

**REPORT ON THE LEGAL, INSTITUTIONAL
AND POLICY FRAMEWORK FOR REDD+ IN
PAKISTAN**

**PREPARED BY
AHMER BILAL SOOFI
PRESIDENT, RESEARCH SOCIETY OF INTERNATIONAL LAW
ADVOCATE SUPREME COURT OF PAKISTAN**

APRIL 2017

CONTENTS

ACKNOWLEDGEMENTS	i
EXECUTIVE SUMMARY	ii
Chapter 1 – INTRODUCTION	1
1.1 UN-REDD & REDD+	1
1.2 The Need for REDD+	1
1.3 The REDD+ Goals	2
1.3.1 Deforestation	2
1.3.2 Forest Degradation	3
1.3.3 Sustainable Management of Forests	3
1.3.4 Conservation and Enhancement of Forest Carbon Stocks	4
1.4 Genesis of REDD: The United Nations Framework Convention on Climate Change (UNFCCC)	4
1.4.1 Bali Action Plan.....	4
1.4.2 The Kyoto Protocol.....	4
1.4.3 Cancun Agreements.....	5
1.4.4 The Warsaw Framework for REDD+.....	5
1.4.5 Paris Agreement	6
Chapter 2 – NATIONAL CONTEXT AND APPROACH TO REDD+	7
2.1 Economic and Social Development Policies of Pakistan	8
2.2 Initiation of REDD+ in Pakistan	9
2.3 National Climate Change Policy 2012	10
2.4 The Framework for Implementation of the Climate Change Policy (2014-2030)	10
2.5 Draft National Forest Policy 2015	10
2.6 Clean Development Mechanism	11
2.7 REDD+ Related Projects in Pakistan	11
Chapter 3 – POLICY, LAW AND REGULATION REVIEW	13
3.1 Limbs of the State	13
3.2 Pakistan’s Legal System	13
3.3 Difference between policy, law and regulation	13
3.3.1 Legislative Process	14
3.4 International Law in Pakistan	15
3.5 Forestry in Pakistan	17
3.5.1 Policies	18

3.5.2 Statutory Regime for the Environment, Climate and Forests in Pakistan.....	22
3.6 REDD+ Terminology.....	25
3.6.1 Key Legal Definitions.....	25
Chapter 4 – LAND TENURE LAWS IN PAKISTAN	28
4.1 Land Tenure under the Constitution.....	28
4.2 Statutory Law Governing Land Tenure.....	28
4.3 Land Rights for Women.....	29
4.4 Forested Land	30
4.4.1 Punjab	31
4.4.2 Khyber Pakhtunkhwa	32
4.4.3 Sindh.....	34
4.4.4 Balochistan	34
4.4.5 Azad Jammu and Kashmir.....	34
4.4.6 Gilgit-Baltistan.....	35
Chapter 5 – DRIVERS OF DEFORESTATION & DEGRADATION, BENEFIT SHARING, STAKEHOLDERS ENGAGEMENT AND CONFLICT RESOLUTION UNDER DOMESTIC LAW.....	36
5.1 Drivers of Deforestation & Forest Degradation.....	36
5.2 Benefit Sharing	39
5.3 Stakeholder Engagement	40
5.3.1 Engagement of the Public Sector in REDD+ Implementation.....	41
5.3.2 Engagement of the Private Sector in REDD+ Implementation	41
5.3.3 Engagement at Grass Root Level	42
5.4 Safeguards	43
Chapter 6 – REVIEW OF THE INSTITUTIONAL FRAMEWORK PERTAINING TO LAND, FOREST, CLIMATE MITIGATION AND REDD+	47
6.1 Federal Bodies.....	47
6.2 Provincial Bodies	50
6.3 Non-Governmental Organizations	51
6.4 Research Institutes and Universities.....	52
Chapter 7 – RECOMMENDATIONS	53
ANNEXURE A: RECOMMENDATIONS FROM PARTICIPANTS OF THE WORKSHOPS	56
ANNEXURE B: INTERNATIONAL AGREEMENTS THAT RELATE TO REDD+	59
ANNEXURE C: REFERENCES.....	62
Laws.....	62

UN Conventions and Documents	62
Articles (Journals/ Newspapers/Books etc.).....	63
Pakistan Government Document/Articles	66
Case Law	66

ACKNOWLEDGEMENTS

Report Authors

Mr. Ahmer Bilal Soofi President, Research Society of International Law
Advocate Supreme Court Of Pakistan

Ms. Minahil Khan Research Associate, Research Society of International Law

Contributors

Mr. Jamal Aziz Executive Director, Research Society of International Law

Mr. Fahd Qaisrani Research Associate, Research Society of International Law

Mr. Khubab Aziz Associate, Ahmer Bilal Soofi & Company

Ms. Hafsa Durrani Junior Research Associate, Research Society of International Law

Ms. Sana Taha Intern

EXECUTIVE SUMMARY

Pakistan has one of the highest rates of annual deforestation in Asia. However, REDD+ - the unique compensatory mechanism recently developed under United Nations Programme on Reducing Emissions from Deforestation and Forest Degradation - offers Pakistan a historic opportunity to incentivize the conservation of its forests.

The purpose of this report is to conduct an overall review of Pakistan's laws and policies that relate to forestry in order to develop a robust legal framework to facilitate the implementation of REDD+ in Pakistan.

This report contains a thorough review of the domestic laws that have a bearing on REDD+ in Pakistan. These include inter alia, laws relating to forestry, climate change and land tenure at the federal and provincial level. A historical overview of all the forest policies of Pakistan has also been given to understand the evolution of the law and its possible effect on deforestation and forest degradation. The relevant statutory bodies have also been identified along with ministries, governmental and non-governmental organizations as well as institutions and research centers. The rights of women with regard to land use and ownership have also been looked with a view to reform in order to better implement the mandate of the UNFCCC and REDD+.

This report also analyzes the recently enacted Climate Change Act 2017 from a legal perspective. In our view, this legislative instrument can play a key role in accommodating REDD+ in domestic law and should be used as the principal legal tool to implement REDD+ in Pakistan.

Chapter One of the Report provides an introduction to REDD+ and the UNFCCC. It lists down and defines the different goals of REDD+ including deforestation, forest degradation, sustainable forest management etc. The Chapter also discusses the genesis of REDD from the Kyoto Protocol to the Cancun Agreement.

Chapter Two of the Report focuses on the national context and approach to REDD+ in Pakistan. The Chapter looks at Pakistan's rate of deforestation and current forest cover as well as the current policies that underpin its priorities; from political to economic considerations. The Climate Change Policy and Draft Forest Policy 2015 are also reviewed and the projects that have been undertaken by the different provinces in connection with REDD+ are also discussed.

Chapter Three gives an overview of the general legal system of Pakistan; from its separation of powers, to the role of international law and the difference between policy, law and regulation along with the law making process. The Section also comprehensively reviews the forest policies that have existed in Pakistan from its inception to present day. It also highlights the current statutory regime for the environment, climate and forests.

Chapter Four delves into an analysis of Land Tenure laws in Pakistan with special attention on the laws that pertain to women. The forested land in Pakistan and its demarcation along with the statutory framework for its management are discussed in detail.

Chapter Five focuses on REDD+ specific areas such as drivers of deforestation and forest degradation, system of benefit sharing, stakeholder engagement including public and private sector involvement as well as grass root level engagement and finally the inclusion of certain safeguards that have been highlighted in the Cancun Agreement.

The final chapter in this Report contains the recommendations that have been proposed after reviewing the existing legal framework that deals with REDD+. It is hoped that these recommendations will provide the legal road-map for the effective implementation of REDD+ in Pakistan.

Chapter 1 – INTRODUCTION

1.1 UN-REDD & REDD+

The United Nations Programme on Reducing Emissions from Deforestation and Forest Degradation (UN-REDD) is a collaborative programme of the Food and Agricultural Organization of the United Nations, the United Nations Development Programme (UNDP) and the United Nations Environment Programme (UNEP). UN-REDD was formed in 2007 at the thirteenth session of the United Nations Framework Convention on Climate Change. The Agencies are combining forces to support developing countries in their efforts to mitigate climate change and to support REDD+ processes while ensuring the involvement of stakeholders.

Reducing Emissions from Deforestation and forest Degradation (REDD+) is a compensation based policy under the UN-REDD umbrella for developing countries which focuses on five key activities with regard to preservation of the environment. The five goals that have been set are the reduction of emissions from deforestation, the reduction of emissions from forest degradation, sustainable management of forests, conservation of forest carbon stocks and the enhancement of forest carbon stocks. The 'plus' denotes the ability of the REDD programme to achieve other benefits such as poverty alleviation, improved governance and the conservation and protection of eco-systems and biodiversity.

1.2 The Need for REDD+

Under the REDD+ program, developed countries apart from reducing their own greenhouse gas emissions will pay developing countries to keep their forests intact and reduce deforestation. Countries that reduce emissions and countries that continue to conserve their forests and use their forests sustainably are all paid under the REDD+ programme.

In the context of Pakistan, the REDD+ and result based payment regime can prove to be very beneficial by essentially:

- Facilitating the protection and conservation of Pakistan's fast depleting forest resources;
- Providing incentives to forest dependent communities to not cut down forests under their control; and
- To spread awareness and increase education about conservation and sustainable conservation methods.

As per the Cancun Agreements under the United Nations Framework Convention for Climate Change, REDD+ will be implemented in three phases to allow countries to adapt their national frameworks to include REDD+.¹ Most countries involved in REDD+ activities are in Phase 1 which is the readiness phase whereby countries are developing national strategies, action plans and capacity building activities. Pakistan is currently in the readiness phase of REDD+. The second phase involves the implementation of national policies and measures along with action plans with further capacity building, technology development and transfer and a demonstration of results-based demonstration

¹ COP decision 1/CP.16 (III C Paragraph 73; UNFCCC 2010) available at < <https://unfccc.int/resource/docs/2010/cop16/eng/07a01.pdf>>

activities. The last and final phase involves moving to direct results-based actions i.e. fully measured, reported and verified emissions and removals. These three phases are known as readiness, piloting and results-based payments.²

1.3 The REDD+ Goals

In 2010, at COP-16 as set out in the Cancun Agreements, REDD+ was created to include the following goals:³

- (a) Reducing Emissions from Deforestation;
- (b) Reducing Emissions from Forest Degradation;
- (c) Conservation of forest carbon stocks;
- (d) Sustainable management of forests; and
- (e) Enhancement of forest carbon stocks.

1.3.1 Deforestation

The definition of deforestation is a subject of controversy as it has been given many different definitions; each with its own peculiar connotation. Deforestation implies the long term or permanent loss of forest cover and its transformation to other land use. The term excludes situations where trees have been removed for harvesting or logging and where the forest is expected to regenerate naturally.

As per the UNFCCC, deforestation is the ‘direct human-induced conversion of forested land to non-forested land’.⁴ According to the definition provided by the Food and Agriculture Organization (FAO), deforestation is ‘the conversion of forest to other land use or the long term reduction of the tree canopy below the minimum ten percent threshold’.⁵ Deforestation in the context of REDD+ denotes more than the removal of tree cover. Harvesting agricultural crops and removing timber from forested sites does not necessarily create a long-lasting problem in the environment as the same carbon that is emitted is sequestered by new trees.⁶ However, deforestation becomes a problem when the cycle is broken and the land is converted for another use. Therefore, the term deforestation denotes the change of forested land to non-forested land.

A proposed definition for reducing emissions from deforestation has been proposed by R. Michael Martin, Director of the Forest Economics and Policy Division, FAO Rome, as, ‘avoiding the emissions associated with the burning or natural degradation of stored forest biomass on the site as it is converted to another land use that maintains or stores a lower quantity of carbon in biomass’.⁷

² Martin Herold, Louis Verchot, Arild Angelsen, Danae Maniatis, Simone Bauch, “A Step Wise Framework for Setting REDD+ Forest Emission Levels and Forest Reference Levels,” Info Brief, CIFOR, No. 52, (April 2012)

³ COP decision 1/CP.16 (UNFCCC, 2010)

⁴ Forestry Department, “Definitional issues related to reducing emissions from deforestation,” (FAO Corporate Document Repository) Decision 11/CP.7, UNFCCC, 2011.

Available at < <http://www.fao.org/docrep/009/j9345e/j9345e07.htm>>

⁵ Ibid

⁶ R. M. Martin, “Deforestation, Land Use Change and REDD,” (FAO Corporate Document Repository)

Available at < <http://www.fao.org/docrep/011/i0440e/i0440e02.htm>>

⁷ Ibid

Deforestation globally can be attributed to a number of causes; from lack of market reward for conserving forests to inadequate specification of property rights, poverty, policy failure and poor management practices.⁸ According to the Stern Review, although emissions from deforestation are large, with the right policies, deforestation could be reduced and substantial emissions cut.⁹

1.3.2 Forest Degradation

The definition of forest degradation has also been subject to debate. In fact, a recent survey found more than fifty definitions of forest degradation.¹⁰ While forest degradation was initially defined as ‘the reduction of the capacity of a forest to produce goods and services’, in the current context, degraded forests would be those carrying less carbon than the land is capable of retaining.¹¹ Degradation does not involve a reduction of the forest area but a decrease in the quality of the condition of the forest.¹² Forest degradation involves a process of change that negatively affects the characteristics of a forest. This change is caused by a disturbance which may vary in ‘extent, severity, quality, origin and frequency’.¹³ This disturbance may be natural, such as that caused by fire storm or drought or human induced causes such as harvesting, road construction, hunting, grazing etc. In some cases degradation may be caused as a combination of both natural and human induced causes.¹⁴

Forest degradation is a serious environmental problem and quantifying the scale of the problem is difficult as it perceived differently by different stakeholders and it occurs in different forms and with varying intensity.¹⁵

1.3.3 Sustainable Management of Forests

Sustainable forest management is the management of forests according to the principles of sustainable development which aim to balance the ecological, economic and socio cultural aspects of development. Sustainable Forest Management has been defined as:

*“the stewardship and use of forests and forest lands in a way, and at a rate, that maintains their biodiversity, productivity, regeneration capacity, vitality and their potential to fulfill, now and in the future, relevant ecological, economic and social functions, at local, national and global levels, and that does not cause damage to other ecosystems”.*¹⁶

⁸ Economic and Social Council (ECOSOC) of the United Nations, “Underlying causes of Deforestation Report,” (New York, USA, March 1996) E/CN.17/IPF/1996/2. New York, USA.

