Environmental Rights
Towards a Human Rights Approach to Environmental Protection
A Brief for Parliamentarians and Policy-makers

Executive Summary
The present brief makes a case for more robust environmental policy and planning, incorporating a human rights approach and general principles of environmental law accepted and advocated by experts and specialized bodies around the world. It takes a critical look at the current policy, legal and institutional framework for environmental governance and points out strengths and weaknesses. The brief highlights climate change, water scarcity, disaster management and the state of the Indus Delta region as some of the most pressing challenges for policy-makers and political leadership. A set of illustrative recommendations are given corresponding to the human rights approach and other conceptual tools introduced in the brief.

Introduction
The last few decades have seen a phenomenal rise in moral and legal claims for the protection of human rights as well as environmental goods, such as clean air, water, forests and bio-diversity. As the consequences of global warming and unsustainable development patterns become too obvious to brush aside, environmental activists around the world are increasingly articulating their demands in the language of human rights. Since 1990s, a number of countries have included express environmental rights into their constitutions1.

1 The 1973 Constitution of the Islamic Republic of Pakistan does not have a specific right to a safe or clean environment included in the chapter on Fundamental Rights. However, in the landmark Shahla Zia case, the Supreme Court of Pakistan reading Article 9 (Right to Life) together with Article 14 (Right to Dignity), to the catalogue of internationally recognized human rights, concluded that a life of dignity demanded access to a “clean atmosphere and unpolluted environment”.

Internationally, environmental rights are seen as part of the third generation of rights which emerged only around 1970s. Unlike civil and political rights and socio-economic rights, the so-called third generation rights for right to development, right to benefit from world trade, and environmental rights do not have a corresponding covenant or a treaty. The International Covenant on Economic Social and Cultural Rights (ICESCR) addresses environmental concerns only obliquely calling upon the State Parties to take steps for the “improvement of all aspects of environmental and industrial hygiene”3. International environmental law codified into a number of multilateral environmental agreements (MEAs), provides a rich ensemble of norms and principles for international cooperation as well as a broad template for domestic legislation and policy4. However, these documents do not address individuals or groups as bearers of environmental rights or entitlements.

Conceptual Framework
Those calling for the inclusion of a right to environment to the catalogue of internationally recognized human rights point to the impact of environmental conditions upon the realization of other human rights. Local and global environmental damages, the argument goes, lead to infringements of the right to life, health and livelihoods1. A stronger variant of this position calls for an inalienable human right to a safe environment rooted in humanity’s common dependence on earth

1 For example, the German Basic Law states that the government must protect for “future generations the natural foundations of life.” Similarly, the South African constitution recognizes a right to “an environment that is not harmful to health or well-being and to have the environment protected, for the benefit of present and future generations.”
2 Shahla Zia v WAPDA, PLD 1994 SC 693
3 Article 12, sub-clause 2
4 Pakistan is signatory to a number of such MEAs, including the United Nations Framework Convention on Climate Change (UNFCCC), Convention on Biological Diversity, Conventions on Migratory Species, Convention on Combating Desertification etc.
5 The UN Special Rapporteur on the Realization of Economic, Social and Cultural Rights has identified environmental degradation as one factor impeding the realization of these rights (UN Doc. E/CN.4/Sub.2/19992/16. The Realization of Economic, Social and Cultural Rights-Final Report submitted by Danilo Turk, Special Rapporteur, p 32)
and natural resources. Such advocates want a human right to the environment valued in itself rather than with reference to other rights.

