included in any province—the tribal areas, in the case of the NWFP.

Additional powers are awarded to the Federal Government under Article 232, whereby the Federal Government may assume executive authority over a province in a declared emergency.

4.1.3 Judiciary

Article 175 of the Constitution establishes the Supreme Court of Pakistan along with the provincial High Courts and Federal Shariat Court. The Article provides for administrative courts and tribunals, and provides that other courts be established by law. The Environmental Tribunals created by the Pakistan Environmental Protection Act 1997 are one example of courts created by law.

Federal and provincial courts form part of a single national judicial system with the Supreme Court at the apex, serving as the appellate authority for all decisions taken by the provincial High Courts. The Supreme Court also has original jurisdiction to hear matters pertaining to the enforcement of fundamental rights, as well as disputes between a province and the Federation or between provinces, and questions that may be referred by the President of Pakistan.

4.2 Delegation

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

4.3 Provincial

Part IV of the Constitution sets out the powers of provincial governments.

4.3.1 Legislative

Article 142 and the Fourth Schedule of the Constitution establish the subject matter jurisdiction of the Provincial Assemblies (see section 4.1.1). A Provincial Assembly may also override judicial decisions by legislative measures (see section 4.3.3, below). An Act of the Provincial Assembly does not automatically apply to PATA. The Governor may, with the approval of the President, extend the application of provincial legal instruments to PATA.

4.3.2 Executive

Under Article 137 of the Constitution, the subject matter jurisdiction of the Provincial Government is the same as the subject matter jurisdiction of the Provincial Assembly (see section 4.1.1). Article 129 vests executive authority of a province in the Governor, who exercises it either directly or through subordinate officers.

Article 139 of the Constitution gives provincial governments the power to adopt Rules of Business to govern their administrative operations. As at the federal level, provincial Rules of Business are statutory rules. The business of the NWFP Government is divided between various departments and semi-autonomous bodies, as provided in the Government of the North-West Frontier Province Rules of Business 1985 (as amended). Semi-autonomous bodies are generally attached to a department and referred to as "attached departments". The NWFP Rules of Business establish the hierarchy of departments, provide for the division of responsibilities between various departments and attached departments, and establish the mode in which responsibilities are to be carried out, besides dealing with other miscellaneous issues. The Minister in charge of each department takes operational decisions while policy issues are referred to the Cabinet. Subject to the Rules of Business, affairs within a department or attached department are conducted in accordance with administrative guidelines and policies issued by the Provincial Government from time to time. The Rules of Business also provide for interaction between various departments, which in certain cases is compulsory.

The delegation of powers to authorities subordinate to the Provincial Government is regulated by the NWFP Local Government Ordinance (LGO) 2001.

4.3.2.1 NWFP Local Government Ordinance (LGO) 2001

Under the LGO, "local government" includes: a District Government or City District Government and Zilla Council; a Tehsil Municipal Administration and Tehsil Council; a Town Municipal Administration and Town Council; and a Union Administration and Union Council. Local governments are required to function within the provincial framework, adhere to federal or provincial law, and not impede or prejudice the exercise of the executive authority of the government.

The LGO establishes an Office of Land Revenue and Estate (Section 14 read with Part A of the First Schedule) to be headed by an Executive District Officer (Section 27(2)). Prior to the promulgation of the LGO, provincial departments such as health or revenue and taxation delegated powers and responsibilities to various district officials whose posts have now been abolished. These responsibilities have reverted to the concerned departments at the provincial level or, in the case of devolved departments, to the district level. The Commissioner's administrative powers are now exercised by officials of the Land Revenue and Estate Office, and the judicial powers of the Commissioner are exercised by magistrates. Operational aspects of the application of the LGO continue to be defined.

Besides matters related to the devolution of local government, the Ordinance also prescribes penalties for offences related to freshwater contamination, industrial pollutants and dangers to public health and safety (see sections 5.1.2.2, 5.1.6.2, 6.1.1.2, 6.1.2.2, 6.1.3.1 and 6.1.4.1, below).

4.3.2.2 NWFP (Amendment of Laws) Ordinance 2001

This Ordinance is extended to the whole of NWFP, including PATA. Prior to its promulgation, certain officials carried out judicial as well as executive functions. The 2001 Ordinance separates executive from judicial functions and replaces the term "Deputy Commissioner" with "Judicial Magistrate" in some, but not all, existing NWFP legislation. In some cases it has been decided how the powers formerly exercised by the Deputy Commissioner, and other posts that were abolished, are to be reallocated and laws have been amended accordingly. In many cases, however, these decisions are yet to be made. This jurisdictional gap potentially impacts the management of natural resources for as long as the uncertainties remain.

4.3.3 Judiciary

Each province has civil and criminal trial courts of original jurisdiction, created by law, that deal with all matters within their respective territorial and pecuniary jurisdiction. The Peshawar High Court is the apex judicial authority for the NWFP. Article 199 of the Constitution establishes the jurisdiction of provincial High Courts. The Peshawar High Court controls the lower judiciary administratively (Article 203) and hears appeals against their decisions. The Peshawar High Court, like other provincial High Courts, also has original jurisdiction in certain matters including constitutional jurisdiction. Under its constitutional jurisdiction, the High Court can enforce fundamental rights,

direct specific performance of public duties of the Federal as well as Provincial Government and their respective functionaries, and review executive and legislative actions. When the Peshawar High Court exercises its constitutional jurisdiction to review the exercise of executive or administrative authority, it may modify the actions in question or set them aside. This power is akin to the jurisdiction of the English courts to issue writs.

05

Laws and Judicial

Decisions

Governing

Natural

Resources and

Natural Resource

Management

5.1 Legal Instruments–Introduction

The subject of ecology is mentioned in the constitutional Concurrent Legislative List, meaning that both federal and provincial governments may legislate on most natural resources. In practice, the Federal Government has for the most part abstained from legislating natural resource conservation and use except in cases that affect international trade or national security. Lawmaking to regulate natural resource use is primarily left up to the relevant Provincial Government.

Except for one federal law on irrigation and drainage, legal instruments governing natural resources in the NWFP were all promulgated post-Independence, beginning in 1948. Almost half of the instruments in force were adopted in the 1970s, mostly in the form of ordinances, rules and regulations. Not surprisingly, the majority of NWFP natural resource laws deals with forests. Legal instruments adopted prior to the 1990s focus on regulating natural resource exploitation. NWFP legislation incorporates references to sustainable development beginning in the late 1990s, and first defines the term in a 2002 ordinance for the forest sector.

Administrative and enforcement powers in a number of areas were reallocated under the NWFP Local Government Ordinance (LGO) 2001 (see section 4.3.2.1). The text of pre-2001 acts, ordinances and regulations have not been amended to reflect the new administrative structure, and must therefore be read together with the LGO. A few laws in the forest and water sectors include clauses granting government officials unqualified indemnity from prosecution for acts performed in their official capacities. Such unqualified indemnity provides scope for the mismanagement of natural resources.

5.1.1 Land Tenure

Laws relating to land tenure are fundamental for the management and conservation of natural resources. Legal instruments governing the acquisition of land for urban and rural development, as well as agriculture and irrigation schemes, are discussed in Section 6.1.1, below.

5.1.1.1 North-West Frontier Province Gomal Zam Project (Control and Prevention of Speculation in Land) Ordinance 2002

This Ordinance prohibits the transfer of property in the Gomal Zam Project area. The Provincial Government has the power to demarcate a project area and may do so by issuing a notification in the Official Gazette. This 2002 Ordinance is the re-activation of the North-West Frontier Province Gomal Zam Project (Control and Prevention of Speculation in Land) Ordinance 1971, issued when the Government restarted the project.

5.1.1.2 Land Reforms (North-West Frontier Province Amendment) Act 1972

This Act amends the federal Land Reforms Regulation 1972 in its application to the NWFP, but contains no provisions related to natural resource management.

5.1.1.3 NWFP Land Reforms Rules 1972

These Rules were framed by the Land Commission under paragraph 6 of the federal Land Reforms Regulation 1972, which aims to improve the economic condition of the rural population by "making agriculture a profitable vocation" but does not specify how this is to be done.

The 1972 Rules, which apply to all of the NWFP except for the Federally Administered Tribal Areas, deal with litigation pertaining to agricultural land and make a number of minor modifications to the federal Regulation as it applies to the NWFP. They focus on procedural matters, awarding the Chief Land Commissioner and Land Officers the authority to implement the provisions of the Regulation and exercise the powers of a civil court.

5.1.1.4 West Pakistan Land Utilization Ordinance 1959

The Collector has broad powers under this Ordinance to administer the use of waste land and arable land for growing food and other crops. If cultivable land shown in the Revenue Register has not been cultivated for two consecutive years, the Collector may order the land to be cultivated within a period of two years from the time of the order. If this is not done, the land may be taken on lease and possessed for the purpose of reclamation (Sections 3 and 4). The Collector has discretion to grant and terminate leases (Sections 12 and 13). When a lease expires or is terminated, the land may revert to the owner or the owner may specify that the Government retain possession (Section 18). The Collector and the Government may delegate their powers to specified persons (Section 22).

5.1.1.5 West Pakistan Land Reforms Rules 1959

These Rules, issued under the West Pakistan Land Reform Regulation 1959, specify the implementation powers of the Chief of the Land Commission. The procedure for appealing an order of the Chief of the Land Commission and/or subordinates is set out in Chapter IV. The Rules give Land Commission officers judicial powers.

5.1.2 Forests/Timber

When Pakistan attained independence from British rule in 1947, the Forest Act 1927 was in force in most of the country except northern Balochistan (to which the Balochistan Forest Regulation 1890 was applicable). The NWFP Hazara Act 1936 had been enacted specifically for the now-defunct Hazara division of the NWFP, while the 1927 Act was extended to the Provincially Administered Tribal Areas of Chitral, Dir, Kalam, Swat and Malakand in 1974. The 1927 Act does not apply to FATA, which covers 2.76 million hectares along the border with Afghanistan.

The subject of forests was included in the Provincial Legislative List of the Government of India Act 1935, and in the 1956 Constitution. However, it was not mentioned in the Central Legislative List of the 1962 Constitution or in either of the legislative lists of the 1973 Constitution. As a result, according to the residuary rule, forestry has become an exclusively provincial subject. Provincial assemblies may amend the Forest Act 1927 or enact new forestry laws for their respective provinces. In 2002, the NWFP adopted the North-West Frontier Province Forest Ordinance 2002, repealing the 1927 Forest Act in its application to the NWFP, the Hazara Forest Act 1936, Kohat Mazri Control Act 1953 and North-West Frontier Province (Sale and Sawing of Timber) Act 1996. All rules and notifications issued under the repealed laws remain in force to the extent that they are consistent with the 2002 Ordinance.