⁹ “Stern Review on The Economic Effects of Climate Change,” (Population and Development Review 2006) 207 Available at < http://mudancasclimaticas.cptec.inpe.br/~rmclima/pdfs/destaques/sternreview_report_complete.pdf>

¹⁰ H.G. Lund, “What is a Degraded Forest?” (Forest Information Services, 2009, USA)

¹¹ R. M. Martin, “Deforestation, Land Use Change and REDD” (FAO Corporate Document Repository)

¹² Jean-Paul Lanly, “Deforestation and Forest Degradation Factors,” (FAO Corporate Document Repository)

Available at < http://www.fao.org/docrep/article/wfc/xii/ms12a-e.htm#P14_73>

¹³ “Assessing Forest Degradation, Towards the Development of Globally Applicable Guidelines,” (2011) Forest Resources Assessment Working Paper 177/2011

Available at < <http://www.fao.org/docrep/015/i2479e/i2479e00.pdf>>

¹⁴ Ibid

¹⁵ Ibid 2

¹⁶ “Definitions and Basic Principles of Sustainable Forest Management in Relation to Criteria and Indicators,” (FAO Corporate Document Repository)

Available at < <http://www.fao.org/docrep/003/x6896e/x6896e0e.htm>>

1.3.4 Conservation and Enhancement of Forest Carbon Stocks

Carbon stocks refer to the amount of carbon stored in the world's ecosystem. Conservation of forest carbon stocks is one of the goals of the REDD+ policy whereby countries that conserve their forests and curb deforestation are provided compensation for their contribution to the world carbon stock. Enhancement of carbon stocks on the other hand is the creation or improvement of carbon pools and reservoirs and their ability to sequester and store carbon.¹⁷ This includes forest management activities such as establishing forests on land which was not previously forested or which had been converted to other land use and increasing forest cover through other environmentally viable measures.

1.4 Genesis of REDD: The United Nations Framework Convention on Climate Change (UNFCCC)

The United Nations Framework Convention on Climate Change is an international environmental treaty negotiated at the Earth Summit in Rio de Janeiro which entered into force on 21.03.1994. There are 197 parties to the Convention, including Pakistan. The Convention was unique as it recognized that there was an environmental problem, despite concrete scientific evidence on the subject at the time. It also set the ultimate goal of stabilizing greenhouse gas concentrations and put an onus on the developed countries to lead the way in reducing emissions as their industrialization processes had the most harmful impact on the climate. The Convention also set up a system of grants and loans where developed countries agreed to provide financial and technical assistance to developing countries. It also set up a clear monitoring system whereby parties are to submit national reports on their climate change policies and measures along with an inventory of greenhouse gas emissions.

1.4.1 Bali Action Plan

In December 2007, the 13th session of the UNFCCC and the 3rd session of the Parties to the Kyoto Protocol took place in Bali where Governments adopted the Bali Action Plan which launched a 'new, comprehensive process to enable the full, effective and sustained implementation of the Convention through long term cooperative action, now, up to and beyond 2012.'¹⁸ The Bali Action Plan emphasized the importance of involving developing countries in the process of mitigation of climate change. UN-REDD was launched as a program in this session of the UNFCCC.

1.4.2 The Kyoto Protocol

While the formation of UNREDD was formalized in the thirteenth Conference of the UNFCCC in Bali in 2007 the seeds for a concentrated effort to mitigate climate change were planted in 1997 by the Kyoto Protocol. Article 2 of the Protocol enjoined the parties to implement and further elaborate policies to promote sustainable development and sustainable agriculture in order to achieve its quantified emission limitation in light of climate change conditions,¹⁹ while Article 3 laid down the

¹⁷ The REDD Desk, "Carbon Stock Enhancement," (REDD encyclopedia)
Available at < <http://theredddesk.org/encyclopaedia/carbon-stock-enhancement>>

¹⁸ United Nations Framework Convention on Climate Change, "The Bali Road Map Intro," (March 2013)
Available at < https://unfccc.int/key_steps/bali_road_map/items/6072txt.php>

¹⁹ Article 2 (1) of Kyoto Protocol to the UN Framework Convention on Climate Change

requirement of reporting greenhouse gas in a transparent manner.²⁰ The Kyoto Protocol was adopted by Pakistan in 1997 and came into force in 2005.²¹

Under the Kyoto Protocol the Clean Development Mechanism (CDM) was defined which has been viewed by many as a trailblazer as it is the first global investment and credit scheme.²² The CDM has two main goals; firstly, to assist developing countries in achieving sustainable development and secondly, to assist developed countries in meeting their emission reduction targets by allowing them to purchase offsets created by CDM project. The CDM allows emission-reduction projects in developing countries to earn certified emission reduction credits (CER) or offsets. Each credit is equal to one tonne of CO₂ (hence the informal term ‘carbon’). These credits can be traded and sold as a commodity, and used by industrialized countries to meet a part of their emission reduction targets under the Kyoto Protocol.

1.4.3 Cancun Agreements

The Cancun Agreements of 2010 addressed the challenge of climate change and took key steps forward in drafting cohesive plans to reduce climate change impacts. Its main objectives covered mitigation, transparency of actions, technology, finance, adaptation, forests and capacity building.

REDD+ was launched pursuant to the Cancun Agreements forming the basis for the greatest collective effort to reduce emissions with mutual accountability while helping developing nations deal with the issue of climate change and including a timely schedule for nations under the UNFCCC to review the progress made towards the objective.

1.4.4 The Warsaw Framework for REDD+

At the 19th session of the Conference of the Parties to the UNFCCC, the Warsaw Framework (WFR) was adopted. The WFR established a robust framework for the implementation of REDD+ activities in order to achieve tangible results while bearing in mind the diversity of countries. The WFR contains a well-designed measurement and reporting system and sufficient discretion and flexibility to implementing developing country parties. It is arguable that REDD+ was made a reality by virtue of

Each Party included in Annex I, in achieving its quantified emission limitation and reduction commitments in order to promote sustainable development, shall:

- (a) Implement and/or further elaborate policies and measures in accordance with its national circumstances, such as:
- (ii) Protection and enhancement of sinks and reservoirs of greenhouse gases, promotion of sustainable forest management practices, afforestation and reforestation;
- (iii) Promotion of sustainable forms of agriculture in light of climate change considerations

²⁰ Article 3 (3), Kyoto Protocol to the UN Framework Convention on Climate Change

The net changes in greenhouse gas emissions by sources and removals by sinks resulting from direct human-induced land-use change and forestry activities, limited to afforestation, reforestation and deforestation since 1990, measured as verifiable changes in carbon stocks in each commitment period, shall be used to meet the commitments under this Article of each Party included in Annex I. The greenhouse gas emissions by sources and removals by sinks associated with those activities shall be reported in a transparent and verifiable manner.

²¹ United Nations Framework Convention on Climate Change, “Status of Ratification of Kyoto Protocol,” (April 2016) Available at < http://unfccc.int/kyoto_protocol/status_of_ratification/items/2613.php>

²² United Nations Framework Convention on Climate Change, “Clean Development Mechanism (CDM),” (November 2015)

Available at < http://unfccc.int/kyoto_protocol/mechanisms/clean_development_mechanism/items/2718.php>

the Warsaw Framework.²³ The Framework includes decisions on national forest monitoring systems, safeguards, forest reference emission levels, measuring, reporting and verification (MRV) and the drivers of deforestation and degradation.

1.4.5 Paris Agreement

The Paris Agreement, formulated at the 21st session of the UNFCCC, enhanced the implementation of the UNFCCC mandate by creating a hybrid of grass root level efforts and top down rules. REDD+ was officially included in the Agreement under Article 5.²⁴ Parties were encouraged to implement and support the existing REDD+ framework as laid down by the WRF. The importance and necessity of REDD+ was thus firmly underscored by the Paris Agreement and sent a strong message to governments around the world to mobilize efforts under this initiative. The Agreement was signed by Pakistan on 22 April 2016 and ratified on 10 November 2016.

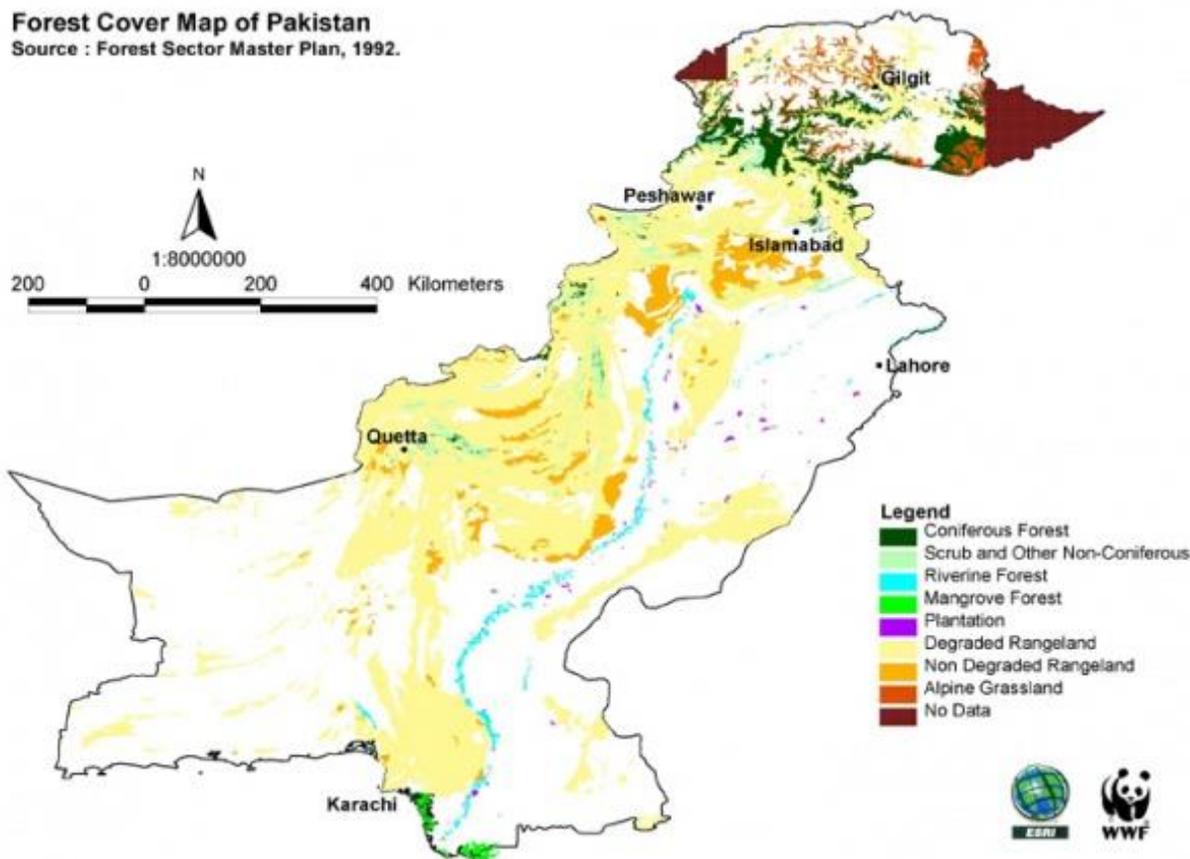
²³ “Unpacking the ‘Warsaw Framework for REDD+’, the Requirements for Implementing REDD+ under the United Nations Framework Convention on Climate Change, Climate Law and Policy,” (Climate Law and Policy, February 2014) Available at < http://theredddesk.org/sites/default/files/resources/pdf/cop19_assessment_by_clp_2014.pdf>

²⁴Article 5, Paris Agreement 2015:

1. Parties should take action to conserve and enhance, as appropriate, sinks and reservoirs of greenhouse gases as referred to in Article 4, paragraph 1 (d), of the Convention, including forests.
2. Parties are encouraged to take action to implement and support, including through results-based payments, the existing framework as set out in related guidance and decisions already agreed under the Convention for: policy approaches and positive incentives for activities relating to reducing emissions from deforestation and forest degradation, and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries; and alternative policy approaches, such as joint mitigation and adaptation approaches for the integral and sustainable management of forests, while reaffirming the importance of incentivizing, as appropriate, non-carbon benefits associated with such approaches.

Chapter 2 – NATIONAL CONTEXT AND APPROACH TO REDD+

Pakistan has a high rate of deforestation and forest degradation particularly in the Diامر District of Gilgit-Baltistan and Kohistan District of Khyber Pakhtunkhwa. The illustration below is the forest cover map of Pakistan (as it stood in 1992).



The exact amount of forest cover in Pakistan today is under dispute. According to the Pakistan Forest Institute (PFI) in Peshawar, the percentage of forests in the country is 5.02%.²⁵ According to the FAO, Pakistan lost 840,000 hectare of forest cover between 1990 and 2010 and the rate of loss of forests is 42,000 ha per year.²⁶ Other studies show the total tree cover loss between 2000 and 2013 as 10,022.4 hectares, with a gain of only 847.3 hectares.²⁷ Therefore it is evident that Pakistan’s current policies lack a strong and cohesive implementation strategy that can curb deforestation. These figures also make it apparent that Pakistan can gain significantly from a policy that conserves and protects its forests while providing compensation in order to maintain its forests and prevent forest degradation.

Table 1 below shows the change in forest resources in Pakistan from the year 1990 to 2005:

²⁵ Pakistan Forest Institute, “Land Cover Atlas of Pakistan 2012,” (Peshawar 2012).

²⁶ Rina S. Khan, “Earthly matters: Can Pakistan’s forests be saved?” *Dawn*. (19 January 2014)
Available at: <<http://www.dawn.com/news/1081262>>

²⁷ Rina S. Khan, “Pakistan’s Fast Disappearing Forests,” *The Express Tribune*. (25 February 2014)
Available at <<http://tribune.com.pk/story/676010/pakistans-fast-disappearing-forests/>>

Variable	Year	Unit	Pakistan
Forest Area	1990	1000 ha	2527
	2005	1000 ha	1902
Change in Forest Area	1990-2005	1000 ha	-625
		%	-24.7
Change in Growing Stock	1990-2005	1000m ³ /year	-10,200
Carbon Stock in Living Biomass	1990	Million tons	330
	2005	Million tons	243
Change in total carbon stock in living biomass	1990-2005	Million tons	-87

Table 1. Change in Forest Resources in Pakistan: 1990 – 2005²⁸

2.1 Economic and Social Development Policies of Pakistan

Pakistan is the sixth most populous country in the world with an estimated population of 193.6 million and a growth rate of 1.97%.²⁹ Consequently, the economy is stressed and there is widespread poverty which is further exacerbated by natural disasters and terrorism.³⁰ Because of this rapid growth the share of urban population is also increasing exponentially. Urbanization results in widespread deforestation to accommodate the population. This is counterproductive to a nationwide REDD+ strategy as it does not protect the environment but rather contributes towards its destruction.