**Significance of Shahla Zia v WAPDA, 1994**

The Shahla Zia case, set out three most critical foundations of environmental law in Pakistan. First, by virtue of the broad meaning of the word “life” as contained in Article 9 of the Constitution, a derivative constitutional right to an unpolluted environment has been established. Secondly, the case established the application of the precautionary principle where there is a hazard to such rights. And finally, it accepted the persuasive value of Pakistan’s obligations under customary international law referring to the Rio Declaration, 1992. – Box 1

A distinct advantage of a human rights approach to environmental protection is that it places environmental concerns within the realm of strong claims to an absolute entitlement immune from trade-offs. In terms of laws and policy drafting, that approach would rule out compromises in the name of development and economic growth. As with all Fundamental Rights, laws and policies impinging on environmental rights will have to produce strong justifications for any infringement of those rights. Additionally, a human right to environment could provide strong redress where traditional bureaucratic remedies and ordinary laws fail. Placing environmental concerns within the domain of human rights also allows for mobilizing resources and political will that an approach based on traditional procedural rights and regulation cannot. And finally, a human rights approach could help bring local, national and international issues within the same conceptual frame and legal judgment.

Some experts insist that a simple human right to environment may not help resolve complex issues of environmental management. There is some merit in this claim; however, it has to be noted that a human rights approach is not meant to provide detailed answers to all complex political, administrative and legal problems. A human rights approach provides ethical benchmarks for all public policy and action to be evaluated against. When it comes to complex policy and environmental management issues, there is a lot to absorb from key principles of international environmental law embedded in environmental treaties and declarations, adopted by courts in different jurisdictions, and incorporated into public policy across the world. Not only do they provide normative foundations and technical guidelines for legal judgment and policy decisions, they also help determine a clear intent of a statute or a policy. A brief description of these key principles follows:

- **The prevention principle** is based on the fact that preventing an environmental harm is cheaper, easier, and less environmentally dangerous than reacting to environmental catastrophes. The principle advocates timely action to eliminate or minimize environmental damage. The principle may be used to prohibit damaging activities; for example, states may prevent, reduce or control pollution of the marine environment whether within or outside their national waters rather than waiting till the impact of such pollution on marine resources becomes evident. The precautionary principle posits that the absence of scientific consensus cannot stop the adoption of regulations preventing environmental damages. This principle requires states to take action where a risk to human health or the environment exists but there is evidential uncertainty as to the existence or extent of the risk. For example, policy-makers may allocate additional budget for the control of infectious diseases in anticipation of the possible increase in the incidence of such diseases as a result of global warming.

- The **polluter pays principle** holds that the polluter should, in principle, bear the cost of pollution. In order to do so, states have three main implementation instruments: (i) norms stated in policy documents and statements; (ii) taxes and; (iii) sanctions. The purpose of these mechanisms is to dissuade the polluter from polluting more in order to reduce the costs.

- The **integration principle** requires that due consideration be given to the potential consequences of economic and development policy and action on the environment. Thus, governments should take environmental issues into account in their decisions-making processes across all sectors.

- **The principle of access to information and public participation** ensures that ordinary people have access to information concerning environment and the use of harmful substances and practices. The principle requires public access to environmental information held by authorities and public participation in decision-making which affects the environment.

### Salient Substantive and Policy Issues

Since independence, Pakistan has experienced considerable environmental damage. Water supplies are being depleted, much of our forests have been destroyed, and the soil is rapidly eroding with adverse consequences for livelihoods, biodiversity and food production. In urban areas, which now host more than 35 per cent of the country’s population, industrial and vehicular emissions, solid and hazardous waste are growing problems with serious health implications. A high population growth rate puts a severe stress on natural resources and an already inadequate public service.
infrastructure. There is a link between environmental destruction and high population but they are both related to a third factor, poverty.\(^7\)

According to a 2007 World Bank assessment, the cost of environmental degradation in Pakistan amounts to Rs. 365 billion annually. The most significant fallout relates to illness and premature mortality caused by indoor and outdoor air pollution and lead exposure, representing almost 50 per cent of the total damage cost. Environment related factors cause roughly one third of all child mortality in Pakistan, which is the highest in South Asia. Diarrheal diseases and typhoid due to inadequate water supply, sanitation and hygiene are another significant cause of environmental damage amounting to about 30 percent of the cost of environmental damages. The remaining 20 per cent of the total cost results from reduced agricultural productivity due to soil degradation, particularly salinization, erosion, and water logging, which has a drastic effect on the livelihoods of the rural poor.\(^8\)

Pakistan participated in the Earth Summit in Brazil in 1992 and finalized the National Conservation Strategy (NCS) the same year.\(^9\) In 1993, the government instituted National Environmental Quality Standards (NEQS) on municipal and industrial effluents, gaseous emissions, motor vehicle exhaust, and noise. The 1997 Pakistan Environmental Protection Act (PEPA) prohibits discharge of any waste or air pollutant or noise in excess to NEQS. Those not conforming are required to pay a pollutant charge. Federal and Provincial Environmental Protection Agencies are in place to oversee the implementation of the Act (See Box 2).