Although "farm forestry" has been devolved to the district level under the LGO 2001, the forest sector itself remains under the jurisdiction of the Provincial Government. Forest resource management and related functions are carried out by forestry and revenue officials, as well as other officers nominated by the Provincial Government.

Existing forest laws do not allow for classification based on species or conservation status. The law contains limited definitions, leaving the details to be worked out through statutory rules that are often not made or not accessible to the public.

5.1.2.1 North-West Frontier Province Forest Ordinance 2002

The Forest Ordinance 2002 consolidates the law related to forests in the NWFP and has been extended to PATA. Prior legislation on the subject, such as the Forest Act 1927, Hazara Forest Act 1936, Kohat Mazri Control Act 1953 and NWFP (Sale and Sawing Timber) Act 1996, is repealed. Laws that have not been specifically repealed by the 2002 Ordinance remain in force to the extent that they are consistent with the provisions of the new Ordinance. In case of inconsistency, the 2002 Ordinance prevails.

The Ordinance defines the phrase "sustainable development", to mean development that meets the needs of the present generation without compromising the ability of future generations to meet their needs—one of the most important principles of environmental law. However, the Ordinance is not clear about the specific steps to be taken in order to materialise this principle in the context of forest management.

While retaining salient features of the Forest Act 1927 and NWFP Hazara Forest Act 1936 relating to reserved forests, protected forests and guzara (wasteland) forests, the 2002 Ordinance also contains important new provisions relating to social forestry:

- i. Government owned/managed forests are to be managed in accordance with forest management plans prepared with the involvement of local communities and other interested parties "as may be possible";
- ii. the Government is to "facilitate" participation of village communities and interested parties in the sustainable development of forests and wastelands, and "will make efforts" to encourage women to participate in the management process;
- iii. commercial harvesting of timber will be permitted only in accordance with approved management plans or regeneration schemes which ensure participation of communities, including women, "as far as possible or practicable", and which alleviate the hardship of particular segments of society, such as women and nomads;
- iv. the Forest Officer may enter into agreements for the joint management of forests and wastelands with community organisations;
- v. the Forest Officer may assign rights of management over any protected forest, guzara forest or protected wasteland to any village forest community, village organisation or Joint Forest Management Committee; and
- vi. the Forest Department may lease out forests or wastelands for specified purposes, including social forestry.

The Ordinance classifies four types of forests on the basis of management as well as the nature of proprietary rights in those forests. The Provincial Government may declare any forest or

wasteland to be a (1) reserved forest (forest which is either the property of the Government or over which the Government has propriety rights) and appoint a board to manage and preserve a reserved forest. The Government may assign a reserved forest or rights over a reserved forest to a village community, and such forests are known as (2) village forests. The Government may make rules to provide for the management of village forest and lay down conditions on the basis of which the assignment of reserved forest will be made to village communities, but no such rules have so far been made. The Government may also declare forest other than reserved as (3) protected forest, with management vested in the Forest Department. Guzara forests (4), meanwhile, are wastelands that are managed by the Forest Department for the purpose of meeting the requirements of landowners and rightsholders.

The Ordinance contains provisions to regulate the sale and sawing of timber, and its transport. It also governs non-timber forest products—for example, the management and protection of mazri, the dwarf plant (*Nannorrhops Ritchieana*), which is used to make rope, thread, furniture and household items.

Under the Ordinance, the entire forest establishment, including Forest Officers and Divisional Forest Officers but excluding ministerial staff, constitutes a "Forest Force" for forest protection, vested with powers to arrest, search and apprehend offenders under the Ordinance. The Ordinance contains penalties to deal with offences related to cutting, felling, uprooting trees, encroachment and construction within a forest. It is a crime to pollute the soil or dump sewage, domestic waste and industrial waste in a forest. The Ordinance contains an indemnity from prosecution clause (Section 111).

5.1.2.2 North-West Frontier Province Local Government Ordinance 2001

Although this Ordinance deals primarily with the reorganisation of local government and devolution of powers to the district level (see section 4.3.2.1, above), the law also makes reference to timber harvesting activities. Under sections 141, 144 and 145 read with Part I of the Fourth Schedule, it is an offense to cut timber in a manner that endangers or is likely to endanger passersby or people living or working in the vicinity. No other provisions are made regarding forests. Penalties extend to a maximum three years in prison and/or a fine of 15,000 rupees.

5.1.2.3 North-West Frontier Province Forestry Commission Act 1999

This Act establishes a Forestry Commission and a Forestry Roundtable. The primary purpose of the Commission is to protect, manage and develop forests in the province. It formulates a framework for forest management, and oversees the process of institutional and legislative reform. The Commission reports to the Chief Minister and minister-in-charge, but has the power to take suo moto action to investigate matters related to forestry (Section 10(g)).

The Forestry Roundtable acts as a think tank and resource pool for the Commission, performs advisory functions and resolves conflicts between stakeholders.

5.1.2.4 Hazara Forest (Amendment) Ordinance 1997

Promulgated by the NWFP Governor under Article 128 of the Constitution, this Amendment Ordinance enables village communities to participate in the management of a reserved forest. Until the 2002 Ordinance, this was the only law pertaining to forests and timber that provided for community participation. The form and extent of participation are left undefined. The Community Participation Rules proposed to be prescribed under the new Ordinance will extend the principles contained in this Ordinance to "such areas/forests as the Chief Conservator of Forests may consider necessary".

This Ordinance remains in force despite the promulgation of the NWFP Forest Ordinance 2002, repealing the Hazara Forest Act 1936, to the extent that its provisions are consistent with the new Ordinance.

5.1.2.5 North-West Frontier Province (Conservation and Exploitation of Certain Forests in Hazara Division) Ordinance 1980

This Ordinance terminates all prior contracts or agreements for the extraction of timber and other forest produce. The Provincial Government has the power to make rules to carry out the purpose of the Ordinance. The law contains an indemnity from prosecution clause (Section 6). Although the Hazara division is now dissolved, this Ordinance remains in force to the extent that its provisions are consistent with the Forest Ordinance 2002.

5.1.2.6 North-West Frontier Province Forest Development Corporation Ordinance 1980

This Ordinance establishes the Forest Development Corporation, which is responsible for the commercial and scientific exploitation of forests, and the sale of forest produce. The corporation is empowered to establish primary wood processing units. This Ordinance includes an indemnity from prosecution clause (Section 21).

5.1.2.7 Hazara Forest and Local Government Laws (Amendment) Ordinance 1978

This Ordinance amended the 1936 Hazara Forest Act, which has now been repealed by the 2002 Forest Ordinance. Although the 1978 Ordinance was not specifically repealed by the 2002 Ordinance and is therefore technically still in force, its provisions are not operative.

5.1.2.8 North-West Frontier Province Establishment of Sale Depots and Sawing Units Rules 1975

These Rules require that all depots and mills be registered with the Forest Division. Depots are also required to register their hammer marks, and furnish details regarding the origin of the timber being processed. Violation of the rules carries a punishment of imprisonment and/or a maximum fine of 500 rupees.

5.1.2.9 North-West Frontier Province Forest Produce Transport Rules 1975

These rules were framed under Section 41 of the Forest Act 1927 and apply to all of the NWFP (including PATA). Although the NWFP Forest Ordinance 2002 repeals the 1927 Forest Act in its application to the NWFP, these rules remain in force to the extent that they are consistent with the new ordinance.

The Rules govern the transport of timber, firewood and other forest produce, and allow the chief conservator of forests to set up checkpoints and roadblocks in order to monitor the transport of forest produce (Rule 9). They also establish procedures for obtaining transport passes.

Violation of the Rules is punishable with imprisonment for up to six months and/or a maximum fine of 500 rupees.

5.1.2.10 North-West Frontier Province Management of Protected Forests Rules 1975

These Rules were framed under Section 32 of the Forest Act 1927 in order to manage and conserve protected forests in Chitral, Dir, Kalam and Swat as well as the Malakand Protected Area. Although the 1927 Forest Act in its application to the NWFP has been repealed by the NWFP Forest Ordinance 2002, these Rules remain in force to the extent that they are consistent with the new Ordinance.

Trees cannot be felled or removed from the forests to which these Rules apply, except with written permission from the Conservator of Forests Malakand or the area Divisional Forest Officer. Trees may be granted free of cost to landowners or rightsholders for domestic use, subject to availability and up to the limit specified in the Forest Department's sanctioned working plans. This provision does not apply to Kalam and Swat, where the limit for grants is set out in the second schedule appended to the Rules. Requests for grants must be made in writing to the area Range Officer, who forwards the application to the Tehsildar, the chief officer entrusted with local revenue administration of a tehsil or sub-division (Land Revenue Act 1967, Section 11). The Tehsildar may choose to obtain the consent of the jirga (council of rightsholders or landowners in a village) before arriving at a decision. Under the LGO 2001, the post of Tehsildar has not been abolished. The Tehsildar retains powers in matters related to revenue, but administrative powers other than revenue matters have been withdrawn. The Range Officer's post has not been affected by the LGO.

According to the Rules, only trees between 24 and 30 inches in diameter may be granted. Standing deodar trees cannot be granted for domestic use except in Kalam, upper Indus Kohistan, Dir, Kohistan and Chitral. Wind-felled trees may be granted and are counted against the quota specified in the schedule appended to the Rules.

The Rules contain specific instructions regarding the procedure for marking trees, the timeframe within which marked trees are to be felled, and the purpose for which such timber may be used. The

Rules describe various types of contracts through which trees may be sold at commercial rates or granted at concessionary rates. Rule 15 requires those to whom trees have been granted to plant new trees and tend to them.

According to Rule 19, commercial sales are to be conducted in accordance with sanctioned working plans. The Rules also specify the share of sale proceeds that is to be distributed amongst rightsholders.

Violation of the Rules was originally punishable under the Forest Act 1927, with imprisonment and/or a fine. Since the 1927 Act in its application to the NWFP has been repealed by the 2002 Forest Ordinance, punishments will now be meted out in accordance with the 2002 Ordinance.

5.1.2.11 Hazara District Protected Forest Rules 1973

Framed under the 1927 Forest Act, these Rules are consistent with the 2002 Ordinance and remain in force. They cover matters related to the cutting of trees and issuance of licenses for this purpose, as well as other associated issues.