Pakistan has committed to the United Nations Sustainable Development Goals (SDG); a set of seventeen goals which includes ending poverty, injustice, inequality and tackling climate change by the year 2030. The thirteenth goal of the SDGs is to take urgent action to combat climate change. In this regard, Pakistan has also recently passed a National Climate Change Policy and drafted a Forest Policy that takes into consideration the REDD+ strategy. However, the effective implementation of several other SDG's creates competing pressure on the State relating to social and economic development. The resulting energy needs are likely to cause a surge in the emission trajectory.

In this regard, Pakistan's current priorities do not appear to reflect a commitment to REDD+ strategy. There is a strong focus on resuscitating the economy and improving the security situation; the latter being a key determinant of future investment.³¹ Pakistan has worked on improving its security conditions through the National Action Plan adopted in 2014 and Operation Zarb-e-Azb in the tribal regions of Pakistan.³² In 2017, counter-terrorism and counter-militancy operations by the Army were extended across the country under Operation Radd-ul-Fasaad. In such a situation, the development

²⁸ Food and Agriculture Organization of the United Nations, "Global Forest Resources Assessment," (Rome, Italy, 2005)

²⁹ World Population Review, "Pakistan Population 2017," (February 2017)
Available at <<http://worldpopulationreview.com/countries/pakistan-population/>>

³⁰ UNDP, "About Pakistan," UNDP in Pakistan, (2016)

Available at <<http://www.pk.undp.org/content/pakistan/en/home/countryinfo.html>>

³¹ "Impact of War in Afghanistan and Ensuing Terror on Pakistan's Economy," (Pakistan Economic Survey 2014-2015) 280

Available at <http://www.finance.gov.pk/survey/chapters_15/Annex_IV_War_on_Terror.pdf>

³² "NAP, Zarb-e-Azb Made it the Safe Year" *The Nation* (1 January 2016)

<<http://nation.com.pk/2015-in-review/01-Jan-2016/nap-zarb-e-azb-made-it-the-safe-year>>

and implementation of environmental policies tend to be dwarfed by other more immediate priorities for the government.

On 20 April 2015 Pakistan and China signed an agreement to commence work on a multi-billion-dollar project; the China-Pakistan Economic Corridor (CPEC). This project is intended to improve Pakistan's economy by construction of modern transportation infrastructure, establishment of special economic zones and increasing power generation capacity. A vast network of highways and railways is to be built in order to link the seaports in Gwadar (Balochistan) and Karachi (Sindh) to Xinjiang in China. As part of the infrastructure project, an eleven-hundred-kilometer-long motorway will be constructed between Karachi and Lahore and the already existing Karakoram Highway between Rawalpindi and the Chinese border will be completely reconstructed. Railway networks will also be extended and renovated. These developments will have serious implications on the environment especially since the question of sustainable development and protection of the environment has not been explicitly addressed by either of the Governments nor are such concerns presently a part of the national discourse on CPEC.

2.2 Initiation of REDD+ in Pakistan

Pakistan initiated REDD+ in 2010 when it was included in the Climate Change Policy of Pakistan. A National REDD+ Steering Committee was established in 2010 and focal persons from the provincial forest departments were designated.

In 2011 Pakistan joined the UN-REDD Programme as a partner with the aim of operationalizing and mainstreaming REDD+ in its forest management policies. Pakistan also became a member of the Forest Carbon Partnership Facility (FCPF) of the World Bank in 2013 where it submitted its REDD+ Readiness Preparation Proposal (RPP) to the FCPF that was approved in December 2013 enabling Pakistan to secure USD 3.8 million for the next five years.³³

In 2012, the Forestry Wing of the Climate Change Division, International Centre for Integrated Mountain Development and Worldwide Fund for Nature-Pakistan (WWF-Pakistan) jointly implemented a project on the REDD+ Preparedness Phase in Pakistan with the objective of building capacity, developing a road map for a national REDD+ strategy and developing a national REDD+ project proposal.

Furthermore, in 2013 and 2014 the UN-REDD programme provided technical and financial support for the development of a REDD+ Roadmap Proposal, the preparation of a National Forest Monitoring System Action Plan and capacity building in Satellite Land Monitoring System and Greenhouse Gas Inventory.

³³ Government of Pakistan, "Action Plan for the implementation of the national forest monitoring system of Pakistan," (August 2015)

Available at < <https://www.wwf-pak.org/wwf-projects/pdf/NFMS.pdf>>

2.3 National Climate Change Policy 2012

The National Climate Change Policy 2012 (NCCP) is the primary policy document on climate change in Pakistan.³⁴ The NCCP explicitly mentions REDD+ in its policy measures with regard to ‘carbon sequestration and forestry’. It prioritizes the development of a framework for a national REDD strategy which ensures compliance with international conventions and practices. The NCCP also creates an obligation to develop a legal and institutional framework that specifies the right to REDD+ credits.³⁵ It also states that a system for monitoring, reporting and verification must be established in order to evaluate emission reductions and changes in the land use system. Furthermore, it calls for institutions dealing with REDD+ matters to be strengthened.³⁶ This is crucial for Pakistan in order to ensure grass root level application of the REDD+ strategy.

2.4 The Framework for Implementation of the Climate Change Policy (2014-2030)

In pursuance to the NCCP, the Framework for Implementation of the Climate Change Policy 2014-2030 (henceforth referred to as the Framework) was drafted which provides a detailed list of the REDD+ goals that the Federal Government strives to achieve.³⁷

The primary objective of the Framework is to build institutional and professional capacities for the development and implementation of REDD+ and Clean Development Mechanisms (CDM).³⁸ It focuses on enhancing the capacities of national institutions, provincial forest departments and other stakeholders for the effective development and implementation of innovative mechanisms aimed at avoiding deforestation and enhancing forest stocks. The Framework also recognizes and highlights the importance of developing a regulatory, governance and law enforcement framework and the interconnection of and coordination between national and international entities for technical and financial assistance.

2.5 Draft National Forest Policy 2015

To supplement the Framework, and to achieve the intended objectives of forest conservation, the Ministry of Climate Change has drafted a National Forest Policy in 2015. This policy lists REDD+ as one of its core goals in curbing deforestation and promoting conservation. The two main policy measures are provided as firstly, ensuring the implementation of REDD+ in accordance with international agreements and secondly, that the benefits arising from REDD+ be fully transferred to the owners and right holders. The policy also gives special consideration to results based payments under REDD+.³⁹

³⁴ Government of Pakistan Ministry of Climate Change, “National Climate Change Policy 2012,” (Islamabad, Pakistan, September 2012)

Available at < <http://www.mocc.gov.pk/>>

An updated draft policy has been in the works since 2015 but has yet to be formalized.

³⁵ Ibid 29-30

³⁶ Ibid 30-32

³⁷ Government of Pakistan Climate Change Division, “Framework for Implementation of Climate Change Policy,” (Islamabad, Pakistan, November 2013)

Available at < <http://www.mocc.gov.pk/>>

³⁸ Ibid 38-39

³⁹ Government of Pakistan Ministry of Climate Change, “National Forest Policy 2015,” (Islamabad, Pakistan, 2015)

2.6 Clean Development Mechanism

Clean Development Mechanism projects as provided for under the Kyoto Protocol have been initiated in a number of areas in Pakistan.⁴⁰ As a rule, Pakistan permits any unilateral, bilateral and multilateral CDM project, that is related to energy, land use, forestry, agricultural and livestock practices, waste management, transport and industrial processes. Pakistan has approved 67 CDM projects and has included them in the aforementioned NCCP.

2.7 REDD+ Related Projects in Pakistan

Pakistan has undertaken the following projects that involve REDD+ and which in the future could result in REDD+ credits.

Punjab

A thirty-six month long project to map the major forests of Punjab for REDD+ through satellite was introduced in 2013. This mapping was done via geographic information system (GIS) which is a computer system for capturing, storing, checking and displaying data related to positions on the Earth's surface. This project had a budget of PKR 84.930 million and was implemented by the Punjab Forest Department.⁴¹

Khyber Pakhtunkhwa (KPK)

The current political government in KPK has recently launched the 'Billion Tree Tsunami Afforestation Project'. The plan is to plant a billion trees in KPK from the year 2014 to 2018 with a budget of PKR 12 billion to be implemented by the KPK Forest Department. According to the KPK Provincial Government, "the Billion Tree Tsunami Project is driven by current Government's vision of Green Growth which ties in the needs for sustainable forestry development in Khyber Pakhtunkhwa generating Green jobs, Gender empowerment, Preserving Pakistan's natural capital while also addressing the global issue of Climate Change."⁴²

Moreover, in 2013 the Government of KPK launched a project for the development of a designated forest carbon stock assessment for REDD+ with a budget of PKR 40 million to be implemented by the KPK Forest Department

In 2013, the Government also initiated a two year plan to assess the carbon stocks of forests in KPK with a budget of 25.8 to be carried out by the Pakistan Forest Institute.⁴³

⁴⁰ Article 12 Kyoto Protocol to the United Nations Framework Convention on Climate Change UN Doc FCCC/CP/1997/7/Add.1, Dec. 10, 1997; 37 ILM 22 (1998)

⁴¹All data for the provinces in this section was taken from the Office of the Inspector General of Forests: Government of Pakistan. "Action Plan for the implementation of the national forest monitoring system of Pakistan," (August 2015) 28 Available at < <https://www.wwf-pak.org/wwf-projects/pdf/NFMS.pdf>>

⁴²Forestry, Environment and Wildlife Department, "Billion Trees Tsunami Afforestation Project," Available at <<http://103.240.220.71/btt/>>

⁴³ Pakistan Forest Institute, (Peshawar, Pakistan) Available at <<http://pfi.gov.pk/>>

Gilgit-Baltistan

REDD+ readiness preparation began in Gilgit-Baltistan in 2013 with a budget of PKR 30 million. The implementing organization was the Gilgit-Baltistan Forest Department. The Government also initiated a project to make a revised working plan for private forests in Diamer District under the auspices of the Forest Department from the year 2015 to 2016 with a budget of PKR 10.5 million.

Azad Jammu & Kashmir

The Government of AJK in 2009 sanctioned PKR 176 million for the preparation of scientific forest management plans in the area to be implemented by the AJK Forest Department.

Chapter 3 – POLICY, LAW AND REGULATION REVIEW

This section explores the legal framework which could potentially accommodate and regulate REDD+ initiatives in the country. It sets out the policies, laws and regulations that deal with forestry in Pakistan and highlights the legal landscape within which these laws and policies operate. The institutional framework under which REDD+ strategies can be implemented and furthered will be discussed subsequently in Chapter 6 below.

The identification of the applicable domestic legal framework is key to developing a comprehensive REDD+ policy in Pakistan that explicitly addresses key elements and establishes the legal approach to REDD+ at the federal or provincial level. It will also provide clarity on the bodies and personnel responsible for overseeing and implementing REDD+ projects in Pakistan.

The policy, law and regulation review should prove useful in developing strategies for applying the existing law to REDD+ especially with regard to benefit sharing, carbon rights and the monetization of carbon benefits at the grass root level.

3.1 Limbs of the State

Pakistan is a democratic parliamentary federal republic. The separation of powers in Pakistan is inherent in its Constitution though not explicitly demarcated.⁴⁴

The legislature in Pakistan consists of the President, the National Assembly and the Senate. The executive authority of the Federation is exercised in the name of the President by the Federal Government which consists of the Prime Minister and the Federal Ministers.⁴⁵ The Judicial System of Pakistan is discussed in detail in the subsequent section.

3.2 Pakistan's Legal System

The Judicial System of Pakistan is constitutionally regulated under Article 175 of the Constitution of Pakistan which provides for the Supreme Court and the High Courts along with the Criminal and Civil Courts. Under Article 277 of the Constitution, a Federal Shariat Court has also been established. The trichotomy of the judicial system is as below:

1. Superior Judiciary: Supreme Court, Federal Shariat Court and High Court
2. District Judiciary: Civil & Criminal Courts under the supervision and control of the High Courts as per Article 203 of the Constitution
3. Administrative Courts, Tribunals and Special Courts created under different laws.

3.3 Difference between policy, law and regulation

Laws in Pakistan take the form of either Acts or Ordinances. Rules and regulations are formulated under these parent laws as subordinate legislation.⁴⁶ Policy making is a function which is exclusively

⁴⁴ District Bar Association, Rawalpindi v. Federation of Pakistan PLD 2015 SC 401

⁴⁵ Article 90 Constitution of the Islamic Republic of Pakistan 1973

⁴⁶ Emmanuel Zafar, "Administrative Law," (Khyber Law Publishers, Lahore, Pakistan, 1998) 9

in the domain of the Federal or Provincial Government. Courts do not intervene in the policy matters unless such policies are perverse, void ab initio or against the fundamental freedoms enjoined in the Constitution.⁴⁷ One of the key functions of a policy is to advise and direct the government, however it must be noted that a policy is not binding and there are no legal consequences for failure to implement a policy. Given below is the legislative process for statute making.

3.3.1 Legislative Process

The executive authority of the Federation is exercised in the name of the President by the Federal Government which consists of the Prime Minister and the Federal Ministers⁴⁸. The Federal Government allocates and carries out its business pursuant to the Rules of Business, 1973.

The executive authority of the four Provincial Governments, i.e. Khyber-Pakhtunkhwa, Sindh, Balochistan and Punjab is exercised in the name of the Governor. The Governor of the Provinces is appointed by the President on the advice of the Prime Minister.⁴⁹ As has been addressed earlier, the Provincial Governments carry out their business pursuant to the various Rules of Business that have been enacted by the Provincial Assemblies under Article 139(2) of the Constitution of the Islamic Republic of Pakistan 1973.

The relationship between the Federal Government and the Provincial Governments is one of relative autonomy however the Provincial Governments exercise their authority so as to ensure compliance with the federal laws that apply in the Provinces.⁵⁰ Furthermore the Federal Government may also direct the Provincial Government to exercise the authority vested in them in such a manner as may appear necessary to the Federal Government.⁵¹

Pakistan has a bicameral parliament. This is composed of the Senate and the National Assembly. The President is elected by both Houses of Parliament and the Provincial Assemblies. The Prime Minister, who heads the Cabinet, belongs to the National Assembly. Members of the Cabinet are appointed by the President on the advice of the Prime Minister. Three-fourths of the cabinet members are taken from the National Assembly and the remaining quarter are taken from the Senate.