**Pakistan Environmental Protection Act (PEPA), 1997: Key Provisions**

The Act incorporates ‘polluter pays principle’ by empowering the Environmental Protection Agencies (EPAs) to order the closure of or impose administrative penalties on industries and motor vehicles emitting pollution in excess to National Environmental Quality Standards (Section 11).

The Act prohibits the imports of hazardous substances (Section 13) and requires the conducting of environmental impact assessments (EIAs) before the commencement of all projects that are likely to harm the environment (Section 12).

Under various sections, the Act stipulates public involvement: citizens may participate in EIAs and lodge a complaint with the EPA or a Tribunal. – Box 2

The overall institutional arrangement for environmental management in the country may need to be revisited in the light of the 18th Amendment as environment or ecology, which was part of the Concurrent List, now falls exclusively under the domain of provincial legislatures. In the new constitutional dispensation, the role of the Federal Government in terms of benchmarking, standard-setting and policy-making is yet to be clarified.

National Environment Policy 2005 is a succinct document providing broad guidelines in a range of sub-sectors, including water supply and management, air quality and noise, waste management and forestry, and so on. The document implicitly follows the preventive principle; for example, where it calls for the setting up of a Marine Pollution Control Commission.

It also draws on the sustainability principle in calling for the promotion of eco-tourism. The document recommends the development of a National Climate Change Policy and an Action Plan, a demand which can now be followed through in the light of the Report of the Task Force on Climate Change released in 2009.

While there are some substantive environmental issues which need legislative and policy responses in the light of changing climatic realities and new scientific evidence, a more pressing challenge appears to be the full implementation of existing policies, laws and regulations. For example, it has been pointed out that Provincial EPAs have not been able to enforce pollution control despite legal backing.\(^12\) The sea line along Karachi’s Korangi Industrial Area bears a testament to that required to pay a pollutant charge. Federal and Provincial Environmental Protection Agencies are in place to oversee the implementation of the Act (See Box 2).

In addition, sectoral policies often pull in different directions thwarting the aims of environmental policy. For example, the government’s livestock policy aims at private sector led intensification of the livestock sector without paying due regard to the implications on the environment as a result of vast amounts of animal waste.\(^11\) The Environment Policy calls for inter-ministerial coordination around environment. However, in practice departments and ministries at both federal and provincial levels operate more or less in silos.

In terms of emerging environmental challenges, the report of the Task Force on Climate Change provides a comprehensive list of possible adaptation strategies across sectors and vulnerable ecosystems (See Box 3). Implementation of measures suggested, however, must be guided by an understanding of the fact that climate change will have its greatest effect on those who have the least access to resources. Social processes generate unequal exposure to risk by making some people more prone to climatic changes than others. It is in dealing with such cases that a human rights

\(^{10}\) See for example, Mid-term Review of the National Conservation Strategy (NCS), Government of Pakistan 2000.

\(^{11}\) Pakistan Economic Survey 2009-10, p.29

\(^{12}\) Adaptation to climate change refers to adjustment in natural or human systems in response to actual or expected climatic stimuli or their effects, which moderates harm or exploits beneficial opportunities. For example, harvesting rainwater and switching to renewable energy sources.
Climate Change and Pakistan: Emerging Policy Challenges

According to the report of Pakistan’s Task Force on Climate Change, summer temperatures have reportedly increased in all parts of Pakistan during 1951-2000. Precipitation trends show 10 to 15% decrease in coastal belt and arid plains over the last 40 years and an increase in summer and winter precipitation in Northern Pakistan.