5.1.2.12 NWFP Forest Officers Powers, Duties and Rewards Rules 1973

These Rules, framed under the 1927 Forest Act, remain in force under the 2002 Ordinance. They assign powers to various officials of the Forest Department. In addition, rewards are to be given to those who help a forest official in arresting offenders under the penal provisions of forest laws and confiscating illegally removed forest produce.

5.1.2.13 North-West Frontier Province Timber Market (Peshawar) Ordinance 1972

For the purpose of this Ordinance, the definition of timber is restricted to bamboo. The Ordinance establishes timber markets in the province and allows the Government to acquire land for this purpose. According to Section 8, the provisions of this Ordinance cannot be questioned in a court of law. It is worth nothing that similar clauses are included in a number of laws but have very little practical significance because questions of jurisdiction are always open for the civil courts to decide.

5.1.2.14 West Pakistan Firewood and Charcoal Restriction Act 1964

This Act prohibits the burning of firewood or charcoal in any factory, kiln or other site the Government may specify by notification. Forest officers, after obtaining a warrant, may arrest persons suspected of committing an offense under this Act, and may seize the firewood and/or charcoal involved with the offense. See also Section 6.1.4 on Non-extractive Industry.

5.1.2.15 Forest Transport Rules 1952

Framed under Section 29 of the Hazara Forest Act 1936, these Rules regulate the transport of forest produce in the Hazara district. Although the Hazara Forest Act 1936 has been repealed by the NWFP Forest Ordinance 2002, these Rules remain in force.

Forest produce, including timber and firewood, cannot be transported without a pass issued by the Forest Department, stating the quantity of wood being transported, name of owner, place of origin and destination of consignment. All timber must be hammer-marked, unless an exemption has been granted. Offences are punishable by up to six months in prison and/or a maximum fine of 500 rupees.

5.1.2.16 River Rules 1952

Framed under Section 41 of the Forest Act 1927 and Section 29 of the Hazara Forest Act 1936, these Rules regulate the transport of timber via those stretches of the Indus and its tributaries, as well as the Kabul and Swat rivers that flow in Hazara, Kohat, Mardan and Peshawar districts. Although the Acts of 1927 and 1936 have been repealed by the NWFP Forest Ordinance 2002, these Rules remain in force.

Timber cannot be imported into Hazara District via the rivers mentioned above without a pass issued by the Forest Officer in charge of these rivers, who may allow timber to be set afloat and collected at certain specified locations. All timber must be marked before it is set afloat, and the mark must be registered with the concerned Forest Officer.

It is prohibited to cut, move, remove, sell or conceal timber, and to mark, alter or remove the mark on timber while it is in transit or adrift on these rivers, or if it is stranded on any bank or island of these rivers within the limits of the districts governed by these Rules. Violation of the Rules is punishable with up to six months in prison and/or a fine.

5.1.2.17 Hazara Management of Waste Land (Guzaras) Rules 1950

These Rules were framed under Section 53(1) of the Hazara Forest Act 1936, which has now been repealed by the NWFP Forest Ordinance 2002. These rules nevertheless remain in force, to the extent that they are consistent with the new ordinance. In cases of inconsistency, the provisions of the new Ordinance override.

According to the Rules, the Conservator of Forests exercises the powers of a Deputy Commissioner and has full authority to issue instructions regarding the administration of wasteland, assisted by the Divisional Forest Officer, as well as technical and subordinate staff. The LGO 2001 does not affect the post of Divisional Forest Officer, whose functions are normally of an administrative nature. The post of Deputy Commissioner has been abolished, however, and these Rules have not been amended to reflect the current administrative set-up.

Trees in Hazara District cannot be cut or removed without prior permission from the Conservator, who has vast discretionary powers to permit a number of other forest-related activities as well, including the cutting or removal of green wood, collection of wood for domestic use, sale of dry wood, production and sale of charcoal, and gathering or removal of medicinal herbs.

It is prohibited to damage a tree in any way, or to make a gift of trees for the purpose of onward sale. Violations are punishable with imprisonment for up to six months and/or a maximum fine of 500 rupees.

5.1.2.18 North-West Frontier Province Protection of Trees and Brushwood Act 1949

This Act extends to the whole of the NWFP and protects trees and brushwood owned by the government as well as local bodies, the latter defined to include municipal committees, area committees, cantonments and district boards. With the establishment of the new local government system, however, many of these local government bodies have been dissolved and the law has yet to be amended to reflect the new institutional arrangements.

Cutting down or damaging trees and brushwood is prohibited, and causing damage by fire or by allowing cattle to graze in the area is an offense. This law holds residents accountable for crimes committed in their areas. Those residing in the vicinity of trees or brushwood, as well as local landowners and occupants, are required to furnish to the nearest police officer or magistrate any information they may possess about the commission of offences under the Act. Failure to do so is punishable with imprisonment for up to three years and/or a fine.

The Provincial Government cannot impose a fine without first serving a show cause notice. Officials have been designated to hear appeals in such cases. Under Section 7, the Provincial Government in 1976 named the Abbottabad and Malakand Conservators of Forests as the authorities before whom representatives of a village, landowner or occupant may show cause in their respective circles. So far, only the notification regarding Abbottabad and Malakand has been identified, leaving the situation in other districts unclear. The Abbottabad and Malakand forest Conservators are responsible for hearing cases only in their respective areas.

Section 7 also allows the Provincial Government to frame rules to carry out the purposes of the Act, and to authorise officials to grant exemptions from the provisions of the Act. No criteria for exemptions have been provided in the law. Punishments for forest offences include three years imprisonment and/or a fine, the amount of which has not been specified.

5.1.3 Fisheries

The two legal instruments governing fisheries in the NWFP are both exploitation-oriented, dealing primarily with fishing licences and leases. These instruments are more than 25 years old and do not provide for the identification of endangered species or the classification of fish species according to their conservation status. Size restrictions set out in the 1976 Fisheries Rules may operate as protective measures, even if they were not intended to serve that purpose.

**5.1.3.1 West Pakistan
Fisheries Ordinance 1961**

This Ordinance provides for the management of fisheries in the NWFP, amending and consolidating prior laws on the subject. It extends to the whole of the province except for the Tribal Areas.

The 1961 Fisheries Ordinance establishes mechanisms to manage the exploitation of fisheries resources. The Provincial Government appoints various officials to issue fishing leases and licenses, sell fish, and enforce the Ordinance with powers of search and seizure. The Provincial Government may subdelegate its powers.

Among the mechanisms used to manage fisheries resources are prohibitions on certain methods of fishing, such as with the use of explosives or poison, and restrictions on the size of fish that may be caught. The first schedule to the Ordinance contains a list of fish species and specifies the size of individual specimens that may be caught. This list is by no means exhaustive and does not categorise species according to their conservation status. There is no restriction on catching endangered species. The Ordinance contains no provisions to regulate the development and protection of fish hatcheries and fish market in the province. Fines imposed under this Ordinance are outdated and too low to constitute a deterrent.

**5.1.3.2 North-West
Frontier Province
Fisheries Rules 1976**

Framed by the Provincial Government under Section 26 of the West Pakistan Fisheries Ordinance 1961 (see 5.1.3.1 above), these Rules govern the conservation and management of fisheries in the province.

Fishing licences and leases are issued by the Director of Fisheries. Rivers, lakes, reservoirs, water tanks, ponds and canals may be leased for the purpose of fishing. Sub-leases are permitted, but licences are not transferable.

Licence holders are not permitted to construct dams or weirs, or to divert water. Any fishing apparatus used or installed in contravention of the Fisheries Ordinance or these Rules is to be seized, and offenders are to be prosecuted. Fish caught illegally may be auctioned by the Government, and the licences of offenders will be cancelled. Licence- and leaseholders are required to report to fisheries officials any infraction of the rules that may come to their notice.

Limits are fixed on the size of fish that may be caught. In the case of trout, specimens smaller than nine inches in length must be released. Other species of fish mentioned in the schedule must be released if they are less than 12 inches in length. No more than five fish of any species may be caught in a single day from the areas mentioned in Appendices II, III and IV to the Rules, including Charsadda, Dir, Mardan, Peshawar and Swat as well as Malakand Agency.

5.1.4 Wildlife/Fauna, Non-timber Flora

The NWFP Wildlife Act does not specify which office or authority is responsible for the management, protection or conservation of wildlife, providing for the establishment of the NWFP Wildlife Management Board whose functions are merely advisory. The exceptions mentioned in Sections 22 and 44 allow even protected species to be killed under certain circumstances, clearly demonstrating that in the eyes of the law, crops and livestock receive priority over wildlife. The Act regulates hunting, but makes no provisions for the protection or sustainable use of wild animal resources, or the conservation of ecosystems that support their habitat. Fines established under the Act are outdated. The 1976 Amendment to the Wildlife Act reduces the protection available for bird species.

5.1.4.1 North-West Frontier Province Wild-life (Protection, Preservation, Conservation and Management) Act 1975

Despite its title, this Act focuses primarily on hunting. It prohibits the use of certain weapons and methods of hunting, including the use of drugs or chemicals to incapacitate an animal. Except in the case of ducks, hunting between sunset and sunrise is restricted. The Third Schedule to the Act contains a list of protected species which may not be hunted or killed. Under Section 22, it is not an offense to kill a wild animal, even if it belongs to a protected species, in self-defence, in defence of another person, or in the case of damage to crops or livestock. In the case of protected species, however, any animal killed defensively is the property of the Provincial Government. In addition, the Government itself may authorise the killing or capturing wild animals for scientific or "public" purposes. The Act requires a permit for import, export, lawful possession and trade in wild animals, carcasses and trophies.

Section 4 of this Act established the North-West Frontier Province Wild-life Management Board, which was notified in January 2000 (notification No.SOFT: 4(FFD) VIII.22, January 2000). The Board advises the Provincial Government on policy matters related to game management as well as the conservation and development of wildlife, and reviews wildlife conservation and game management schemes.

The Government may, by means of a notification in the Official Gazette, empower an officer to compound wildlife offences. Seized property may be released upon payment of its value, as estimated by the officer. Punishments under this Act vary, with maximum penalties being two years in prison and/or a fine of 1,000 rupees.

5.1.4.2 North-West Frontier Province Wild-life (Protection, Preservation, Conservation and Management) (Amendment) Act 1976

This Act amends the NWFP (Protection, Preservation, Conservation and Management) Act 1975 (see 5.1.4.1 above), particularly Section 8 as well as Schedules 1 and 3. The Amendment removes the restriction placed on the hunting of ducks by means of decoys and birdcalls, and extends the hunting season by several months.