A bill relating to the Federal Legislative List can be originated in either House. If the House passes a bill through majority vote it is transmitted to the other House. If the other House passes it without amendment, it is presented to the President for assent. Where the bill is not passed within ninety days or is rejected by the non-originating House it is considered in a joint sitting that is summoned by the President at the request of the originating House. If the bill is passed in the joint sitting it is presented to the President for assent; thereafter a decision of assent has to be made within ten days. If after ten days a statement of assent is not made, it is deemed to have been given.⁵²

Furthermore, the Parliament may legislate directly for the provinces where such a request is made by the province. If the Federal Government proclaims a state of emergency in any province, the power

⁴⁷ Pakistan Football Federation v. The Government of Pakistan 2017 CLC 1

⁴⁸ Article 90 Constitution of the Islamic Republic of Pakistan 1973

⁴⁹ Article 101 Constitution of the Islamic Republic of Pakistan 1973

⁵⁰ Article 148 Constitution of the Islamic Republic of Pakistan 1973

⁵¹ Article 149 Constitution of the Islamic Republic of Pakistan 1973

⁵² Article 75 Constitution of the Islamic Republic of Pakistan 1973

to legislate over that province shifts to the Parliament. However, the bills passed by the Parliament during a state of emergency only remain in force for a period of six months after the emergency is lifted.

3.4 International Law in Pakistan

The interpretation and implementation of international law at a national level is determined by the monist or dualist nature of the State. In states with a monist system, international law does not need to be translated into domestic law. It applies as if it were domestic law from the moment of ratification. In a dualist system, international law is not directly applicable. It must first be translated into domestic legislation, before being applied nationally. The State of Pakistan falls into the latter category.⁵³

Legislation in Pakistan is comprised of thousands of acts, ordinances, orders and notifications and Pakistan is also party to hundreds of multilateral treaties and several thousand bilateral treaties, Memorandums of Understanding, unilateral commitments, etc.⁵⁴ The domestic laws do not, by and large, reference international law directly in their text. However, it is estimated that nearly 60% of these domestic legal documents represent or implement international law provisions in some capacity.

Incorporating International Law into Pakistan's Domestic Law

The scope of the power of the Federal Government is defined within Article 97 of the Constitution, which states:

*Subject to the Constitution, the executive authority of the Federation shall extend to the matters with respect to which Majlis-e-Shoora (Parliament) has power to make law, including exercise of rights, authority and jurisdiction in and in relation to areas outside Pakistan.*⁵⁵

The subjects with regards to which Parliament may make laws are enumerated in the Fourth Schedule of the Constitution. Perhaps the most relevant portions of the Fourth Schedule Federal Legislative List are items three and thirty-two as follows:⁵⁶

*3. External affairs; the implementing of treaties and agreements, including educational and cultural pacts and agreements, with other countries; extradition, including the surrender of criminals and accused persons to Governments outside Pakistan.*⁵⁷

*32. International treaties, conventions and agreements and international arbitration*⁵⁸

Regarding Article 97, the Supreme Court held that the Federal Government has the power to “exercise executive authority” to ratify a treaty, but not the power to legislate, a role that remains firmly with

⁵³ SGS Societe Generale v. Pakistan 2002 CLD Lah. 790.

⁵⁴ This estimation is derived from a combination of multilateral treaties Pakistan participates in as documented by the United Nations, along with the treaties included in the Pakistan Treaty Series.

⁵⁵ Article 97 Constitution of the Islamic Republic of Pakistan 1973

⁵⁶ Items 1, 6, 7, 18, 20, 22, 24, 25, 27, 58 of the Fourth Schedule (1973 Constitution) are indirectly relevant as well.

⁵⁷ Item 3 Fourth Schedule Constitution of the Islamic Republic of Pakistan 1973

⁵⁸ Item 32 Fourth Schedule Constitution of the Islamic Republic of Pakistan 1973

the Parliament.⁵⁹ Article 142(a) of the Constitution also confirms that Parliament has the exclusive power to make laws with respect to any matter on the Federal Legislative List.⁶⁰

Thus, items three and thirty-two anchor the power of ratification and domestic implementation of international instruments with the executive and legislative branches of the Government of Pakistan. This is relevant to the extent that the courts perpetually interpret the legal status of a treaty in a manner in which the rights and obligations arising directly from these international instruments may not form a legal cause of action in the domestic courts unless legislatively adopted.⁶¹

Domestic courts are, in accordance with this reasoning, constitutionally limited in their scope to accepting a cause of action that arises from domestically enacted law. Article 175(2) plainly states that the courts shall have no jurisdiction save as is or may be conferred by the Constitution or by or under any law.

Though the courts are not explicitly directed to exercise jurisdiction over the enforcement of international instruments to which Pakistan is a party under the Constitution, there is also little to suggest that they are entirely barred from considering principles or provisions of international law in issuing a judgment. The Supreme Court, in *Al-Jehad Trust v. Federation of Pakistan*, held that where international law is viewed as consistent with the principles of the Constitution, it may serve as a source of further interpretation or support for enforcing fundamental rights in order to “extend maximum benefits to the people and to have uniformity with the comity of nations.”⁶²

Further, the definition of “existing laws” within the Constitution reinforces this interpretation of the role of international law within the domestic system. “Existing laws” are defined in the Constitution of Pakistan⁶³ in accordance with Article 268(7) to mean “all laws (including Ordinances, Orders-in-Council, Orders, rules, by-laws, regulations and Letters Patent constituting a High Court, and an notifications *and other legal instruments having the force of law*) in force in Pakistan or any part thereof, *or having extraterritorial validity...*”⁶⁴ [*Emphasis Added*].

The inclusion of “other legal instruments having the force of law” and laws “having extraterritorial validity” in the definition of existing laws at the very least implies that international instruments to which Pakistan is a party and accepted customary international law formulate soft law, which may be considered by courts when executing judgments.

A bolder interpretation would suggest that this definition supports the notion that international legal instruments to which Pakistan is a party and accepted customary international law are domestic law as they are in monist countries because they may be considered “legal instruments having the force of law.” Countervailing arguments promoting the exclusive power of Parliament to legislate may be assuaged with the knowledge that where Parliament has the exclusive power to *make* legislation, the executive has the power to introduce ordinances and enter into international instruments, which need not be made at all.

⁵⁹ *Societe Generale De Surveillance S.A. v. Pakistan* 2002 SCMR SC. 1694, 26.

⁶⁰ Article 142 (a) Constitution of the Islamic Republic of Pakistan 1973

⁶¹ *Societe General De Surveillance S.A. v. Pakistan*, *supra* note 71, at 20.

⁶² *Al-Jehad Trust v. Federation of Pakistan* (1999) SCMR SC. 1379

⁶³ Article 260 (1) Constitution of the Islamic Republic of Pakistan 1973

⁶⁴ *Ibid* Article 268 (7)

The executive comprised of the Prime Minister, President and the Cabinet actually exercises a great deal of authority with respect to adopting international law in Pakistan. The Government of Pakistan is to take all action in the name of the President as regards the “authentication of orders and instruments in connection with the representation of Pakistan in foreign countries or at international conferences and of international agreements and treaties.”⁶⁵ No order is to be issued without the approval of the Prime Minister when a proposal arises for the implementation of an international agreement in the provinces.⁶⁶ The Cabinet is required to approve all proposals for entering into any cultural or other agreements with any foreign government prior to any negotiations.⁶⁷ The Federal Rules of Business also extensively document the areas of work in which the various divisions of the Cabinet exercise authority.

As Pakistan is a party to all the agreements under UNFCCC, it has an obligation to implement its international commitment towards REDD+. While there is no specific law that transposes this commitment into domestic law, there are certain frameworks within which REDD+ can be incorporated. Perhaps the most important in this regard is the Pakistan Climate Change Act 2017 that has been passed for this very purpose and the Environmental Protection Act 1997 which was also enacted to meet Pakistan’s international obligations towards climate change. The Convention on the Elimination of All Forms of Discrimination against Women 1976 and Convention on the Elimination of All Forms of Racial Discrimination 1965 are also important instruments for the application of REDD+ in Pakistan. A list of treaties relevant to REDD+ has been provided in Annex B for this purpose. The statutory regimes mentioned in the sections below are also important implementing tools for REDD+.

3.5 Forestry in Pakistan

Under the Constitution of Pakistan, forestry falls in the provincial domain and therefore under the four provincial governments of Sindh, Punjab, Khyber Pakhtunkhwa and Balochistan.⁶⁸ In the Federally Administered Tribal Areas (FATA), the Federal Government is responsible for the Forestry sector through the FATA secretariat however the federal or provincial acts have not been extended to it and therefore ‘legally defined categorization of forests does not exist’.⁶⁹ The Gilgit-Baltistan Forest division falls under the control of the GB Council and it is one of the 53 subjects provided under the Schedule III of the Gilgit-Baltistan (Empowerment & Self Governance) Order 2009.⁷⁰

The functions of the Federal Government with regard to forestry as per the Constitutional Federal Legislative List (Part II) are limited to national planning and economic coordination, inter provincial matters and coordination and matters incidental or ancillary to it. Article 151 of the Constitution and Part I of the Federal Legislative List entitle the Federal Government to regulate import and export of wood and forest products, inter provincial trade and international trade and commerce. The

⁶⁵ Section 7 (3) Rules of Business

⁶⁶ Ibid Section 15 (1) (c)

⁶⁷ Ibid Section 16 (proviso)

⁶⁸ In the Constitution, anything that does not fall in the Federal Legislative List is deemed to fall in the domain of the provinces.

⁶⁹Government Federally Administered Tribal Areas “Directorate of Forests”
Available at <<https://fata.gov.pk/Global-fac.php?iId=381&fid=49&pId=331&mId=183>>

⁷⁰ Schedule III, Gilgit-Baltistan (Empowerment & Self Governance) Order 2009
Available at <<http://www.gbchiefcourt.gov.pk/downloads/self-governance-order-2009.pdf>>

implementation of international conventions and agreements with regard to forestry also fall in the domain of the Federal Government.

In 2010, Parliament passed the 18th Amendment to the Constitution as part of a comprehensive devolution plan.⁷¹ The 18th Amendment has changed the mandate of Federal Ministries and increased the roles and responsibilities of the related institutions and administrative structures at the provincial level. As a result, the topic of Environment has devolved to the provincial authorities.⁷² Forestry itself however was always a purely provincial subject. Nevertheless, forest policies designed to support provincial forest policies and programmes continue to be made at the Federal level.

Although forestry falls within the ambit and domain of the provinces, following the 2016 Paris Agreement, forest carbon accounting has to be done at the national/federal level while following the standards set forth internationally otherwise forest carbon trading may not be permissible.⁷³ The most relevant body for undertaking forest carbon accounting at the national level would be the Federal Ministry of Climate Change. The development and implementation of a REDD+ strategy in Pakistan will thus primarily fall under the purview Ministry of Climate Change at the Federal level.

3.5.1 Policies

This section highlights the history of forest policies in Pakistan in order to give an insight into the nature of rules and their evolution through the years.

Forestry in Pakistan suffers from a large number of management and finance related issues which necessitate an overarching national policy. As per the Draft Policy of 2015 some of the key issues of forestry at the national level are:

- (i) Absence of national forest monitoring mechanism
- (ii) Un-regulated inter provincial movement and trade of timber
- (iii) Absence of uniform standards for forest monitoring and assessment of growing stock in carbon stored in forests.

At the provincial level, forests are often transferred for non-forestry uses or encroached upon. There is also a shortage of irrigation water, inter-sectoral conflicts, natural calamities and weak law enforcement and governance rules.

The first forest policy that was announced in Pakistan was in 1955. Prior to this, Pakistan inherited the Forest Policy of 1894 from the sub-continent. The policy reflected the colonial system of the time and consisted entirely of top down autocratic rules with little room for grass root level application. It placed significant importance on government control over forests. Although the policy called for conservation and preservation of forests, it provided nothing for the improvement and extension of forest areas. The policy was ‘top down and non-participatory’ and drove a ‘wedge between

⁷¹ 18th Amendment to the Constitution of the Islamic Republic of Pakistan 1973

Available at < <http://www.pakistani.org/pakistan/constitution/amendments/18amendment.html>>

⁷² “Environment Devolved” *Dawn* (24 August 2010)

Available at < <https://www.dawn.com/news/555851>>

⁷³ Section 6 Paris Agreement 2015

Available at < http://unfccc.int/files/essential_background/convention/application/pdf/english_paris_agreement.pdf>

communities and their birthright by denying them a say in its management and subjecting them to [a] legal process which was often arbitrary'.⁷⁴ The exponential increase in forest degradation and deforestation during those years in Pakistan can be partially attributed to this seemingly flawed policy.

In 1955, Pakistan introduced its first independent forest policy. This was a step towards biodiversity conservation but failed in the larger picture to make any impact vis a vis deforestation. It recommended classification of forests based on their utility and defined objectives of management.⁷⁵ It also recommended extensive public support and promoted block plantations. It proposed the fencing of forests to protect their degradation from unabated grazing of livestock. However, this did not do much to solve the problem.⁷⁶ While the policy focused on increasing the forested area in Pakistan, it did not address the drivers of deforestation and forest degradation.

In 1958, martial law was imposed in Pakistan and the government's policies were reviewed. The Forest Policy 1962 was drafted as a result which shifted focus from conservation to preservation by moving people out of forested areas and acquiring the rights of tree removal and grazing. While some edicts of the policy were implemented, others were seen as unworkable. Under the 1962 Policy, there was no noticeable increase in forested area and the depletion of forest resources gained momentum to match the growing demand for timber and related products.

While the above-mentioned policies aimed at increasing forest area, these plans were subsequently dropped as it became clear that there was a lack of suitable area and there were only two feasible alternatives; firstly, to increase tree growth on farmlands in irrigated areas and secondly to restore degraded forest land to high rainfall watersheds.⁷⁷

Thereafter, in 1975 a new forest policy was introduced which bore in mind the lack of suitable area for forestation and instead focused on artificial regeneration using high quality stock.⁷⁸ The 1975 Forest Policy took a departure from the earlier policies by including representatives from both governmental and non-governmental institutions. It suggested the formation of owners' cooperative societies but also recommended that forest harvesting should be carried out by the public sector. It therefore identified the need for *guzara* forests to be under the control of those who owned the land as opposed to being managed and controlled by public sector organizations.⁷⁹ This policy was the first people-friendly policy enacted in the forestry sector.