Projected trends suggest temperature increases in both summer and winter to be higher in Northern Areas than in South; increase in summer precipitation for both Northern and Southern parts of the country; increased frequency and intensity of extreme events such as heat waves, heavy precipitation, droughts and tropical cyclones.

Possible future impacts of climate change in Pakistan include: changes in sowing season (time of soil moisture and temperature); increase in locust and insects due to high temperatures; increased mortality and morbidity from heat waves, floods and droughts, etc. Across all sectors, the poorest of the poor, those leaving in threatened ecosystems, women and children are likely to be affected most.

The Indus Delta region, for example, presents a classic case of the flipside of development, of fundamental rights ignored for a purported economic goal. Abstraction of water upstream through a series of dams, barrages and link canals has significantly reduced freshwater flow downstream Kotri Barrage. At present, freshwater flow in an average year is estimated to be far lower than 10 Million Acre Feet (MAF) per year, the minimum level of environmental flow stipulated in the 1990 Water Appointment Accord. The lack of fresh water has had major effects on the deltaic ecosystem and livelihoods. The sea water has intruded inland up to 1.2 million acres, rendering what was once fertile agricultural land extremely saline. Salinity of the seawater itself has increased, which is detrimental to the growth of mangroves.

Coastal stability has been affected due to lack of sediments flow. Quality of surface water aquifers has deteriorated. And finally, certain species of fish, which were dependent on mangroves and fresh water, have become almost extinct. Commercialization of the fishing sector and lack of alternative livelihood options have pushed many fisher folk into unsustainable fishing methods, such as fishing in prohibited seasons, putting a further strain on marine resources.

An important area where a new policy paradigm based on the principles of prevention and stability is required is that of energy. Admittedly, energy shortages leading to frequent and prolonged power breakdowns represent a daunting challenge for policy makers. However, short-term fixes, such as increasing the share of coal in the energy mix, as suggested by the Energy Security Plan (ESP) 2005-15, for example, could lead to serious environmental damages. It is worthwhile to note that fossil fuels already make up over 60 per cent of total commercial energy consumption in Pakistan with hydro, solar, wind and geothermal energy making up just 3.5 per cent. Harnessing the latter is an absolute imperative not only to meet growing energy demands but also to arrest disastrous consequences of environmental degradation and climatic changes.

The 2010 monsoon floods, the most devastating ever to hit the country, have brought old challenges into sharp relief and created new ones for the country’s leadership to deal with. Foremost, among them is the effectiveness of the current institutional structure for disaster management in the country, especially in terms of its capacity at the district level and the extent of public participation in disaster preparedness. Equally relevant is the imperative to increase the forest cover in the country and prevent deforestation as forests are known to serve as the first line of defense against floods and cyclones.

The floods have also led to a renewed debate on the need for new dams. While there may not be any conclusive evidence on the link between large dams and irreversible ecological damages, a human rights approach and an awareness of precautionary principle would require policy makers to err on the side of caution, that is, give a strong weight to any possible damages.

As we brace for a water-scarcity scenario (See Box 4), state action and policy interventions are required not only for more efficient water use but also for developing cropping systems which are sustainable. In planning for the future, Pakistan might have to phase out water intensive crops like sugarcane and rice and make a shift toward more appropriate and less water intensive crops.

Water-scarcity in Pakistan

Pakistan is among the most water-stressed countries in the world today. Current per capita availability of water is well below the threshold of 1800 cubic meters per capita per year, below which a country is considered water stressed. Projections suggest a water scarcity scenario in the year 2035 when the per capita availability falls down to 1000 cubic meters per year. Areas outside the Indus Basin are already classified as water-scarce. (See Amir, M ed. 2003: p 193). – Box 4

One concept that can help make better and environmentally sound decisions is that of Water Footprint, an indicator of freshwater use that looks not only at direct water use of a consumer or producer, but also at the indirect water use. The Water Footprint of a product is the volume of freshwater used to produce the product, measured over the full supply chain.