5.1.5 Protected Areas

There is no national system of protected areas in Pakistan. Protected areas, including "national" parks, are to be designated as such by the Provincial Government under the 1975 Wild-life Act.

5.1.5.1 North-West Frontier Province Wild-life (Protection, Preservation, Conservation and Management) Act 1975

According to Sections 15–19, the Provincial Government has the power to designate certain areas as wildlife sanctuaries, game reserves, national parks and private game reserves. No criteria or guidelines are provided for selecting areas to be so designated.

National parks. Under Sections 16 and 18, the Provincial Government has so far designated the following areas as national parks:

- i. Ayubia National Park (notification No.SOFT.I (FFD) VIII-10/97-98 Vol.XII. Peshawar, 3 February 1998);
- ii. Sheikh Buddin National Park (notification No.SOFT.I(FFD)VIII-8/90, 6722-62. Peshawar, 15 July 1993); and
- iii. Chitral Gol National Park (notification No.SOFT.I(FAD)VIII-22/79/30875-99. Peshawar, 18 October 1984).

Wildlife sanctuaries. Under Section 15, the Provincial Government declared the following areas as wildlife sanctuaries:

- i. Manshi Reserved Forests, Borraka, Manglot (notification No.SOFT(FAD)VIII-8/76); and
- ii. Agram-Besti (notification No.SOFT(FAD)VIII-10/76/8723-48) to be.

Game reserves. Under Section 17, a number of areas have been designated game reserves, including:

- i. Bagra (notification No.SOFT.I(FAD)VIII-8);
- ii. the Mankhnial Reserve Forest (notification SOFT(FAD)VIII-8/76);
- iii. Qalandarabad (notification SOFT(FAD)VIII-8/76 Vol.II); and
- iv. Nizampur, Thandar Wala and Risi (notification No. SOFT(FAD)VIII-8/76).

Private game reserve. Under Section 19, the Kaigah Nullah Community Conservation Area has been declared a private game reserve (notification No.SO(FT-I)FFWD/VIII-10/92. Peshawar, 15 July 2000). This reserve is managed by the local community.

5.1.5.2 North-West Frontier Province Private Game Reserve Rules 1993

Framed under Section 43(1) of the North-West Frontier Province Wild-life (Protection, Preservation, Conservation and Management) Act 1975 (see 5.1.5.1 above), these Rules specify the mechanisms for declaring and managing private game reserves, which may be owned by an individual, family, tribe or village community. The purpose of a private game reserve is to carry out captive breeding for sport hunting, and to allow for biodiversity conservation. The area of land set aside for a private game reserve must be at least 50 acres. While it is managed and protected by the owners, the Wildlife Department provides assistance wherever possible.

Even though these are private reserves, it is prohibited to hunt game animals without a general small game shooting licence issued by the Forest Department. In addition, private reserve owners may issue special permits for a fee, 25 per cent of which goes to the Government. Within the limits of a private game reserve, owners exercise the same powers as those of an officer responsible for the management of a public game reserve. Hunting protected species is not permitted.

5.1.6 Freshwater

A 1958 Act creates the Water and Power Development Authority and gives it broad, cross-sectoral powers to regulate all aspects of freshwater resource management, as well as limited authority to implement schemes for the conservation of forests and catchment areas. Except for the relatively recent LGO 2001 and River Protection Ordinance 2002, no other legal instruments deal with the dumping of human waste and other pollutants into freshwater sources. Existing law provides for drinking water supply—but not purification—in rural areas, but does not cover urban areas.

5.1.6.1 North-West Frontier Province River Protection Ordinance 2002

This Ordinance provides for the protection of aquatic ecology and water quality, as well as the economic and environmental value of rivers and tributaries in the NWFP.

Carrying out construction or any other development work, whether for commercial or non-commercial purposes, is prohibited within 200 feet of the high water mark of rivers or their tributaries, and in any area between the banks of a river. Effluents may not be discharged into any river or tributary in excess of the amounts specified in the Federal Government's National Environmental Quality Standards. Dumping solid waste and hazardous waste into a river or tributary is prohibited. The Government may, from time to time, add to the list of substances that cannot be dumped.

This Ordinance enables the Government to prepare land use and zoning plans for the catchment area of any river or tributary to which this Ordinance applies, and to require mandatory compliance with such plans.

The Government is empowered to make new regulations or apply existing building regulations to control construction in the catchment area of any river or tributary. The term "catchment area" is not defined in the Ordinance; it generally understood to mean land receiving and storing water from rains and other forms of precipitation, and feeding the surplus water either as surface runoff or as sub-surface discharges, into a river.

Owners and managers of hotels and other buildings standing within 200 feet of the banks of a river must ensure that waste is disposed of by means of a septic tank, soakaway or other appropriate arrangements to the satisfaction of the concerned government official, who has the power to inspect any building or structure within 200 feet of the banks of a river in order to ensure adequate sanitation arrangements have been made.

The Ordinance allows officers to investigate complaints regarding offences and conduct inquiries, assisted by the police. Punishment under this Ordinance includes imprisonment for up to six months and/or a maximum fine of 500,000 rupees.

**5.1.6.2 North-West
Frontier Province
Local Government
Ordinance 2001**

This Ordinance deals primarily with the reorganisation of local government and devolution of powers to the district level (see section 4.3.2.1, above). However, the law also provides for some measure of protection for freshwater resources. Under sections 141, 144 and 145 read with Part I of the Fourth Schedule, it is an offense to discharge dangerous chemicals or hazardous materials into drains or public water courses. Industrial and commercial concerns are required to dispose of effluent safely, and to ensure that effluents are not allowed to contaminate the water supply. Violation of these provisions is punishable with a maximum term of three years in prison and/or a fine of 15,000 rupees. The Ordinance also provides for clean drinking water, applying the same penalties to the sale or supply of contaminated water.

**5.1.6.3 North-West
Frontier Province
Irrigation and Drainage
Authority Act 1997**

This Act establishes the Irrigation and Drainage Authority that provides for cooperation between government departments in matters related to irrigation and drainage in the province. The Authority has the power to formulate policy regarding the improvement of water resources, and the irrigation and drainage infrastructure. Section 35 provides officials indemnity from prosecution.

**5.1.6.4 North-West
Frontier Province Salinity
Control and Reclamation
of Land Ordinance 1987**

This Ordinance aims to facilitate schemes for the drainage of sub-surface water, making it the responsibility of the Irrigation and Public Health Engineering Departments to install sub-surface drains. These departments also prepare schemes for salinity control and land reclamation.

Deep-rooted trees cannot be planted within the area of a salinity control or reclamation scheme without permission from the Secretary of the concerned department. Written permission to erect a building or any other permanent structure in a scheme area must be obtained prior to construction. Sections 5(2) and 5(3) specify conditions under which permission may be granted to plant deep-rooted trees or build in a project area. Permission may be granted if the concerned department Secretary is satisfied that the tree or trees being planted do not damage or obstruct sub-surface drains. Section 12 of the Ordinance grants officials indemnity from prosecution.

**5.1.6.5 North-West
Frontier Province Rural
Area Drinking Water
Supply Scheme Act 1985**

This Act facilitates the execution of schemes for drinking water supply to rural areas. Such schemes are to be administered by the successor to the Public Health Engineering Department, as designated under the LGO 2001. Disconnecting or damaging a pipeline, or using the water supplied for any purpose other than

human consumption, is punishable with imprisonment for three months and/or a fine. The Act makes no provision for the treatment of water. Section 11 of this Act provides officials indemnity from prosecution.

5.1.6.6 North-West Frontier Province Water Users' Associations Ordinance 1981

This Ordinance provides for the formation, operation and promotion of Water Users' Associations to manage watercourses, tubewells and drainage facilities. In logistical, financial and administrative matters related to irrigation, the concerned government departments and offices are to give preferential treatment to these Associations, which are registered and organised under this Ordinance.

Associations set up water delivery schedules, supervise water allocation and distribution, and may be assisted by officials responsible for on-farm water management. Watercourse users pay the government a percentage of the total costs of repair and maintenance work on a watercourse. In case of damage to watercourses or canals, an Association has the power to levy fines that are recovered as arrears of land revenue.

5.1.6.7 West Pakistan Water and Power Development Authority Act 1958

This Act provides for the unified and co-ordinated development of the freshwater and power resources of Pakistan. It establishes the Water and Power Development Authority (WAPDA) and sets out its powers and functions.

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

Under Section 8(1)(vi), WAPDA may frame schemes to provide for "the prevention of any ill-effects on public health" resulting from its activities. This clause serves, indirectly, to regulate water quality. In addition, WAPDA is empowered to take limited steps for natural resource conservation. Under Section 13(2)(d)(ii), it may direct owners of private land to "undertake anti-erosion operations, including conservation of forests and re-forestation [sic]". Similarly, Section 13(2)(e) allows WAPDA to "restrict or prohibit by general or special order the clearing and breaking up of land in the catchment area of any river".

Although the Act provides for preventing adverse effects on public health, it does not specifically provide for regulating or monitoring the impacts of its own operations on natural resources or the environment. Amendments adopted in 1964 and 1967 deal with purely administrative issues.

5.1.6.8 Canal and Drainage Act 1873

This federal law regulates irrigation, navigation and drainage. It specifies rates to be charged for canal water supplied for purposes of irrigation, and provides for charges to be levied and penalties incurred on account of waste or unauthorised use. All powers under this Act, including the power to make rules, have been delegated to the provinces.

The Act 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 collections of still water. The Provincial Government may prohibit obstructions or order their removal if they appear to be causing harm or injury to land, public health or public convenience.

The Act provides for the construction and maintenance of works related to canals, and empowers Canal Officers to enter and survey land for this purpose. Canal Officers have magisterial powers and 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). Under the provisions of Section 70, it is an offense to "corrupt" or "foul" the water in a canal. Offenders are liable to a fine of 500 rupees and/or one month imprisonment. 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 NWFP.

5.2 Court Decisions

All decisions of the Peshawar High Court related to natural resources deal with forests, and specifically the application of the Hazara Forest Act 1936, which has now been repealed by the NWFP Forest Ordinance 2002. In two cases, the Court strictly interpreted the law and decided in favour of the petitioner. In the most recent case, the Court avoided providing a remedy, referring the issue back to the legislature for resolution.