The government that formulated the policy was removed in a coup d'état in 1977 and the new government restarted the process of analyzing national resources. From 1977 to 1988, forest policies were considered ancillary to agricultural policies and added as mere annexures.⁸⁰ The National

⁷⁴ S.R. Khan and A. Naqvi, "The Environment – Poverty Nexus: An Institutional Analysis," (2000) Sustainable Development Policy Institute Working Paper 49 (Pakistan) 19

⁷⁵ Ahmed Javed and Fawad Mahmood, "Changing Perspectives on Forest Policy" (International Institute for Environment and Development, 1998) 40

⁷⁶ Ahmed Javed and Fawad Mahmood, "Changing Perspectives on Forest Policy" (International Institute for Environment and Development, 1998) 40

⁷⁷ Ibid 41

⁷⁸ Ibid

⁷⁹ 'Guzara forest' literally means a 'sufficiency forest'. In effect, a forest whose purpose is to cater to the daily needs for a locality to sustain themselves.

⁸⁰ Anwar Ali, "Management of Guzara Forests; Policies and Their Implications in Hazara Division North-West Frontier Province," (ICIMOD, Kathmandu, Nepal, 2005) 116

Available at <http://lib.icimod.org/record/20711/files/c_attachment_17_28.pdf>

Agricultural Policy 1980 introduced the National Policy on Forestry and Wildlife 1980. The policy provided general statements on the future of forestry in Pakistan without providing any cogent plan to realize those statements. During this period, forest resources continued to deteriorate in the face of a fast growing population.⁸¹

Subsequently in 1988, the democratic government created a National Commission on Agriculture which made recommendations on forestry. The USAID funded a major forestry 'Forestry Planning and Development Project' with an emphasis on farm plantations and research and development of a forest policy. Furthermore, an international seminar on Pakistan's Forest Policies was organized in 1989. The National Forest Policy of 1991 was drafted pursuant to this seminar and the recommendations of the National Commission on Agriculture were also incorporated. The nineties can be considered a turning point for Pakistan's forest policies as some of the lacunae that existed previously were addressed.⁸² The lack of regeneration in hill forests was recognized and the policy emphasized the need for artificial regeneration of forests using high quality stocks. The policy also recommended grants for the rehabilitation of private degraded forests, long-term loans at concessional rates and an introduction of a scheme for the insurance of tree crops. The Policy also made a number of recommendations emphasizing the importance of promotion of afforestation and included a system of monitoring. The 1991 Policy also suggested watershed planning and coordination as a federal and its implementation as a provincial function.⁸³ The 1991 Policy also proposed the establishment of regional research centers and their coordination with provincial forestry research units and universities etc. Perhaps the most significant contribution of the 1991 policy was these grass-root development programmes and the participatory approach to forest management.⁸⁴ However the policy to a large extent remained a paper-tiger as the Forest Department and the Agricultural Department both lacked a cogent set of incentives and support services for private afforestation despite the recommendations.⁸⁵

In 2001, the Government introduced the National Forest Policy of 2001; the goal of which was to foster the sustainable development of renewable natural resources and the rehabilitation of the environment along with the enhancement of sustainable livelihoods of the rural population especially women, children and other marginalized and deprived groups. The policy bore in mind some key elements that effect forestry in Pakistan and aimed to reduce the impact of socio-economic causes, the impact of political interference and focused on the need to strengthen the institutions responsible for the management of forests. This policy had a 'rights-based' approach in which development is linked with the rights of individuals and the community. It focused on improving livelihoods and involving the local communities in the implementation of projects and the management of forests.

The operative policy in Pakistan at present is the National Forest Policy 2010. The Policy provides a framework for sustainable management of forests and associated natural resources including

⁸¹ Babar Shahbaz, Tanvir Ali and Abid Q. Suleri "A Critical Analysis of Forest Policies of Pakistan: Implications for Sustainable Livelihoods." (2007) 12.4 Mitigation Adaptation Strategies for Global Change. 441-453.

⁸²Government of Pakistan. "Forests- The Guardians of Present and Future Generations" (Environmental Policy and Law, 1981) 80

Available at <http://environment.gov.pk/PUB_PDF/StateER2005/Part3Chp3.pdf>

⁸³ Ahmed Javed and Fawad Mahmood, 'Changing Perspectives on Forest Policy' (International Institute for Environment and Development, 1998) 42

⁸⁴ Ibid 116

⁸⁵ Ahmed Javed and Fawad Mahmood, "Changing Perspectives on Forest Policy" (International Institute for Environment and Development, 1998) 116

watersheds, range lands, wildlife etc. The primary goal of the policy is to provide guidance to the federal and provincial agencies to improve the maintenance, restoration and management of forests. This policy also introduced Geographical Information System (GIS) and Remote Sensing for Research and Development institutions and provincial forest departments, to effectively monitor the forest cover on public and private land.

The National Forest Policy 2010 explicitly accommodates REDD+ under Clause 1.10 which reads as under:

Pakistan as a party of UNFCCC and Kyoto Protocol will implement CDM projects of 'afforestation' and 'reforestation' sectors as viable options for mitigating climate change. In order to avoid deforestation and forest degradation and storing maximum carbon in forest ecosystems, REDD+ mechanism will be fully implemented to give incentives and alternate livelihoods to forest dependent communities.

The Policy stipulates the creation of a forest fund to finance the protection of watersheds and to finance the promotion of forestry research and education in Pakistan.

In 2015, a new draft policy was introduced. This policy has yet to be passed and this delay can be attributed to the lack of coordination between the federal and provincial governments. The policy has been made at the federal level but its implementation lies with the provinces who have yet to comment on it. In a statement from the Secretary of the Ministry of Climate Change, it was revealed that the Ministry is planning to take the issue up with the Council of Common Interest (CCI), the body mandated to resolve disputes between the federal government and the provinces to reach a consensus on the national forest policy.

The draft policy focuses on both afforestation and promoting conservation and curbing deforestation. It explicitly mentions Pakistan's commitments towards REDD+. Under the Cancun Agreement, REDD+ has to be implemented in three phases i.e. readiness, piloting and results based payments. Phase three is likely to start in 2020 where forest communities can get results-based payments for quantified and verified emission reduction.

Currently, Pakistan is in phase one of REDD+ implementation where assistance is required from the World Bank's Forest Carbon Partnership Facility (FCPF) and the UN-REDD to prepare a national strategy for implementation along with a national forest monitoring system, national forest reference emission level and a national system for safeguards. The policy measures it includes are that:

- i) The Government of Pakistan with the support of all federating units shall ensure implementation of REDD+ in accordance with the Cancun Agreement, the Warsaw Framework, guidance provided by Inter-Governmental Panel on Climate Change (IPCC) and guidelines provided by the UN-REDD Programme and World Bank's FCPF
- ii) The benefits to be accrued from result based REDD+ actions shall be transferred to legal owners and right holders of forests in accordance with the benefit distribution prescribed in Pakistan's national REDD+ strategy.

Pakistan has signed a REDD+ readiness grant from the FCPF under which it has secured USD 3.8 Million for the implementation of REDD+ activities in Pakistan.

3.5.2 Statutory Regime for the Environment, Climate and Forests in Pakistan

Pakistan did not have any environment laws during its nascent years and it was not until 1975 that the Environment Ministry was established, as a follow up to the Stockholm Declaration of 1972. The first effective period for environmental legislation in the country was from the years 1983 to 1997; resulting in the enactment of the Environmental Protection Ordinance and finally in the promulgation of the Pakistan Environmental Protection Act 1997.⁸⁶

Pakistan Environmental Protection Act 1997

Pakistan Environmental Protection Act 1997 (PEPA) was preceded by the Pakistan Environment Protection Ordinance 1983. The purpose of PEPA is to protect and conserve the environment, promote sustainable development and prevent pollution. This Act forms the basic foundation of environmental law in Pakistan. It calls for the creation of Environmental Protection Agencies at the provincial level. The Act is mandated to transform the international commitments of Pakistan into programs that can be applied by institutions in Pakistan. Environmental Tribunals were established under S. 20 of the Act, which are to be headed by a Chairperson qualified to be a High Court judge.⁸⁷ The Tribunal is discussed in more detail in Chapter 6.

Pakistan Climate Change Act 2017

The Pakistan Climate Change Act 2017 passed by the National Assembly is drafted to meet Pakistan's obligations under international conventions relating to climate change. This Act is monumental for the purposes of establishing an institutional framework for REDD+. The pre-ambule of this Act clearly mentions that

Whereas it is expedient to meet Pakistan's obligations under international conventions relating to climate change and to provide for adoption of comprehensive adaptation and mitigation policies, plans, programmes, projects and other measures required to address the effects of climate change and for matters connected therewith and ancillary thereto.

The Act establishes three institutions for the purposes of meeting Pakistan's international obligations related to climate change; the Pakistan Climate Change Council, the Pakistan Climate Change Authority and the Pakistan Climate Change Fund.⁸⁸ These three institutions are discussed in more detail in Chapter 6 on Institutions. For the purposes of our current review it is important to highlight some of the main definitions that have been incorporated in the legislation and how they may relate to REDD+.

Climate change, under the Act, means change in the climatic system, in addition to natural climate change, caused by changes in concentration of greenhouse gases as a direct or indirect consequence of human activities.⁸⁹ It also provides a definition for greenhouse gases as the gas that contributes to greenhouse effect by absorbing infrared radiation produced by solar warming of the earth's surface,

⁸⁶ Environmental Legislation in Pakistan and the OECD Guidelines for Multinational Enterprises: A Gap Analysis (2012) Available at < <http://sustainableinitiatives.org.pk/R&R/3.pdf>>

⁸⁷ Section 20 Pakistan Environmental Protection Act 1997 No. F. 9(46)/97

⁸⁸ Sections 3, 5 and 12 Pakistan Climate Change Act 2007

Available at < http://www.na.gov.pk/uploads/documents/1485513841_966.pdf>

⁸⁹ Section 2 (d) Pakistan Climate Change Act 2007

and includes any direct or indirect greenhouse gas recognized by UNFCCC and IPCC.⁹⁰ As per the Act, mitigation is the effort that prevents or slows down increase of greenhouse gas concentrations by reducing emissions and enhancing potential sinks for greenhouse gases.⁹¹ ‘Emissions’ are defined with respect to greenhouse gas, to mean emissions of greenhouse gas into the atmosphere caused by human activity.⁹²

The Act does not define ‘forests’ nor does it mention what is meant by carbon credits and carbon stocks. Some of these deficiencies have been dealt with in the concluding section that proposes recommendations in the current framework to incorporate REDD+.

Forest Act 1927⁹³

The Forest Act 1927 extends to Sindh and Punjab. It deals with reserved forests, village-forests, protected forests. It sets down prohibitions of acts in reserves forests such as setting fire, kindling or carrying fire, trespassing or pasturing cattle and causing damage by negligence in felling trees or cutting or dragging any timber.⁹⁴ It criminalizes and penalizes offenders with imprisonment and fines and in some cases both.⁹⁵ The Forest Act in Punjab and Sindh is discussed in more detail in Chapter 4, sections 4.4.1 and 4.4.3.

Khyber Pakhtunkhwa Forest Ordinance 2002⁹⁶

⁹⁰ Section 2 (h) Pakistan Climate Change Act 2007

⁹¹ Section 2 (i) Pakistan Climate Change Act 2007

⁹² Section 2 (e) Pakistan Climate Change Act 2007

⁹³ The Forest Act 1927, Act No. XVI of 1927

Available at <[http://pakistancode.gov.pk/english/UY2Fqa\]w1-apaUY2Fqa-ap%2BX-sg-jjjjjjjjjjjj](http://pakistancode.gov.pk/english/UY2Fqa]w1-apaUY2Fqa-ap%2BX-sg-jjjjjjjjjjjj)>

⁹⁴ Section 26 The Forest Act 1927: Acts prohibited in such forests. (1) Any person who

(a) makes any fresh clearing prohibited by section 5, or

(b) sets fire to a reserved forest, or, in contravention of any rules made by the 2[Provincial Government] in this behalf, kindles any fire, or leaves any fire burning, in such manner as to endanger such a forest; or who, in a reserved forest

(c) kindles, keeps or carries any fire except at such seasons as the Forest-officer may notify in this behalf;

(d) trespasses or pastures cattle, or permits cattle to trespass;

(e) causes any damage by negligence in felling any tree or cutting or dragging any timber;

(f) fells, girdles, lops, or burns any tree or strips off the bark or leaves from, or otherwise damages, the same;

(g) quarries stone, burns lime or charcoal, or collects, subjects to any manufacturing process, or removes, any forest-produce;

(h) clears or breaks up any land for cultivation or any other purpose; [or]¹

(i) in contravention of any rules made in this behalf by the 4[Provincial Government] hunts, shoots, fishes, poisons water or sets traps or snares; 2* 3* * * * * shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both, in addition to such compensation for damage done to the forest as the convicting Court may direct to be paid.

(2) Nothing in this section shall be deemed to prohibit

(a) any act done by permission in writing of the Forest-officer, or under any rule made by the 4[Provincial Government]; or

(b) the exercise of any right continued under clause (c) of sub-section (2) of section 15, or created by grant or contract in writing made by or 5[on behalf of the Government] under section 23.

(3) Whenever fire is caused wilfully or by gross negligence in a reserved forest, the 4[Provincial Government] may (notwithstanding that any penalty has been inflicted under this section) direct that in such forest or any portion thereof the exercise of all rights of pasture or to forest-produce shall be suspended for such period as it thinks fit.

⁹⁵ Section 26 The Forest Act 1927

⁹⁶ The Khyber Pakhtunkhwa Forest Ordinance 2002, Ordinance No. XIX of 2002

Available

<[http://kpcode.kp.gov.pk/uploads/THE_\[KHYBER_PAKHTUNKHWA\]_FOREST_ORDINANCE,_20021.pdf](http://kpcode.kp.gov.pk/uploads/THE_[KHYBER_PAKHTUNKHWA]_FOREST_ORDINANCE,_20021.pdf)>

at

The KP Forest Ordinance 2002 (KPFO) was promulgated for the protection, conservation, management and sustainable development of forests and natural resources in KP.⁹⁷ The Ordinance is the most recent forest legislation in Pakistan. It is discussed in greater detail in Chapter 4 on Land Tenure, section 4.4.2.