15 See (WB 2005: p xvi). Even that figure is not considered adequate by many to maintain deltaic ecosystems and local livelihoods. On the other hand, a government commissioned study by an international panel of experts (POE) in 2005 suggested a minimum environmental flow of 6 MAF per year downstream Kotri.
Rice, cotton, sugarcane and bovine meat are known to have very high water footprints, which do not get reflected anywhere in the official economic reporting. As such, it can be a very useful tool to mainstream environmental considerations into economic planning and evaluation in line with the integration principle.

Against the conceptual debate presented in the brief and the substantive issues highlighted so far, the following section presents very selected general and sector-specific recommendations for policy-makers, legislators and opinion-makers in the context of environmental and climate challenges facing Pakistan.

**Recommendations**

Based on the preceding discussion and the conceptual framework elaborated in the brief, we now present a set of general, cross-sector recommendations followed by more specific recommendations with regard to policy areas highlighted in the brief.

**General Recommendations**

- **Clarify the role of the Federal Ministry of Environment in terms of policy-making, standard-setting and benchmarking; transfer of environmental and green technology; and implementation of adaptation measures for climate change, particularly in the context of devolution of powers to the provinces post 18th Amendment;**
- **Audit all economic and social policy from an environmental and human rights perspective. Integrate climate change concerns into water and agricultural policies and plans;**
- **As part of migration planning, explore options available for re-settlement of communities from severely stressed or disaster prone habitats into peri-urban areas with employment opportunities in industry and agriculture provided for.**

**Sector-Specific Recommendations**

Recommendations presented in this section are by no means exhaustive and they do not cover the entire range of issues even within the selected sectors. However, they are meant to provide some illustrative examples of legislative, policy and administrative measures that are required to make environmental rights a reality.

**Climate Change**

- **Prepare federal and provincial climate change policies and action plans based on the Report of the Task Force on Climate Change and with a focus on vulnerable groups and threatened eco-systems, such as the Indus Delta;**
- **Make new investments in the control of infectious diseases, such as malaria and dengue, in the light of the potential spread of such diseases as a result of increasing temperatures.**

**Forests**

- **Establish provincial targets for expanding forest cover;**
- **Prepare a strategy and an action plan for the protection and rehabilitation of mangrove forests as recommended in the National Environment Policy 2005.**

**Water and Agriculture**

- **Initiate a parliamentary debate with a view to developing a consensus on phasing out water intensive crops, including rice and sugarcane. Water Footprint Accounting could be used as a tool to advocate a shift toward less water intensive crops;**
- **Set clear policy guidelines for promoting water-use efficiency in agriculture and advocate a shift toward drip irrigation from the highly wasteful flood irrigation.**

**Indus Delta and Ecosystem Management**

- **Prepare provincial eco-tourism policies as a means for sustainable development, especially around vulnerable eco-systems and habitats;**
- **Revisit the Water Appointment Accord 1990 to set new benchmarks for environmental flows downstream Kotri in the light of the findings of the Independent Panel of Experts (IPOE). Publicize the findings of IPOE report on environmental flows downstream Kotri and have an open dialogue involving representatives of the delta communities;**
- **Develop non-farm rural sector to help fisher folk diversify livelihoods in the context of possible reduction in fish catch as a result of climatic change and inadequate environmental flows into the delta;**
- **Enhance the role of the District Fisheries Department in terms of greater information sharing on weather and climatic variability and sustainable fishing methods.**

**Pollution Control**

- **Ensure effective enforcement of National Environmental Quality Standards (NEQS) by controlling corruption, increasing budgetary allocations, and streamlining human resources across Environmental Protection Agencies and Environment Tribunals;**
- **Introduce a progressive environmental or green tax on large industries and agricultural units in accordance with the “polluter pays principle”.**

**Energy Conservation**

- **Revise Building Codes in all provinces to include mandatory provisions for rainwater harvesting, water recycling and energy conservation;**
- **Set new national and provincial targets for increasing the share of renewable sources i.e. wind, hydropower, thermal and solar, in the overall energy mix.**
Bibliography


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