5.2.1 Syed Rahim Shah vs. Government of NWFP and Others, PLD 1982 Peshawar 93

The petitioner challenged the powers of the Forest Authority to compound offences under Section 45 of the Hazara Forest Act 1936. The Court held that the relief sought by the petitioner could not be granted, refusing to question the wisdom of the legislature in including Section 45 in the Act. The court acknowledged the mischief being done in applying Section 45, but said that it was "for the

Government to further analyse the matter and take such decision as may be deemed appropriate to check or arrest the evil caused by the application of Section 45 of the Act."

5.2.2 Syed Aurangzeb Shah vs. Government of NWFP and 2 others, PLD 1975 Peshawar 238

The petitioner, in accordance with the Hazara Forest Act 1936, obtained permission from the Government to cut a certain number of walnut trees. After the trees were felled, an application was made for a transport permit. The Provincial Government refused to issue the permit, based on a federal directive that stated that "cutting of walnut trees has been completely banned by the Government. No fresh marking [is] to be done and trees already marked [are] not to be cut. No permit for the transport of walnut timber [is] to be issued."

The petitioner challenged the validity of the directive in the Peshawar High Court. The court decided in favour of the petitioner, asking the Government to issue a permit because the directive lacked legal support and would have the force of law only after it had been introduced as an amendment to the relevant forest laws and rules.

5.2.3 Qazi Abdul Kafil Khan vs. Faqir and another, PLD 1962 (WP) Peshawar 51

The plaintiffs questioned the validity of an exchange of land with the defendant on the basis of Rule 22, framed under the Hazara Forest Act 1936. Rule 22 restricts the exchange of land in guzara forests. The trial court rejected the plaintiffs' contention that the transaction in dispute violated the provisions of Rule 22.

On appeal to the Peshawar High Court, the main question for decision was the validity of Rule 22. The High Court held that the statute should be strictly interpreted. Rule 22 went beyond the letter and spirit of the law it was adopted to implement and was therefore invalid.

06

Laws and Judicial

Decisions

Governing

Processes and

Institutions that

affect Natural

Resources and

Natural Resource

Management

6.1 Legal Instruments–Introduction

Provincial legislation governing processes and institutions that affect natural resources is on the whole relatively modern. Nevertheless, with few exceptions, contemporary concepts of sustainable management of natural resources are not integrated into legislation governing sectors that have substantial impact on natural resources, such as agriculture and mining.

6.1.1 Urban Development/Rural Development

Neither urban nor rural development is mentioned in the Federal or Concurrent Legislative Lists. Under the residuary rule, such matters fall under the legislative authority of the Provincial Government.

Rural and urban development in the North-West Frontier Province (NWFP) is governed by a significant number of legal instruments covering issues as diverse as river management and housing schemes. Existing legislation creates institutional authorities to administer development schemes but provides few specific criteria or guidelines. The law does not provide for the participation of citizens or representative bodies, such as the Chamber of Commerce and Industry, in designing development projects that affect them. The powers and responsibilities of various layers of bureaucracy overlap in certain instances. For example, the Galiyat and Kaghan Development Authorities perform certain functions under their respective laws, which include preparing and implementing schemes for education, health, agriculture, industry, forests, land management and irrigation. These authorities are also empowered to levy and collect taxes with the permission of the Government. However, activities in the field of education, health, agriculture and urban development are also the responsibility of local bodies under the NWFP Local Government Ordinance (LGO) 2001.

Under the LGO, administrative and financial authority in certain areas previously controlled by the Provincial Government is now in the hands of district-level offices. Some laws have already been modified to bring them into accordance with the new local government structure, but many more legal instruments laws are yet to be amended (see section 4.3.2.1).

6.1.1.1 NWFP Urban Development Board (Dissolution) Ordinance 2002

This Ordinance repeals the Provincial Urban Development Board Ordinance 1978 and dissolves the Board created under the 1978 Ordinance. The district government, both under this Ordinance and the LGO 2001, is empowered to deal with matters related to urban development. Directions in this regard are normally issued through notification in the Official Gazette. This Ordinance contains no other substantive provisions.

6.1.1.2 North-West Frontier Province Local Government Ordinance 2001

Although this Ordinance deals primarily with the reorganisation of local government (see section 4.3.2.1, above), the law also provides a number of measures to safeguard public health and safety. Under Sections 141, 144 and 145 read with Part II of the Fourth Schedule cutting or trimming a tree or carrying out construction and demolition work in a manner that constitutes a public hazard or "annoyance" is punishable with up to six months in prison and/or a fine of 5,000 rupees. Similar penalties apply to prevent the discharge of sewage or other effluent into streets, irrigation channels or public places. Meanwhile, Sections 141, 144

and 145 read with Part III of the Fourth Schedule prescribes a maximum penalty of one month in prison and/or a fine of 5,000 rupees for a number of similar offences, including: disposing of garbage in any location other than a spot designated for the purpose; allowing sources of drinking water to become polluted; failing to close off a polluted water source; allowing sewage to collect in public places; and "damaging or polluting [the] physical environment, inside or outside private or public premises, in a manner to endanger public health."

6.1.1.3 Galiyat Development Authority Act 1996

This Act governs development in the Galiyat areas, including the education, health and forestry sectors. The Act establishes the Galiyat Development Authority, headed by the NWFP Chief Minister. Through line departments and other agencies, the Authority prepares and implements schemes in the areas of education, health, agriculture, industry, forest conservation and development, wildlife protection, tourism, water supply, landslide management, irrigation, communications, housing, sewerage, drainage, environmental improvement and "slum clearance". The Authority has the power to issue development orders for areas in which a scheme is under preparation, and to restrict changes in land use or alterations to buildings and installations. The Act sets up an Authority Fund consisting of monies received from the federal and provincial governments, and international agencies.

6.1.1.4 Galiyat Development Authority (Amendment) Act 1999

This Ordinance makes minor modifications to the Galiyat Development Authority Act 1996 (see 6.1.1.2 above). The Commissioner of Hazara Division is designated to act as director general of the Authority until a director general is appointed by the Government. Both the post of Commissioner and the Hazara Division have been dissolved. However, as is the case with many laws, this Amendment Act remains to be revised accordingly and in the interim must be read with the LGO 2001.

In terms of procedures, this Amendment Act adds certain conditions to be followed by the Authority while preparing a scheme: the area of a residential plot may be no less than two kanals, the covered area of a residential or commercial plot must not exceed one third of the total area, and no residential building may stand more than two storeys high. The Amendment also requires that Government approval be obtained for the site plan prior to construction.

6.1.1.5 Kaghan Development Authority Act 1996

This Act governs development in Kaghan and other areas of Hazara Division. Its provisions are similar to those of the Galiyat Development Authority Act 1996 (see 6.1.1.2 above). The Hazara Division has been dissolved in the 2001 local government re-structuring.

6.1.1.6 Kaghan Development Authority (Amendment) Act 1999

This Act regulates development and construction in great detail. Residential plots cannot be less than two kanals in size, nor can larger residential plots be subdivided into plots smaller than two

kanals. The covered area of residential or commercial buildings must not exceed one third of the total area of the plot. Residential buildings cannot be more than two stories high and the covered area of the upper floor cannot exceed half the covered area of the ground floor. Construction in the area cannot be carried out unless a detailed plan and site plan is approved by the Authority. Permission must be sought from the Authority before excavation or levelling in the area is carried out (also see 6.1.1.4 above).

**6.1.1.7 North-West
Frontier Province Katchi
Abadis Act 1996**

This Act provides for the regularisation, development and improvement of katchi abadis. A katchi abadi is defined in the Act as "any area or part thereof which was occupied unauthorisedly [sic] before the 23rd of March, 1985, and continue [sic] to be so occupied and has at least forty dwelling units on it" (Section 6); the term is commonly used to refer to temporary settlements or shanty towns.

The Provincial Government appoints a Director General who is empowered to declare a settlement to be a katchi abadi. The Director General implements government policies related to the regularisation, development and improvement of katchi abadis; determines policy implementation guidelines; is responsible for conducting a physical survey and census in these areas; and oversees the provision of civic amenities and services. An implementation committee in each Development Authority or Council assists the Director General and co-ordinates development activities in katchi abadis.

The Act calls for the establishment of a Katchi Abadis Fund consisting of subsidies received from the federal and provincial governments, loans obtained by the Development Authority, as well as other forms of financial assistance.

**6.1.1.8 North-West
Frontier Province
Establishment of District
Development Advisory
Committees Act 1989**

This Act establishes District Development Advisory Committees, consisting of members of the Provincial Assembly as well as representatives nominated by the Government. The NWFP Chief Minister has the power to appoint and remove a Committee chairperson. These Committees formulate and recommend proposals for the district Annual Development Programme, which are forwarded to the Planning and Development Department. Committees also recommend schemes to be implemented under the Rural Development Programme.

In November 1993, the NWFP governor made the provisions of this Act applicable to the Provincially Administered Tribal Areas.

This Act repeals the North-West Frontier Province (Establishment of District Planning and Development Advisory Committees) Act 1987 and the North-West Frontier Province (Establishment of District Development Advisory Committees) Ordinance 1989.

6.1.1.9 North-West Frontier Province Salinity Control and Reclamation of Land Act 1988

This Act facilitates the execution of schemes for sub-surface water drainage. Acting on its own initiative or in response to an application from a landowner or other interested party, the Provincial Government may direct the appropriate departments or delegated officials to prepare salinity control and land reclamation schemes. Irrigation and public health engineering were the responsibility of a single department at the time that this Act was framed. This Act has not been amended to reflect the changes in local government and must be read together with the LGO 2001 and other legal instruments that set out the details of the current administrative structure.

After a scheme is approved by the Government, it is notified in the Official Gazette, following which no construction or tree planting is permitted in the area. Under this Act, it is an offense to erect a building, plant a tree, remove machinery or obstruct work in progress on salinity control or reclamation schemes. Offences are punishable with simple imprisonment for up to three months and/or a maximum fine of 5,000 rupees.

6.1.1.10 North-West Frontier Province Salinity Control and Reclamation of Land Rules 1989

Framed under Section 13 of the NWFP Salinity Control and Reclamation of Land Act 1988 (see 6.1.1.8 above), these Rules require applications for the construction of a salinity control or reclamation scheme to be addressed to a designated officer for screening before forwarding to the appropriate department.