Balochistan Forest Regulation 1890

The Balochistan Forest Regulation 1890 governs the management of state forests in the public sector. This Regulation will also be discussed in more detail in the Chapter 4 on Land Tenure, section 4.4.4.

The Cutting of Trees (Prohibition) Act 1992

The Cutting of Trees (Prohibition) Act 1992 (CTA) prohibits cutting of trees or causing damage to them near the external frontiers of Pakistan.⁹⁸ Cutting, felling or causing damage to the trees in first and second zones as defined by the CTA would amount to a punishable offence, unless the same is done with written approval from an authorized officer.⁹⁹ The Act has limited scope as it has geographically limited its application to only the external frontiers of Pakistan.

The Punjab Plantation and Maintenance of Trees Act 1974¹⁰⁰

The Punjab Plantation and Maintenance of Trees Act 1974 (PPMTA) prescribes for every occupier or owner of land to plant three trees per acre. If he fails to do so, the Forestry and Wildlife Department would plant the trees and the owner/occupier would be responsible for those trees. Contravention with provisions of PPMTA can lead to imposition of fine.

The Balochistan Wildlife (Protection, Preservation, Conservation and Management) Act 2014¹⁰¹

Section 62 of the Baluchistan Wildlife (Protection, Preservation, Conservation and Management) Act 2014 provides that the Government should promote sequestration of carbon by effective management of Protected Areas and vegetation in the outer countryside to stabilize and reduce greenhouse gas concentrations in the atmosphere.¹⁰²

⁹⁷ Preamble Khyber Pakhtunkhwa Forest Ordinance 2002

⁹⁸ Preamble Cutting of Trees (Prohibition) Act 1992, Act No. XVIII of 1992

Available at < <http://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-apmaZQ%3D%3D-sg-jjjjjjjjjjjj>>

⁹⁹ Section 3 Cutting of Trees (Prohibition) Act 1992

¹⁰⁰ The Punjab Plantation and Maintenance of Trees Act 1974 (Pb Act VI of 1974)

Available at <<http://punjablaws.gov.pk/laws/294.html>>

¹⁰¹ The Balochistan Wildlife (Protection, Preservation, Conservation and Management) Act 2014, No.PAB/Legis: V(15) 2014-231

Available at [http://blncode.pitb.gov.pk/public/dr/The%20Balochistan%20Wildlife%20\(Protection,%20Preservation,%20Conservation%20And%20Management\)%20Act,%202014.pdf](http://blncode.pitb.gov.pk/public/dr/The%20Balochistan%20Wildlife%20(Protection,%20Preservation,%20Conservation%20And%20Management)%20Act,%202014.pdf)

¹⁰² Ibid Section 62: The Government shall— (a) endeavor to promote sequestration of carbon by effective management of Protected Areas and vegetation in the outer countryside to stabilize or reduce greenhouse gas concentrations in the atmosphere and achieve a level within a time frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner; (b) promote sustainable management and promote and cooperate in the conservation and enhancement, as appropriate, of sinks and reservoirs of all greenhouse gases, including biomass, forests and oceans as well as other terrestrial, coastal

3.6 REDD+ Terminology

Considering that forests and their regulation are not a federal subject, the provinces have, over the years, legislated a number of instruments containing definitions for words that are similar but have slight iterations in legal meaning.

The table below lists down some of the key definitions contained in the laws pertaining to forests in the four provinces. It is evident that the definitions are not harmonized. The Khyber Pakhtunkhwa Ordinance is perhaps the most far reaching in terms of its definitional clauses as it clearly defines what ‘brushwood’, ‘ecosystem’ and ‘sustainable development’ are whereas the other Acts fail to clarify what these terms mean. The Balochistan Forest Regulation 1890 does not provide a definition for forests either and the definitions that exist in the Khyber Pakhtunkhwa Forest Ordinance and the Forest Act 1927 are also different.

Another problem that exists with regard to REDD+ related terminology is that there is no harmonized definition for forests. A national definition of what constituted a ‘forest’ was decided at a national workshop on REDD+ in March 2012; ‘forests are the areas which cover at least an area of 0.5 hectares, with at least 10% of tree cover and with trees not less than 2 meters high.’¹⁰³ While this might not be the most viable definition of forests as it does not consider the status of forest plantations it does make it clear that Pakistan could benefit from a standardized definition of forests to ensure that mapping and classification is done uniformly.

3.6.1 Key Legal Definitions

	Khyber Pakhtunkhwa Forest Ordinance 2002	Forest Act 1927 (Punjab and Sindh)	Balochistan Forest Regulation 1890
Brushwood	S 2(5): “brushwood” includes all woody plants, bushes, shrubs and small trees growing on wastelands, reserved forests and protected forests, with the exception of trees, that is pears, apples, plums, cherries, apricots, peaches, almonds, citruses, persimmons, pistachios, guavas, litchies and vines grown thereon;	---	---

and marine ecosystems; (c) prepare for adaptation to the impacts of climate change for the species, habitats and ecosystems; and (d) develop and elaborate appropriate and integrated plans for coastal zone management, water resources and agriculture, and for the protection and rehabilitation of areas, particularly in areas affected by drought and desertification, as well as torrent floods.

¹⁰³ Government of Pakistan. “Action Plan for the implementation of the national forest monitoring system of Pakistan,” (August 2015) 11

Ecosystem	S 2(13): “ecosystem” means a dynamic complex of plant, animal and microorganism communities and their non-living environment interacting as a functional unit;	---	---
Forest	S 2 (16): “forest” means a tract of land mostly or predominantly covered with trees and other woody vegetation, and declared as forest by Government through a notification issued under this Ordinance or rules made thereunder;	S 2 (c): “forest’ means a reserved forest, protected forest, unclassified forest and village forest and includes wasteland or rangeland;	---
Sustainable Development	S 2 (44): “sustainable development” means development that meets the needs of the present generation without compromising the ability of future generations to meet their needs;	---	---
Timber	S 2 (45): “timber” includes trees when they have fallen, or have been felled, or uprooted, and all wood, whether cut up, sawn, split, or fashioned or hollowed out, or partially processed, for any purpose or not;	S 2 (q): “timber” includes wood (firewood, brushwood, twig, sawdust, chips), whether obtained by falling of a tree or plant or without it;	S 2 (6): “timber” includes trees when they have fallen or have been felled, and all wood whether cut up or fashioned or hollowed out for any purpose or not;
Tree	S 2 (46): “tree” includes stumps, bamboos, palms, reeds, canes, woody plants and brushwood specified in Schedule-I or any other kind which the Chief Conservator of Forests may add to, or delete from, the said Schedule;	S 2 (r): “tree” includes a woody plant, palm, bamboo, stump, brushwood and cane;	S 2 (5): “tree” includes palms, bamboos, stumps brushwood and canes;
Forest Land	---	a piece of land notified by the Government as the forest land to develop, protect and conserve forest and includes a rangeland and wasteland;	---

Table 2. Key Legal Definitions

While these laws define some of the basic terms that are used in forest legislation in Pakistan, they fail to define REDD+ specific issues such as degradation, sustainable management of forests and carbon stocks. The KP Forest Ordinance is perhaps the most far-reaching in terms of its definitional clauses as it defines what sustainable development and ecosystem are. However, these provincial laws do not contain a unified or harmonized definition for forests which can be problematic when mapping and identifying the forest cover and the base line carbon that is already stored in every province. In connection with that these laws do not contain a definition or mechanism for carbon rights and that remains something alien to our current legal framework.¹⁰⁴

¹⁰⁴ Recommendations in this regard can be found in Chapter 7.

Chapter 4 – LAND TENURE LAWS IN PAKISTAN

A clarification of land tenure rights is essential in order to understand the existing relationship that people have with land and to assess where and how REDD+ can be incorporated in the current tenure system. The section below looks at land tenure laws vis-a-vis forestry in Pakistan.

Land tenure is the relationship among people with respect to land.¹⁰⁵ Broadly, land tenure rights can also be classified as ‘formal’ or ‘informal’. Formal property rights are those that are explicitly acknowledged by the state whereas informal property rights are those that lack official recognition and protection. Customary property held in rural indigenous communities falls into the category of informal property rights. However, some customary rights are given formal recognition thereby blurring the distinction between formally recognized rights and customary rights.

4.1 Land Tenure under the Constitution

Property rights are enshrined in the Constitution of Pakistan. Articles 23, 24, 172 and 173 deal with private property rights. Article 23 lays down the fundamental freedom to acquire land and dispose of property whereas Article 24 provides for the acquisition of private property.¹⁰⁶ Article 172 states that ‘any property which has no rightful owner shall, if located in a Province, vest in the Government of that province and in every other case, in the Federal Government’ thereby providing that any property that is not owned by private individuals is owned by the Government. Furthermore, Article 173 states that the Government can grant, sell, dispose or mortgage any property that vests in them.

4.2 Statutory Law Governing Land Tenure

There are numerous laws that regulate land law in Pakistan. Some of the important statutes are listed below:

- i. The Transfer of Property Act, 1882
- ii. The Punjab Tenancy Act, 1887
- iii. The Government Tenants Act, 1893
- iv. The Land Acquisition Act, 1908
- v. The Colonization of Government Lands Acts, 1912
- vi. The Sindh Tenancy Act, 1950
- vii. The Khyber Pakhtunkhwa Tenancy Act, 1950
- viii. The Provincial Land Revenue Acts, 1967
- ix. The Balochistan Tenancy Ordinance, 1978
- x. The Land Record Manual

¹⁰⁵ Economic and Social Development Department, “What is Land Tenure” (FAO Corporate Directory Repository) Available at <<http://www.fao.org/docrep/005/y4307e/y4307e05.htm>>

¹⁰⁶ Article 23 the Constitution of Pakistan 1973:

Every citizen shall have the right to acquire, hold and dispose of property in any part of Pakistan, subject to the Constitution and any reasonable restrictions imposed by law in the public interest.

Article 24 (2):

No property shall be compulsorily acquired or taken possession of save for a public purpose, and save by the authority of law which provides for compensation therefore and either fixes the amount of compensation or specifies the principles on and the manner in which compensation is to be determined and given.

- xi. The Land Administration Manual
- xii. The Settlement Manual

All land in Pakistan is categorized into three divisions: state owned land, private owned land and village common land.

State land can be assigned to individuals for various uses from cultivation to cattle breeding on a temporary basis. It is cultivated on behalf of the state by tenants who have to pay a certain rent in cash or kind to the government. After the land is made cultivatable, the ownership may be transferred in the name of that citizen.¹⁰⁷

Private owners of land have the full rights to sell, gift, exchange or dispose of their private land in any manner they wish. This land is subject to inheritance laws under Muslim personal law which determines the legal share of the heirs.¹⁰⁸

Village common land is known as *shamilat* in Pakistan. This can be translated to mean community land. This land is given by the state to owners of the village to be used for their common purposes and is usually granted at the time of the settlement.¹⁰⁹ This land is jointly owned by the landowners of the village and is used for common purposes such as grazing, firewood, graveyards, playgrounds etc. The shares in the community land are proportionate to the size of the holding of the owners in the total farm land in the village.

4.3 Land Rights for Women

Article 23 and 24 of the Constitution apply equally to men and women in Pakistan. The laws that govern property transactions such as the Contract Act, 1872, the Transfer of Property Act 1882 and the Registration Act, 1908 do not make a distinction between males and females either.¹¹⁰ Consequently, under civil law, women have all the same rights to hold, acquire, transfer, sell or dispose of property as men.

Nevertheless, the land rights of women in Pakistan are not on par with the rights of men. Customary laws of the land offer only limited rights of ownership available to women as they can neither gift nor alienate the land or easily obtain ownership rights. Furthermore, women in Pakistan do not have an inherent right in their marital property as the concept of co-ownership does not exist. For example, with regard to agricultural property this means that a divorced woman would lose her right to access the common land which was being used by her husband's family.¹¹¹

Under the Islamic law of inheritance, the shares of men and women are pre-defined. Under the predominant Hanafi sect, the law is such that daughters receive half the share of the son from their

¹⁰⁷UN-Habitat, "A Guide on Land and Property Rights in Pakistan," (Islamabad, Pakistan, December 2011) 11-12 Available at <<http://www.ndma.gov.pk/Publications/A%20Guide%20on%20Land%20and%20Property%20Rights%20in%20Pakistan%202011.pdf>>

¹⁰⁸ UN-Habitat "A Guide on Land and Property Rights in Pakistan," (Islamabad, Pakistan, December 2011) 12

¹⁰⁹ Ibid 13

¹¹⁰Nausheen Ahmed "Land Rights for Pakistani (Muslim) Women: Law and Policy," SDPI (November 2010) 1 Available at <<https://www.sdpi.org/publications/files/Microsoft%20Word%20%20policy%20Brief%202023.pdf>>

¹¹¹ Nausheen Ahmed 'Land Rights for Pakistani (Muslim) Women: Law and Policy,' SDPI (November 2010) 4

father's estate whereas wives' receive a quarter of their husband's estate. The rationale for this law is that traditionally women were not required to take any financial responsibility. In the context of REDD+ women have to be given a more central position vis a vis forest use, ownership and REDD+ related activities and for that traditional values may have to be set aside.

In this regard the Courts of Pakistan have played a positive role in this regard and have been proactive in ensuring that women are given their inheritance rights. Yet, difficulties persist on the ground in ensuring that women receive their share of land. In a survey of over a thousand households in rural Punjab it was seen that only 36 women owned land in their own name and only 9 out of them had the power to sell the land without permission from the male members of their family.¹¹²

4.4 Forested Land

Aspects of REDD+ implementation can be gleaned and drawn on to the current land tenure arrangements in Pakistan where the breakdown of land ownership and management is provided.

The management of forests involves three fundamental issues. Firstly, the forest resources and their use, purpose and control, secondly; the procedure for using the forests and thirdly the implementation of the decisions taken.¹¹³ This explores the different land tenure arrangements with regard to forests in the provinces.