In cases where the Government acquires land for the purpose of executing a scheme and orders a building to be demolished or requires trees to be cut, claims for compensation are made to the designated authority. Permission to plant deep-rooted trees or construct a permanent structure or building within a scheme area is to be obtained from the appropriate department. These Rules have not been amended to reflect the changes in local government and must be read together with the LGO 2001 and other legal instruments that set out the details of the current administrative structure.

6.1.1.11 North-West Frontier Province Housing Facilities for Non-Proprietors in Rural Areas Act 1987

This Act allows the Provincial Government to develop housing colonies in rural areas and to grant land free of charge to non-proprietors for house building. A non-proprietor is defined in Section 2(g) as "a person who is a bonafide resident of the District for which a scheme is prepared under this Act and who or any member of whose family does not own any agricultural land, a house or other immovable property any where [sic] in Pakistan." Committees are to be constituted in each district for the purpose of examining the allotment process.

According to the text of this law, Deputy Commissioners are empowered to cancel allotments in cases where allottees have wilfully provided incorrect information or breached any of the provisions of the Act, while grievances related to allotments and

cancellations are referred to the Commissioner. Both posts originally responsible for implementing this Act have been abolished and their functions re-assigned. As in many other cases, this law needs to be amended in light of the new administrative structure.

**6.1.1.12 North-West
Frontier Province Sarhad
Development Authority
Act 1972**

This Act establishes the Sarhad Development Authority for the purpose of developing commerce and industry in the province, and setting up financial, technical and advisory committees. The Authority is also empowered to explore, exploit and develop minerals and mines (also see 6.1.3.3, below). Although charged primarily with matters related to the development of industry, the Government may assign additional functions to the Authority.

The Authority may, with the prior approval of the provincial and federal governments, borrow in foreign currency from the International Bank for Reconstruction and Development. It is also authorised to sponsor limited companies and sub-delegate its powers.

**6.1.1.13 North-West
Frontier Province New
Irrigation Projects
(Planned Development)
Act 1953**

This Act allows the Provincial Government to develop any local area and acquire land for this purpose. A local area is defined in Section 2(iii) as an area to which this Act applies or is extended; in this case, Bannu district. The Provincial Government may, by notification, extend all or any of the provisions of this Act to any other part of the NWFP. According to available information, this Act has not been extended any other area.

Development for the purposes of this law may involve division, cultivation, deforestation or plantation; raising, lowering or reclaiming land for agricultural production; setting up nurseries, seed farms or pastures; and irrigation works. The Government is responsible for the planning and construction of towns, markets, villages and settlements in a local area, as well as for providing water, street lighting, sanitation and drainage.

According to Section 3(xiii), the Government is empowered to prepare schemes for the "conservation and preservation from injury or pollution" of rivers and other water resources, and to establish educational institutions and dispensaries in local areas.

The Government is to give notice of a proposed scheme, which is published in the Official Gazette. The Government may establish committees to carry out development activities and appoint a "Colonisation Officer" (not defined in the Act) to perform administrative functions which include taking possession of properties required by the Government in a project area, levelling embankments, surveying and excavation, and constructing water channels. Although the post of Colonisation Officer no longer exists, and the officer's functions are performed by officials of the concerned departments, the law is yet to be suitably amended.

This Act provides a lengthy list of activities which are the responsibility of the Provincial Government, but similar functions are now also assigned to the local authorities and bodies following the reorganisation of local government.

6.1.1.14 North-West Frontier Province New Irrigation Projects (Control and Prevention of Speculation in Land) Act 1950

This Act governs new irrigation projects and allows the Government to purchase, lease or rent land in order to execute irrigation projects. It sets out procedures for the evaluation of land that is to be acquired for a project. Alienation of land in a project area is prohibited, except at the discretion of the Government.

The Government is required to maintain registers of land ownership in the project area. It is not clear from the text of the law whether the Government must make a new register of ownership specifically for a project area, or whether it may use the record of rights already maintained under the 1967 Land Revenue Act.

The Government may make rules to carry out the purpose of this Act and determine penalties to be imposed for non-compliance.

6.1.2 Agriculture

Considering that agriculture is not included in either the Federal or Concurrent List and is therefore a provincial subject, NWFP-specific legislation for the sector is minimal. The NWFP Agriculture Authority Ordinance is purely administrative, and the Authority itself was dissolved by the NWFP Agriculture Development Authority (Dissolution) Ordinance. Except for these two NWFP legal instruments, one of which repeals the other, laws governing this sector have been framed by the Federal Government or adopted from the British colonial administration, and operate as provincial laws.

6.1.2.1 North-West Frontier Province Agricultural Development Authority (Dissolution) Ordinance 2001

This Ordinance dissolves the Agricultural Development Authority by repealing the 1980 Agricultural Development Authority Ordinance, which was created in 1980 to facilitate commercial agriculture. The assets of the Authority are transferred to the Government, which is empowered to establish a committee for the purpose of summing up the consequences of the dissolution of the Authority. Employees of the Authority are to be dealt with in accordance with the terms and condition of their appointment.

6.1.2.2 North-West Frontier Province Local Government Ordinance 2001

Besides dealing with the reorganisation of local government in the province (see section 4.3.2.1, above), this Ordinance also regulates some aspects of agricultural activity. Under sections 141, 144 and 145 read with Part I of the Fourth Schedule, agricultural crops intended for public consumption may not be irrigated or fertilised with sewage water. Violation of this provision is punishable with a maximum term of three years in prison and/or a fine of 15,000 rupees.

6.1.2.3 Seed Act 1976

This federal Act, which operates as a provincial law, establishes the National Seed Council and Federal Seed Certification Agency. The Council is responsible for maintaining the genetic potential of "basic seeds" (defined in Section 2(b) as seeds "produced by an organisation set up by a Provincial Government for the purpose") and assists in the development of seed production farms. The Certification Agency carries out field inspections, sampling and testing, and provides technical advice.

The Federal Government specifies the varieties of seeds approved for production, sets germination and purity standards, and regulates labelling of certified seeds. The Federal Government may make rules to carry out the purposes of this Act (Section 29), and delegate its powers to a subordinate officer or authority, or to provincial governments (Section 28).

6.1.2.4 Chemical Fertilizers (Development Surcharge) Act 1973

This federal Act, which operates as a provincial law, authorises a development surcharge to be levied on the production of chemical fertilisers, and on the sale of fertilisers not already subject to a surcharge at the production stage. This Act empowers the Federal Government to fix the maximum sale price of fertilisers. The Federal Government may grant general or special exemptions from the levy of surcharge. The law does not provide for any specific use of the surcharge. The Federal Government makes rules to carry out the purposes of this Act (Section 7), and may delegate its powers to an officer or authority.

6.1.2.5 Loans for Agricultural Purposes Act 1973

This federal Act, which operates as a provincial law, simplifies the procedure for acquiring agricultural credit from public and private sector banks. The Federal Government may make rules to carry out the purposes of this Act or delegate its powers to provincial governments (Section 5).

6.1.2.6 Agricultural Pesticides Ordinance 1971

This federal Ordinance which operates as a provincial law regulates the import, manufacture, formulation, distribution, sale and use of pesticides. Imports are regulated exclusively by the Federal Government and only those pesticides that are registered with the Federal Government can 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 (Section 3(s): "any plant which grows where not wanted") is so broad as to be counterproductive.

The Ordinance establishes a technical advisory committee, makes provisions for the inspection of pesticides, employs analysts and sets up pesticides laboratories (Sections 12-15).

This law 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 4(d) states that the chemical in question, when used according to the manufacturer's instructions, should not be "injurious to vegetation other than weeds, or to human or animal health." The Federal Government may delegate its powers (Section 29).

**6.1.2.7 West Pakistan
Cotton Control
Ordinance 1966**

This Ordinance establishes a Cotton Control Board to regulate the production, processing and sale of cotton. No person is allowed to commence construction of a new factory or an extension to an existing factory without a licence granted under this Ordinance. The Ordinance provides no criteria for siting a cotton processing factory. Any factory or class of factories may be exempted from any or all of the provisions of this Ordinance. The Government may by notification prohibit the growing of all or any varieties of cotton in a particular area, prohibit the import of cotton into specified areas, and fix maximum and minimum prices for any variety of cotton.

**6.1.2.8 West Pakistan
Seeds and Fruit Plants
Ordinance 1965**

The purpose of this Ordinance is to provide for better production and distribution of high quality seeds and fruit plants. The Ordinance gives an unspecified "competent authority" powers to certify and inspect seeds, fruit plants and nurseries; to seize sub-standard seeds, fruit plants and nurseries; and to register growers. The Provincial Government may specify local areas where certified fruit plants may be raised.

**6.1.2.9 West Pakistan
Rice (Restriction on
Cultivation)
Ordinance 1959**

This Ordinance regulates the cultivation of rice in order to control waterlogging, salinity, seepage and the resultant damage to the land. The Board of Revenue may, by notification, prohibit or impose restrictions on the cultivation of rice in specified areas and may frame rules and issue Standing Orders at its discretion (Sections 3 and 6).

**6.1.2.10 West Pakistan
Agricultural Pests
Ordinance 1959**

This Ordinance provides for the eradication of agricultural pests in the Province. The Government may by notification prohibit the use of methods of cultivation that encourage the proliferation of agricultural pests either generally or with respect to any particular crop, and ban the transport or sale of an infested crop. Inspectors appointed by the Provincial Government are awarded broad powers of search and seizure, and the authority to order preventive measures.

**6.1.2.11 Oilseeds
Committee Act 1946**

This federal Act, which operates as a provincial law, and its subsequent amendments establish the Pakistan Food and Agricultural Committee to improve the cultivation and marketing of oilseed and oilseed products. A cess is imposed on "oil extraction" and "export" to finance the Committee's operations. The functions of the Committee include assisting and encouraging agricultural, industrial and technological research. The Federal Government may make rules (Section 17). The maximum penalty under this law is a fine of 1,000 rupees (Section 17A).

**6.1.2.12 Coconut
Committee Act 1944**

This federal Act, which operates as a provincial law, establishes and funds a committee to provide extension services for the development of the coconut industry, determine grade standards of coconuts and coconut products, recommend prices, and assist in pest control. It does not provide substantive guidelines for any of these responsibilities.

**6.1.2.13 Agriculture
Produce Market Act 1939**

The object of the Act is to regulate the purchase and sale of agricultural produce, to establish markets and make rules for their proper administration. The Act has not been extended to the Tribal Areas.