The management and protection of forests is the sole responsibility of the provincial forest departments. Under the Forest Act 1927, all forest and range lands were categorized as either reserved, protected or unclassed based on the rights of the communities settled around those lands. Some of these rights were then purchased or bartered and declared as reserve or protected forests. Some forests and range lands remained unclassed and were notified as such under the Forest Act. Unclassed forests do not fall under the purview of the Forest Act.¹¹⁴

Hence, forested land for the purposes of the Forest Act, 1927 can be divided into two broad categories; state owned forests/reserved forests and protected forests. These can be further divided in the following manner:

State owned forests

- Reserved forests with limited community rights
- Reserved forests with no community rights

Reserved forests are state owned and fall solely under the jurisdiction of the relevant Forest Department. These is the strictest tenure class and leaves the local population with limited rights which extend only to the needs of the residents in the surrounding areas. The activities allowed on reserved forests include grazing of cattle, collection of fuel wood and basic easement rights such as the right of way and water.

¹¹² Ibid

¹¹³ Urs Geiser, "State Forest Administration, Donor Support, and Forest Realities in Khyber Pakhtunkhwa Province of Pakistan," (University of Zurich, 2013) 1

¹¹⁴ Ibid

For example, the land which is declared a reserved forest under the Forest Act 1927 has the added protection of Section 26 of the Forest Act, 1927 which criminalizes clearing for the purpose of cultivation, the setting of fire without the authorization of the Forest Officer, trespass, the felling or cutting of any tree, the stripping of bark, the removal of forest-produce or any other such activity which is detrimental to the ecology of the reserved forest.

Protected forests:

- Private or community forests with restriction on usage and harvesting limits
- State lands declared as protected, with access and usage rights for communities
- *guzara* or community owned forests managed by forest departments
- Private forests with exclusive ownership; managed by forest departments and managed by owners
- Forest plantations, roadside and canal side, owned and managed by the government
- Privately owned forest plantations, managed and harvested by owners

A protected forest is subject to some amount of legal protection. The amount of legal protection is less than those in reserved forests however they still fall within the administration control of the provincial government. All activities except those that are explicitly prohibited by special orders are allowed on protected forests. Privately owned protected forests have a complex system of ownership and rights. The right to harvest rests with the Forest Department and the owner is not allowed to cut trees for domestic use without the department's permission.¹¹⁵

The rights available under the different regimes in the provinces can be broadly divided into use rights, control rights and transfer rights. Use rights include rights to use the land for grazing, the use of wood for domestic use, lopping for fuel wood etc. Control rights allow for decisions to be made on how the land should be used. Transfer rights relate to the right to sell or mortgage the land and to re-allocate use and control rights.¹¹⁶

In most cases, marginalized sections of society such as women, poor and minorities only have the right to use land.¹¹⁷ The Government mostly retains control rights over the forests unless they are privately owned.

The division of rights are looked at in more detail below along with an overview of the laws that govern forests in the four different provinces of Pakistan along with Azad Jammu & Kashmir, the Northern Areas of Pakistan and Gilgit-Baltistan.

4.4.1 Punjab

Forests and range lands in the public sector of Punjab are managed under the Forests Act 1927.¹¹⁸ The rights available in reserve forests are rights of way and water, collection of fuel wood for domestic use

¹¹⁵ Dicky Simorangkir, "Understanding Forest Tenure in South and Southeast Asia," Forestry Policy and Institutions Working Paper. 160

Available at < <http://www.fao.org/docrep/009/j8167e/j8167e00.htm> >

¹¹⁶ Economic and Social Development Department, "What is Land Tenure" (FAO Corporate Directory Repository) 3

¹¹⁷ Ibid

¹¹⁸ Reserve and protected forests only.

and grazing rights. Rights in reserved forests are rare in high hill forests but frequent in scrub forests.¹¹⁹ These rights cannot be sold or transferred but can be inherited. Afforested areas cannot be grazed on for the first ten years. Scrub forests within reserve forests are managed as range lands by a Range Management Circle. The fee for grazing is fixed by the Government and charged by the Punjab Forest Department (PFD).

Protected forests provide more rights towards timber, grazing and the collection of fuel wood. Unclassed forests have been transferred to the Punjab Forest Department as they are not provided for under the Forest Act.¹²⁰ Privately owned lands are also voluntarily put under the control of the Punjab Forest Department by virtue of Section 38 of the Forest Act.¹²¹

Guzara Forests in Punjab

Guzara forests are forests on communal land that have not been divided and are meant for ‘collective use’ to meet the requirements of the village community.¹²² These forests are privately owned but managed by a divisional forest officer. Punjab has a *Guzara* Forest Division which is self-financed. Timber from the forests is publicly auctioned and its revenue is divided and distributed to the village *guzara* fund, the central *guzara* fund and the staff welfare fund. Dead and dry timber from individually owned subsistence/*guzara* forests is also sold at the request of the owner who has to obtain approval from the Chairperson of the *Guzara* Forest Division. The revenue from the sale is divided among the owner, the village *guzara* fund, the central *guzara* fund and the staff welfare fund.¹²³ There is a ban on green felling and permission to cut dry fallen pine trees is granted by the *Guzara* Forest Division after verifying the rights of the claimant. While there have been efforts to prepare a proper plan for *guzara* forests it is hard to achieve in the current scenario where boundaries are unclear.

4.4.2 Khyber Pakhtunkhwa

The Khyber Pakhtunkhwa Forest Ordinance 2002 provides for the management of reserve, protected, *guzara* and all types of private forests in KPK. Ownership and tenure are sufficiently well defined under the KP Forest Ordinance. The ownership of reserved forests vests with the government and their management with the KP Forest Department. The rights to pasture and to forest produce can be admitted by the Forest Settlement Board but no right can be acquired over reserve forests except

¹¹⁹ Dicky Simorangkir, “Understanding Forest Tenure in South and Southeast Asia,” Forestry Policy and Institutions Working Paper. 160

¹²⁰ Ibid

¹²¹ Section 106 The Forest Act:

Protection of forests at request of owners.– (1) The owner of any land or, if there be more than one owner thereof, the owners of shares therein amounting in the aggregate to at least two-thirds thereof may, with a view to the formation or conservation of forests thereon, represent in writing to the ¹²³[District Officer (Revenue)] their desire–

(a) that such land be managed on their behalf by the Forest-officer as a reserved or a protected forest on such terms as may be mutually agreed upon; or

(b) that all or any of the provisions of this Act be applied to such land.

(2) In either case, the ¹²⁴[Government] may, by notification in the ¹²⁵[official Gazette], apply to such land such provisions of this Act, as it thinks suitable to the circumstances thereof and as may be desired by the applicants.

¹²² Dicky Simorangkir, “Understanding Forest Tenure in South and Southeast Asia,” Forestry Policy and Institutions Working Paper. 161

¹²³ Dicky Simorangkir, “Understanding Forest Tenure in South and Southeast Asia,” Forestry Policy and Institutions Working Paper. 161

by inheritance. The sale and purchase of rights in reserved forests is prohibited however in practice this is one of the reasons for deforestation in KPK.¹²⁴

Encroachment of land for cultivation or for any other purpose, construction of infrastructure, trespassing, grazing, browsing, pasturing and driving or permitting cattle to trespass are all prohibited under the Ordinance. Negligently causing damage to reserved forests by felling trees or cutting or dragging any timber is also prohibited. Degrading the soil by polluting it or burning lime or charcoal and removing forest produce is also criminalized under the Ordinance with imprisonment for up to two years or a fine for up to PKR 50,000 or both.¹²⁵ If the offender is a female the magistrate may permit an agent to appear on her behalf.¹²⁶ If a child under sixteen years of age is in charge of the cattle that trespasses into the reserved forest, the owner of the cattle is held liable.¹²⁷

The Ordinance states that the government has to appoint a Forest Settlement Board to ‘enquire into and determine the existence, nature and extent of any rights, alleged to exist in favour of any person in or over any land comprised within such limits or forest produce therefrom and to deal with the same...’.¹²⁸ The Ordinance also specifies that the Board is to consist of a Revenue Officer, the Divisional Forest Officer and two representatives of the community based organization who shall be selected by the concerned community or village.¹²⁹

Protected Forests

The Government has the power to declare any forest land or waste land which is not included in a reserved forest but which is the property of the Government, a protected forest. The Government can reserve certain trees or close forests provided that the forest left open is sufficiently large and accessible to the community and individuals to exercise rights that they previously had in the closed forest. The prohibitions and penalties are the same as for those in reserved forests.¹³⁰

Guzara Forests

Guzara forests are defined as ‘protected wasteland of the villages set aside at the time of regular settlement for meeting the requirements of landowners and right holders’.¹³¹

Guzara forests may be individually owned (*Malkiat*) or jointly owned by families or the community (*Shamilat*). These forests can be bought and sold but the sale of community owned *guzara* forests (*Shamilat*) is uncommon.

Guzara forests are not open to all villagers for fuelwood and fodder and the grazing of animals is restricted also. Tree felling for timber is controlled by the KP Forest Department. However, owners can cut one to three trees after obtaining a permit from the Divisional Forest Officer. This right is not extended to tenants and those who do not own any land.

¹²⁴ Dicky Simorangkir, “Understanding Forest Tenure in South and Southeast Asia,” Forestry Policy and Institutions Working Paper. 162

¹²⁵ Section 26 Khyber Pakhtunkhwa Forest Ordinance 2002

¹²⁶ Section 26 (5) Khyber Pakhtunkhwa Forest Ordinance 2002

¹²⁷ Section 26 (6) Khyber Pakhtunkhwa Forest Ordinance 2002

¹²⁸ Section 5(1)(c) Khyber Pakhtunkhwa Forest Ordinance 2002

¹²⁹ Section 5(2) Khyber Pakhtunkhwa Forest Ordinance 2002

¹³⁰ Chapter IV Khyber Pakhtunkhwa Forest Ordinance 2002

¹³¹ Section 2 (23) Khyber Pakhtunkhwa Forest Ordinance 2002

Tenure laws for *guzara* forests in KPK are different from those discussed earlier for Punjab; the primary difference being that there is no representative body such as the Punjab Guzara Advisory Committee and that all forests that grow *cedrus deodara*¹³² are declared government property irrespective of whether they are grown on government or private land.¹³³ The landowners are paid half the price of the timber sold where the *cedrus deodara* trees are on private land, after deduction of the Forest Department's cost for extraction, taxes and management.¹³⁴

Some of the rights available to *guzara* forests are seigniorage fees, timber for domestic use, royalties from sale proceeds, collection of wood, the use of wood for charcoal, lopping of trees for fuelwood and fodder and the grazing of animals.¹³⁵

4.4.3 Sindh

The Forest Act of 1927 also applies to Sindh in the same way as it does to Punjab.

4.4.4 Balochistan

The Forest Regulations of 1890 governs forestry in Balochistan. Any woodland, permanent grazing ground or other land that is government property can be declared a state forest.¹³⁶ Acts such as setting fire, felling, tapping or clearing for cultivation are prohibited on state forests except when permission of the government or a forest officer authorized by the government is sought and granted. These offences are punishable with fines.

The Government may also declare any trees or any specific class of trees on any land that is at the disposal of the government to be reserved trees upon notification. Felling, marking, lopping or injuring such reserved trees is prohibited and punishable with fines.

4.4.5 Azad Jammu and Kashmir

In Azad Jammu and Kashmir (AJK) forests in the public sector are managed by the AJK Forest Department under the Jammu & Kashmir Forest Regulation of 1930. The Regulation draws a distinction between demarcated and un-demarcated forests as opposed to reserved and protected forests. Demarcated forests are defined as forest land under the control of the Forest Department of which boundaries have already been demarcated by some marking or that have been declared demarcated under S.3 of the Regulation.¹³⁷ Demarcated forests can be put under the control and

¹³² Found mostly in the Guzara forests in Kaghan.

¹³³ Dicky Simorangkir, "Understanding Forest Tenure in South and Southeast Asia," Forestry Policy and Institutions Working Paper. 163

¹³⁴ Ibid 163

Seigniorage: This is a reciprocal right enjoyed by the people for State-owned reserve forests and by the government for privately owned Guzara forests. The fee is payable on the revenue earned from the sale of harvested trees; the rates to be paid are fixed by the government.

Lopping is the cutting of tree branches and twigs.

¹³⁶ Section 3 Balochistan Forest Regulations 1890, Baln Regulation V of 1890

Available at < <http://blncode.pitb.gov.pk/public/dr/The%20Balochistan%20Forest%20Regulation%201890.doc.pdf>>

¹³⁷ Section 2, Chapter II Jammu and Kashmir Forest Act 1987 (1930 AD.)

'Demarcated forest': forest land or waste land under the control of the Forest Department, of which boundaries have already been demarcated by means of pillars of stone or masonry or by an other conspicuous mark, or which may hereafter be constituted a demarcated forest under Section 3.

management of any department or local authority and all rights, concessions and activities can be exercised with the written permission of the forest officer. Where fire is caused or trees are felled/killed, the Chief Conservator of Forests is empowered to suspend rights for a period of up to two years.¹³⁸ Concessions are granted for domestic and agricultural uses to landowners and tenant farmers within a 4.8 km radius of the forest boundary; these rights cannot be sold or bartered. The rights include grazing, grass cutting and the collection of timber (excluding deodar wood).

Un-demarcated forests are those that are the property of the Government and are not appropriated for any specific purpose.¹³⁹ With regard to un-demarcated forests, the Government is vested with powers to declare any class or trees as reserved and prohibit any activity.¹⁴⁰ Infringements are punishable with up to three years in prison and fines upto PKR 300. Reports show that almost all previously un-demarcated forests have been demarcated in AJK.¹⁴¹

The Government also has the right to assign khalsa (crown) lands to any village community thereby declaring it a village forest (also known as *guzara* forests). All the provisions of the Regulation that relate to demarcated forests also apply to village forests.

Buffer zones are also created around forests to protect them from encroachments however there have been cases of misreporting and mismanagement. Buffer zones can be considered demarcated forests or *guzara* forests to bring them under a proper system of management.¹⁴²

AJK also has many private forests that are regulated under the 1984 Azad Kashmir Rules for Sale and Development of Private Forests and S. 2 of the Azad Kashmir Land Revenue Act 1955. However, data on private forests is not reliable since many owners do not officially declare their lands.

4.4.6 Gilgit-Baltistan

Customary rules continue to operate in Gilgit-Baltistan, however the use of forest resources is governed by statutory law. Under customary law, tribal institutions regulate the use of forests and permit limited activity for domestic use such as grazing and the use of wood. The State of Gilgit-Baltistan now owns the forests that formerly belong to feudals and permission to take felled timber is now acquired from the Forest Department.

¹³⁸ Sections 3-8 Jammu and Kashmir Forest Act 1987 (1930 AD.)