Under Section 2(a), agricultural produce is defined as cotton, wheat, barley, gram, rice, maize, millets, pulses, sugar cane, oil seeds, vegetables, fruits and livestock products including hides, bones, skins, wool, hair and ghee (clarified butter). The Government has discretion to exercise control over agriculture produce, establishing markets and granting licenses for its sale and purchase. Markets may include facilities to process and sell agricultural produce. Market Committees are to be established for every notified market.

**6.1.2.14 Agricultural
Produce (Grading and
Marking) Act 1937**

This federal Act, which operates as a provincial law, regulates the grading and marking of various types of agricultural produce, including food, drink, fleece and animal skins. The definition of agricultural produce provided in this Act is fairly wide and can include all articles that relate to agriculture or originate from agricultural products. The Federal Government may extend the provisions of this Act to articles not included in the original schedule.

**6.1.2.15 Sugar-Cane
Act 1934**

This federal Act, which operates as a provincial law, regulates the price of sugarcane and governs transactions between growers and factories. All powers have been delegated to the provincial governments, which may make rules exempting factories from the provisions of this law.

**6.1.2.16 Cotton Transport
Act 1923**

This federal Act, which operates as a provincial law, prohibits the import of cotton into protected areas except under a license. Protected areas are defined in Section 2(g) as areas "into which import of cotton or of any kind of cotton has been prohibited." The criteria for such prohibitions are given in Section 3: "for the purpose of maintaining the quality or reputation of the cotton grown in any area in the Province."

The appropriate government may make rules to prohibit the import of cotton into a protected area, and to prescribe procedures related to the issuing of transport licenses. The "appropriate government" is the Federal Government in the case of transport across customs

frontiers and inter-provincial trade, and the relevant Provincial Government in all other cases, such as intra-provincial trade.

Maximum penalties for offences committed under this Act are imprisonment for three months and/or a fine of 5,000 rupees (Section 6).

6.1.2.17 Cattle Trespass Act 1871

This federal Act, which operates as a provincial law, imposes penalties for damage to crops or public property caused by cattle, defined to include: "elephants, camels, buffaloes, horses, mares, geldings; ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs [sic], goats, and kids" (Section 3). Although the Act extends to the entire country, the Provincial Governments has the power to exclude certain areas from the ambit of the law. It is also permitted to delegate its functions to a magistrate or local authority.

6.1.3 Extractive Industry–Mining, Petroleum

Mineral oil and natural gas are included in the Federal Legislative List. Other types of minerals, and mining itself, are not mentioned in either list, although the Concurrent List mentions the regulation of labour and safety in mines and oilfields. Exploitation of minerals other than oil and natural gas, therefore, is a provincial subject. Laws that pre-date the 1973 Constitution provide that radioactive minerals, oil and gas are regulated by the Federal Government, and all other mines by the relevant Provincial Government.

Existing legislation governing extractive industry in the NWFP provides limited, discretionary protection for trees, but does not generally require or provide guidelines for managing the effects of mining operations on natural resources.

6.1.3.1 North-West Frontier Province Local Government Ordinance 2001

Although the Ordinance deals primarily with matters related to the devolution of local government (see section 4.3.2.1, above), a few provisions are also included to regulate the operations of extractive industry. Under sections 141, 144 and 145 read with Part I of the Fourth Schedule, industries are required to make arrangements for the safe disposal of effluents, and to ensure that effluents are not allowed to pollute the water supply or enter the sewerage system. Quarrying or blasting activities that endanger or are likely to endanger passersby or people living or working in the vicinity is also an offense. Violation of these provisions is punishable with a maximum term of three years in prison and/or a fine of 15,000 rupees

6.1.3.2 North-West Frontier Province Mines Registration Rules 1994

Framed under Section 30(k) of the federal Mines Act 1923, these Rules require all mines in the province to be registered. The application procedure is set out in these Rules but no conditions or criteria for registration are provided.

6.1.3.3 North-West Frontier Province Mining Concession Rules 1976

Framed under Section 2 of the federal Regulation on Mines and Oilfields and Mineral Development (Government Control) Act 1948, these Rules subject prospecting licenses and mining leases to a number of restrictions. Surface operations and construction are not permitted at sacred sites, in residential or public recreational areas, on cremation or burial grounds, or on public roads without the permission of the Licensing Authority. Written permission from the Licensing Authority must also be obtained before trees are cut or damaged. Under Rule 96, the penalty for carrying out unlicensed mining operations or obstructing mining operations, is imprisonment for up to three years and/or a maximum fine of 20,000 rupees.

Mining licenses and leases are subject to a number of additional conditions, particularly where mining operations are to be carried out in reserved or protected forests (Rule 33). Such conditions may be set out either by the Licensing Authority or the Provincial Government. The Rules thus create an overlap of powers between the Licensing Authority and the Provincial Government and do not provide for co-ordination to avoid potential conflict.

6.1.3.4 North-West Frontier Province Sarhad Development Authority Act 1972

Although the Sarhad Development Authority established under this Act is charged primarily with matters related to the development of industry (see 6.1.1.11 above), it is also empowered to explore, exploit and develop minerals and mines. Minerals are defined in Section 2(h) of the Act as: "all minerals excluding minerals necessary for the generation of nuclear energy and mineral oil and natural gas."

6.1.4 Non-extractive Industry

NWFP legislation for this sector focuses on licensing, pricing and other administrative matters. It includes no substantive provisions regulating the impacts of the sector's processes and activities on natural resources. Legal instruments providing for financial assistance for industry do not establish conditions that enterprises applying for loans or loan guarantees must be constructed and operate in ways that minimise impacts on the environment and natural resources.

6.1.4.1 North-West Frontier Province Local Government Ordinance 2001

Besides matters related to the reorganisation of local government in the province (see section 4.3.2.1, above), the Ordinance also contains a few provisions to regulate the operations of non-extractive industry, requiring industries to make arrangements for the safe disposal of effluents, and ensure that effluents are not allowed to pollute the water supply or enter the sewerage system (Sections 141, 144 and 145 read with Part I of the Fourth Schedule). Offences are punishable with a maximum term of three years in prison and/or a fine of 15,000 rupees.

6.1.4.2 North-West Frontier Province Power Crushers (Licensing) Ordinance 1980

This Ordinance provides for the licensing of power crushers operating in the province. The use of heavy machinery to crush sugarcane is prohibited unless a license has been obtained from the licensing authority.

6.1.4.3 West Pakistan Industries (Control on Establishment and Enlargement) Ordinance 1963

Providing for the organised and planned growth of industries is the purpose of this Ordinance. Industrial facilities may be established or enlarged only with the permission of the Government (Section 3). The Government may, by notification in the Official Gazette, exempt any industrial undertaking or class of industry from all or any of the provisions of this Ordinance (Section 11). The Provincial Government has the power to make implementing rules (Section 13) and the Ordinance provides a process for appealing an order issued under it. This 40-year-old Ordinance has no provisions for taking environmental concerns into account in siting, constructing and operating industries.

6.1.4.4 North-West Frontier Province Sugar Factories Control Act 1950

This Act regulates the supply of sugarcane to sugar factories, the price at which it may be purchased, and other related issues. The Provincial Government may establish a "Sugar-cane and Sugar-beet Control Board" (Section 3), and appoint a Cane Commissioner to regulate the operations of sugar factories.

6.1.5 Taxation

The provinces do not have broad powers of taxation and are for the most part financially dependent on the Federal Government. However, provincial governments may impose taxes in areas specified in the Constitution, the limits of which are prescribed by federal law. Items taxable at the provincial level in the NWFP include land and agricultural produce, vehicles, and the transfer of immovable property. The Provincial Government has the power to grant tax exemptions.

Even at the provincial level, taxes may help in the management of natural resources if they are used as tool to provide for environmental protection and natural resource conservation. For instance, tax relief may be provided for vehicles maintaining certain acceptable emissions levels. In the case of agriculture, taxation may be used as a weapon to discourage the conversion of forests into agricultural land, and farmers could be provided tax incentives to employ environmentally sound methods.

6.1.5.1 Finance Acts and Ordinances

The Finance Acts and Ordinances determine rates of tax annually. Areas subject to taxation normally include agriculture, cinemas, motor vehicles, railway fares, buildings and the transfer of immovable property, as well as taxes in the form of water rates and cess (a percentage of land produce apportioned to the Government).

6.1.5.2 North-West Frontier Province Land Tax and Agriculture Income Tax Ordinance 2000

This Ordinance provides for land tax and agricultural income tax to be levied in the NWFP. Cultivable land is taxed at rates specified in the schedule appended to this Ordinance. The Government has the power to exempt any land or class of owners wholly or partially from the payment of tax. Criteria for

exemptions are to be set out in Rules made pursuant to this Ordinance.

**6.1.5.3 Local Councils
(Tax on Transfer of
Immovable Property)
Rules 1997**

These 1997 Rules were framed under the North-West Frontier Province Local Government Ordinance 1979 to deal with taxes on the transfer of immovable property, defined as any building or land within the limits of a local council. Local taxes are now levied by new district-level bodies set up under the LGO 2001.

**6.1.5.4 West Pakistan
Motor Vehicles Taxation
Act 1958**

A quarterly tax is imposed on every motor vehicle. Individuals and groups may be exempted from liability to pay the whole or part of the tax. This Act provides no tax incentives to encourage operation of "clean" vehicles with low pollution emission rates.

6.1.6 Investment—Domestic and Foreign

The few provincial laws that exist on this subject are more than a quarter century old and contain no provisions for investment incentives that would encourage natural resource conservation and sustainable development.

**6.1.6.1 North-West
Frontier Province Small
Industries Development
Board Act 1972**

This Act establishes the Small Industries Development Board to take over the assets and liabilities of the West Pakistan Small Industries Corporation. The Board facilitates the development of cottage industries, and has the power to issue loans, determine policy and prepare schemes. Its responsibilities include organising fairs and setting up pavilions for the display and sale of the products of cottage and small industries. In special cases, and with the prior approval of the Governor, the Board may establish small and cottage industries in less developed areas. No policy guidelines for the functioning of the Board have been provided.

**6.1.6.2 North-West
Frontier Province
Industrial Loans Act 1946**

This Act allows the Government to issue loans for developing industries. Government officials are authorised to inspect the premises, books, machinery, stocks and stores of loan recipients in order to determine whether loans have been utilised appropriately. In cases of contravention of the provisions of the Act, a fine may be imposed. Other details are to be provided by the Provincial Government through rules.

6.1.7 Transport

Although the basic legal instrument governing motor vehicles in the NWFP was adopted in 1965, it does contain provisions that enable the regulation of motor vehicle pollution. Other legal instruments governing transport in the NWFP deal with truck and bus stands in the city of Peshawar. There are no criteria for selecting sites for bus or truck stands, or for acquiring land required for their construction. Nor are obligations placed on municipal authorities to take into account factors such as traffic congestion, noise, air pollution or inconvenience caused to residents of an area where such a stand may be located.

6.1.7.1 North-West Frontier Province Bus Stand and Traffic Control (Peshawar) Ordinance 1978

The 1978 Ordinance is similar to the 1972 Act (see 6.1.7.3 below), except that it deals with buses, not trucks. This Ordinance closes down all existing bus stands within the jurisdiction of the Municipal Committee and empowers the Peshawar Deputy Commissioner to demarcate areas for new bus stands. Municipal Committees were abolished in the local government restructuring, along with the posts of Commissioner and Deputy Commissioner (see section 4.3.2.1), and responsibility for administering this Ordinance has been allocated to the new district government.

6.1.7.2 North-West Frontier Province Bus Stand and Traffic Control (Peshawar) Rules 1999

Framed under Section 12 of the NWFP Bus Stand and Traffic Control (Peshawar) Ordinance 1978 (see 6.1.7.1 above), these Rules require the Peshawar Municipal Corporation, when so directed by the Commissioner, to regulate the administration of bus stands in the public interest. The Municipal Corporation is responsible for constructing and maintaining roads, waiting rooms and sheds, and provides facilities such as drinking water and lavatories within the limits of a bus stand.

Here too, as with so many other laws involving local bodies and municipal authorities, the LGO 2001 necessitates an amendment in the law as both the Peshawar Municipal Corporation and the post of Commissioner have been abolished. Responsibility for administering these Rules now lies with new district government bodies.

6.1.7.3 North-West Frontier Province Truck Stand and Traffic Control (Peshawar) Act 1972

This Act regulates the movement of vehicles transporting goods within the municipal limits of Peshawar, allowing the Commissioner to order the Peshawar Municipal Committee to set up and operate truck stands, and to acquire land for this purpose. Commissioners are authorised to exempt any vehicle or class of vehicles from the provisions of this Act, and to delegate their powers.

As in the case of many other laws, this Act needs to be amended to reflect the changes in the administrative structure. Municipal committees have been abolished under the LGO 2001 and their functions have been transferred to the local government. The post of Commissioner has also been abolished, with powers divided among various functionaries at the provincial and district level.

6.1.7.4 NWFP Motor Vehicles Ordinance 1965

This West Pakistan was renamed the NWFP Ordinance via the Adaptation of Laws Order 1975. The Ordinance and the Rules made under it consolidate the law related to motor vehicles. It sets out the procedures and requirements for obtaining a driving license and registering motor vehicles, issuing transport permits, and regulating the construction, equipment and maintenance of motor vehicles and trailers.

The Ordinance provides the basis for controlling motor vehicle pollution. Under section 74(2), the Government may make rules to regulate the emission of smoke, visible vapours, sparks, ashes, grit

or oil; the noise emitted by or caused by vehicles; and periodic testing and inspection of vehicles.

6.1.8 Energy and Hydroelectric Power

Although NWFP legislation governing the energy and hydel sector is relatively recent, the law deals purely with administrative matters and provides no criteria for siting, constructing and operating hydel schemes in the province. Also see section 5.1.6.7 on the Water and Power Development Authority which also controls generation, transmission and distribution of power, and the construction, maintenance and operation of power houses and grids.

6.1.8.1 Sarhad Hydel Development Organization Ordinance 1993

This Ordinance establishes the Sarhad Hydel Development Organization (SHYDO), which is responsible for the generation, transmission and distribution of electricity, and for the construction, maintenance and operation of power houses, grids, and transmission and distribution lines, especially in remote mountainous areas of the province. It may commission surveys, feasibility studies and technical research.

SHYDO is administered by a Board that reports to the Provincial Government. Once a scheme is completed, the Board may transfer its operations to a local body or other agency. If the local body in question declines to take charge of a scheme, the matter is to be decided by the Provincial Government.

SHYDO operates a fund consisting of grants made by the provincial and federal governments, proceeds from the sale of bonds issued under the authority of the Provincial Government, and loans obtained from commercial banks.

6.1.9 Tourism

Some of the country's most popular tourist areas are located in the NWFP. Yet the tourism industry is not regulated and no legally-binding guidelines or criteria have been established for developing projects in this sector. The only legislation that specifically regulated tourism is no longer in force. Its purpose was to control construction and the alienation of land, in an attempt to preserve the landscape of Malam Jabba (Swat District), attract tourists and promote skiing in the area. Passing references to tourism development are made in the Galiyat and Kaghan Acts of 1996 (see 6.1.1.2 and 6.1.1.4) but these laws include no substantive provisions to integrate the tourism sector with overall development plans and objectives.

6.1.10 Import/Export

No relevant NWFP legal instrument available.

6.1.11 Phytosanitary/Quarantine

No relevant NWFP legal instrument available.

6.1.12 Inter-Provincial Trade

No relevant NWFP legal instrument available.

6.1.13 Research Institutions

No relevant NWFP legal instrument available.

6.1.14 Drugs/Pharmaceuticals

No relevant NWFP legal instrument available.

6.2 Court Decision

No relevant NWFP case available.

07

Summary and Conclusions

7.1 Governance

Environmental pollution and ecology are on the Constitution's Concurrent Legislative List, which means that both federal and provincial governments may enact laws to govern natural resources in the province.

Legislation on the environment and natural resources in the North-West Frontier Province (NWFP) does not automatically apply in substantial areas of the province—the Federally and Provincially Administered Tribal Areas. Neither the Forest Act 1927 nor the NWFP Forest Ordinance 2002 applies to the Federally Administered Tribal Areas (FATA), for example. However, the 2002 Forest Ordinance has been extended to the Provincially Administered Tribal Areas (PATA), as have NWFP fisheries and wildlife laws.

The NWFP Local Government Ordinance (LGO) 2001 delegates substantial powers to the district level. The devolution of powers to decentralised levels of government offers potential for more effective management of natural resources that will take time to realise. New structures have been superimposed on old laws, resulting in jurisdictional gaps and overlaps—for instance between district officials and development authority boards. With the exception of the Forest and the River Protection Ordinances of 2002, NWFP statutes governing natural resources were adopted prior to the LGO 2001. Such laws refer to posts and functions that are now abolished and must be read together with the LGO to understand where responsibility for natural resource management lies and how it is to be carried out.

Even where it is clear which officials have authority to administer natural resources and environmental issues, gaps in the Rules of Business on the subject matter jurisdiction of departments and the functions of their sub-divisions mean that there is scant functional operational basis for integrated natural resource management.

7.2 Natural Resources and Natural Resource Management

The Forest and River Protection Ordinances of 2002 are progressive legal instruments. The Forest Ordinance acknowledges sustainable development, enables social forestry, and provides for controlling pollution that damages forest habitats as well as for protecting and exploiting timber and non-timber forest resources. Protected forests are provided for under the 2002 Ordinance, but there is no link with protected areas established under the NWFP Wildlife Act 1975. Meanwhile, the River Protection Ordinance enables mandatory land use planning in river catchments, provides for conserving freshwater resources, and regulates processes and activities to maintain water quality.

Older natural resource laws in the NWFP are exploitation-oriented. The two instruments that govern fisheries do not provide for the identification of endangered species or classification of fish species according to conservation status. Size restrictions set out in the 1976 Fisheries Rules may operate as protective measures, even if they were not intended to serve that purpose. The 1975 Wildlife Act regulates hunting and does not enable species or habitat conservation or sustainable use, while a 1976 amendment actually reduces the protection available for bird species.

Under the 20th century legal instruments, incentives are rare and disincentives in the form of penalties or fines are too low to serve as a deterrent. Some laws in the forest and water sectors include clauses granting government officials unqualified indemnity from prosecution for acts performed in their official capacities. Such blanket indemnity provides scope for mismanagement of natural resources.

In the few decisions related to natural resources, the NWFP courts have either strictly interpreted the law in favour of exploitation, or avoided providing a remedy, referring the issue back to the legislature for resolution.

7.3 Processes and Institutions that affect Natural Resources and Natural Resource Management

Urban and rural development in the NWFP is substantially regulated, with certain development authorities awarded powers to administer land and forest management in some cases. It is, however, unclear how development authorities' responsibilities for natural resource management are coordinated with the powers of sectoral authorities—for example, the relationship between integrated freshwater resource management and fisheries management. Also to be clarified is how development authorities' powers are to be coordinated with those of local authorities in the new local government structure.

Agriculture is an important sector for the NWFP but the Provincial Government has adopted very little NWFP-specific legislation. The legal regime for the agriculture sector consists primarily of federal statutes that operate as provincial laws, regulating inputs such as pesticides and fertilisers, along with activities such as processing, marketing and transportation. The law does not provide measures to mitigate the impact of agricultural inputs and practices on the natural environment on which agriculture depends. Nor do laws governing this sector provide a system of classification or labelling for agricultural chemicals to indicate their contents and potential impact on the environment.

The only legislation that specifically regulated tourism in the NWFP is no longer in force. Passing references to tourism development are made in the Galiyat and Kaghan Development Authority Acts of 1996, but these laws include no substantive provisions to integrate the tourism sector and its environmental impacts with overall development plans and objectives.

NWFP law provides for conditions that can be applied to certain activities—extractive industries and hydel installations, for example—but the potential restrictions are limited. There are no environmental criteria for siting infrastructure or extractive activities. Although mining is restricted in protected forests, similar safeguards have not been put in place for other types of habitats.

7.4 Governance and Natural Resource Management

Even though most natural resource management is carried out at the provincial level, the constitutional division of jurisdiction for natural resource management between the Federal Government and the provinces creates loopholes that can be taken advantage of to exploit natural resources and degrade the environment. For example, the mining of nuclear substances and extraction of petroleum products lies within the exclusive domain of the Federal Government while the management of natural resources and protected areas affected by such mining is primarily under the control of the Provincial Government. In the event of a conflict, federal law will prevail, particularly in cases where substantial commercial and economic interests are at stake. Local government bodies have been given certain environmental and natural resource responsibilities, but there is no legal framework providing for coordination between the local bodies, provincial environmental protection agencies and other authorities responsible for natural resources. Even so, devolution of powers for natural resource management to the district and local levels is potentially the most significant development in environmental governance in the NWFP.

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