¹³⁹ Section 2 Jammu and Kashmir Forest Act 1987 (1930 AD.)

¹⁴⁰ Chapter III Jammu and Kashmir Forest Act 1987 (1930 AD.)

¹⁴¹ Dicky Simorangkir, "Understanding Forest Tenure in South and Southeast Asia," Forestry Policy and Institutions Working Paper. 167

¹⁴² Dicky Simorangkir, "Understanding Forest Tenure in South and Southeast Asia," Forestry Policy and Institutions Working Paper. 167

Chapter 5 – DRIVERS OF DEFORESTATION & DEGRADATION, BENEFIT SHARING, STAKEHOLDERS ENGAGEMENT AND CONFLICT RESOLUTION UNDER DOMESTIC LAW

5.1 Drivers of Deforestation & Forest Degradation

Drivers of deforestation can be categorized into two heads; firstly, direct causes such as human activity that directly impacts forest cover for e.g. infrastructure extension and wood collection and secondly underlying causes such as fundamental social, economic and political processes as well as policy grounds that affect forest cover.¹⁴³ The latter has been discussed earlier in Chapter 2, section 2.1, where Pakistan's current economic policies have been discussed that have the potential of driving both deforestation and forest degradation. This section looks more at direct drivers of deforestation and degradation such as land acquisition laws and logging.

Deforestation in Pakistan cannot be linked to one overwhelmingly large source, but rather it is a collection of actions, or lack thereof, that have led to the wide-scale deforestation of forested lands.¹⁴⁴

An estimated 62% of Pakistan's population is rural¹⁴⁵ and agriculture remains an important part of Pakistan's economy, making up 21% of the annual GDP and utilizing 45% of the work force¹⁴⁶. The importance of agriculture to society also means that farmers do not have any qualms about cutting trees to make room for cultivation or grazing livestock. Poorer farmers will often clear a few acres for sustenance on a regular basis, using "swidden agriculture", wherein trees are cut down and/or burned to clear land for planting crops. When the productivity of the soil decreases, a new piece of land is selected and the process is repeated.

Agricultural issues in Pakistan are managed by the Ministry of Agriculture (Ministry of National Food Security & Research) which is responsible for implementing, enforcing, developing and executing policies on agriculture.

The timber mafia (i.e. those involved in organized illegal logging activities) in Pakistan, has left whole hills in the north of Pakistan bare, such as the alleged loss of 345,000 hectares of forest in Gilgit-Baltistan alone.¹⁴⁷ This is because of an increased demand for wood products (which include, but are not limited to furniture, wooden furnishings for homes and for sale as timber to other parts of the country that do not have access to forest resources etc.), and a corresponding rise in prices of the same which when coupled with a ban on cutting trees has led numerous individuals to cut trees

¹⁴³ Gabrielle Kissinger, Martin Herold and Veronique De Sy, "Drivers of Deforestation and Forest Degradation" (Lexeme Consulting, Vancouver Canada, August 2012) 10

Available at <https://www.forestcarbonpartnership.org/sites/fcp/files/DriversOfDeforestation.pdf_N_S.pdf>

¹⁴⁴ Asif Saeed (2003) "The Underlying Causes of Deforestation and Forest Degradation in Pakistan" (XII World Forestry Conference, Canada, 2003)

Available at <<http://www.fao.org/docrep/article/wfc/xii/0983-b1.htm>>

¹⁴⁵ The World Bank "Rural Population (% of total population)

Available at <<http://data.worldbank.org/indicator/SP.RUR.TOTL.ZS>>

¹⁴⁶ "Agriculture" Economic Survey (2009)

Available at <http://www.finance.gov.pk/survey/chapter_10/02_Agriculture.pdf>

¹⁴⁷ Shahzad Anwar, "Logging; G-B stripped of more than 50% forest cover" *The Express Tribune* (January 2015)

Available at: <<http://tribune.com.pk/story/827168/logging-g-b-stripped-of-more-than-50-forest-cover/>>

illegally. Attempts by the Government to curb this have not been successful because of alleged political interference, theft, corruption and lack of serious commitment on the part of the officials concerned.¹⁴⁸

Poverty is also one of the main factors contributing to deforestation. Communities living below the poverty line are forced to consume all available natural resources for their immediate survival. A large number of people living below the poverty line choose to reside close to forests so as to utilise the benefits provided thereunder. For example, in the absence of the provision of gas and electricity or the availability of renewable sources of energy at affordable rates, wood is the only source of energy for communities in hilly areas, where a large portion of Pakistan's forests are located and where temperatures often drop to 0° (C) or lower, thus necessitating the cutting of trees at a high rate for firewood. To put this into perspective, Khyber Pakhtunkhwa is the most heavily forested province and 32% of its inhabitants live below the poverty line.¹⁴⁹

Natural factors affecting forests such as the arid climate, heavy dependence on irrigation water, long gestation periods of forestry, and fragile watershed and rangelands lead to the wasting away of many wooded areas. Floods, fires, storms, pests and diseases, pressure to develop areas i.e. the construction of roads, buildings and water reservoirs. Disturbing the ecosystems of sensitive species of trees such as most types of mangroves, has further added to widespread deforestation in Pakistan.

Along with deforestation, forest degradation has major consequences for localities relying on forests for sustenance as well as regional biodiversity, but is more difficult to discern and quantify.

The causes of degradation vary globally, those identified as having a large presence in Pakistan are: unsustainable logging, poor agricultural practices, invasive species, fuel-wood gathering, and wildfire etc.¹⁵⁰

Excessive illegal chopping of trees has resulted in severe soil erosion, flood damage and desertification in many areas. This activity generally leaves the soil exposed and less able to absorb the seasonal rainfall. The rain water consequently, runs off and causes soil erosion, speeding-up the process of denudation and eventually leading to desertification. The removal of top soil causes a dearth in the production of forage, fodder, fuel wood, timber, cereal crops and grains. Furthermore, a large amount of over-grazing is occurring which reduces productivity of rangelands because of soil compaction¹⁵¹, removal of vegetation from fragile slopes and subsequent destruction through water and wind erosion.

Land acquisition for the purposes of construction of infrastructure such as highways is another major contributor of deforestation and forest degradation. The National Highway Authority Act, 1991 empowers the National Highway Authority to acquire land for a public purpose so as to enable them

¹⁴⁸ Irfan Haider, "Timber mafia denuding Murree forests of trees." *Dawn*. (February 2014)

Available at: <<http://www.dawn.com/news/1088880>>

¹⁴⁹ Sustainable Development Policy Institute, "Clustered Deprivation: District Profile of Poverty in Pakistan" (2012) 19

Available at <http://www.sdpi.org/publications/publication_details-358-36.html>

¹⁵⁰ Ian D. Thompson, Manuel R. Guariguata, K. Okabe, C. Bahamondez, R. Nasi, V. Heymell, and C. Sabogal.

"An operational framework for defining and monitoring forest degradation" *Ecology and Society* 18.2 (2013) 20.

Available at <<https://www.ecologyandsociety.org/vol18/iss2/art20/>>

¹⁵¹ Richard Wolkowski and Brill Lowery "Soil Compaction: Causes, Concerns and Cures" University of Wisconsin-Extension (2008)

Available at <<http://www.soils.wisc.edu/extension/pubs/A3367.pdf>>

to enter into agreements for the long term construction and maintenance of strategic roads, national highways and motorways.

In cases of acquisition for a public purpose, with or without a survey under section 4(2) of the Land Acquisition Act, 1894 a notification is issued to the locality where the land is to be acquired.¹⁵² Individuals holding land in the area are allowed a period of thirty days within which to convey their objections to the Collector upon which a report is made and a declaration by the Collector is published in the official Gazette which states the district or division in which the land is situated and the purpose for which it is needed. After the declaration the Collector enters into an elaborate process of ascertaining the amount of compensation payable to each individual whose land is to be acquired on the basis of the market-value of the land and other formal considerations.

In addition to the foregoing, and only in the cases of companies who wish to acquire land through the Collector, the Commissioner is required to enter into an agreement with the company providing the details of the payments to be made by the company and such other terms as may be prescribed at the time subject to which the land may be held.¹⁵³ The importance of the agreement between the company acquiring the land and the Provincial government is that conditions in line with REDD+ could be imposed. Depending on the nature of the purpose for which the land was acquired a company could also be compelled to reforest land damaged by the construction of infrastructure.

In this context, Pakistan Tobacco Company (part of British American Tobacco) has planted over fifty-two million trees as part of its afforestation project to promote sustainable development. They have even signed a Memorandum of Understanding with the National Highway Authority to exclusively plant 600,000 trees along the M1 Motorway between Islamabad and Peshawar.¹⁵⁴

Apart from land acquisition, the authorized logging of forested area also contributed to forest degradation. Instances of such logging, in the case of Punjab, fall under the Punjab Forest (Sale of Timber) Act, 1913.

Apart from the above mentioned lawful activities, illegal logging and felling of trees is also a devastating driver of deforestation. Due to lacunae in the institutional framework, felling and logging

¹⁵² A survey entails the physical inspection of the land to ensure that it is fit for the public purpose for which it is to be acquired. The officers so authorized to carry out a survey are empowered to “cut down and clear away any part of any standing crop, fence or jungle”.

¹⁵³ Section 3 (e) Land Acquisition Act, 1894, Act I of 1894

“Company” means a company registered under the Companies Ordinance, 1984 or under the English Companies Acts, 1862 to 1890 or incorporated by an Act of Parliament of the United Kingdom or by a Pakistan law or by Royal Charter of the Letters Patent and includes a society registered under the Societies Registration Act, 1860 and a Registered Society within the meaning of the Co-operative Societies Act, 1912. Section 38-A of the Land Acquisition Act, 1894 adds that an industrial concern employing one hundred (100) or more workmen shall also be considered a company for the purposes of Part VII of the Land Acquisition Act, 1894 where it is desirous of acquiring land for the purpose constructing accommodation for its workforce.

In the case of company’s land may only be acquired for the purposes mentioned in section 40 of the Land Acquisition Act, 1894.

Available at http://www.punjab-zameen.gov.pk/laws_rules/THE%20LAND%20ACQUISITION%20ACT%201894.pdf

¹⁵⁴Pakistan Tobacco Company “Corporate Social Responsibility,” (May 2010)

Available at http://www.ptc.com.pk/group/sites/PAK_7SHBXN.nsf/vwPagesWebLive/DO7T5LSK?opendocument

of trees is rampant. While there are laws (as mentioned above) that criminalize the illegal felling and logging of trees, their implementation on the ground remains a distant reality.

Lack of implementation of applicable laws coupled with poor governance and corruption in the institutional framework means that such timber mafias often operate with impunity. The current policies are targeted mostly at generating more income as opposed to encouraging sustainable management which can have the effect of eradicating poverty and curbing some of the problems associated with it such as theft, corruption and institutional mismanagement.

5.2 Benefit Sharing

One of the critical issues with REDD+ is the distribution of finances from the national government to lower administrative levels.

Through the funding, and ownership of the forests, the UNFCCC seeks to incentivize and promote the reduction of deforestation and forest degradation while at the same time alleviating poverty and addressing economic insufficiency. For a viable national benefit-sharing model it is imperative that a clear and transparent structure also be developed which ensures zero-tolerance for leakage and pilferage.

A national benefit sharing policy must also cater to the poor and those who are dependent on forests to not only transfer the fiscal benefits of REDD+ to them but also give them a more effective voice in the decision making process.¹⁵⁵

A case in point is that of Brazil where a number of legislative mechanisms have been enacted which enable landowners to gazette their own reserves and receive tax exemptions to pay for the upkeep. This however is limited to land owners and not those who only have limited 'use-rights'. In terms of a 'pro-poor' REDD+ Strategy, Brazil has an Extractive Reserves framework that is applicable to communally owned areas (*guzara*) where the harvesting of Non-Timber Forest Products such as rubber and nuts is allowed. REDD could make such areas more profitable by adding carbon payments on top of the profits received from the sale of rubber, nuts and other such non timber forest products. Furthermore, in Brazil all privately owned land is meant to include a reserve whereby only 20 percent of the forest can be cleared. REDD could potentially enable payments for the maintenance of legal reserves to ensure compliance much like it can do in Pakistan.¹⁵⁶

From the above example of Brazil, it can be extrapolated that REDD can play a key role in supporting existing legislation in Pakistan by incentivizing its compliance. The tenure system will however need to be reformed in order to ensure that the poor are not disadvantaged at the hands of forestry.

The laws mentioned in the section above govern the manner in which the forests are to be used and divide the rights of the different parties; from the owners, to the members of the community and the

¹⁵⁵ Leo Peskett, David Huberman et al., "Making REDD Work for the Poor Man," (Poverty Environment Partnership Report, October 2008) 35

Available at < <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/3451.pdf>>

¹⁵⁶ Leo Peskett, David Huberman et al., "Making REDD Work for the Poor Man," (Poverty Environment Partnership Report, October 2008) 37

provincial governments. At present there is no specific law in place that provides for the distribution of benefits from REDD+ or other initiatives under the land tenure system in Pakistan.

The National Forest Policy of 2010 recognizes that a benefit sharing system has to be created whereby incentives are given to forest dependent communities and the Draft Forest Policy of 2015 also acknowledges that benefits accrued from result based REDD+ actions should be transferred to legal owners and right holders of forests in accordance with the benefit distribution system prescribed in Pakistan's national REDD+ strategy.

Bearing in mind the case study of Brazil, Pakistan can also incorporate a benefit sharing system under its provincial laws. Incentives can be provided to owners of private forests to register their forests and bring them under the management of the provincial forest departments. Land tenure systems that govern *guzara* and village forests require more practical regulation whereby rights can be clearly ascertained and payments provided accordingly through the Guzara Forest Departments in Punjab and Sindh under the Forest Act 1927 and the Forest Settlement Board in KP as well as the Forest Departments in Gilgit-Baltistan and Azad Jammu and Kashmir.

Forest communities need to be made aware of the REDD+ programme and the fiscal benefits that can be obtained as a result of conservation and afforestation. Explaining carbon markets to villagers and forest-dependent communities might be arduous because of the bleak level of illiteracy in Pakistan, however workshops at grass root level could be carried out under the Forest Departments to create awareness on the general benefits of the REDD+ programme and the need to preserve the climate by curbing deforestation and forest degradation. Participation at these workshops could potentially be incentivized.

The land tenure laws in Pakistan all use 'hard' enforcement measures by penalizing infractions of the law. Enforcement of emission commitments under REDD+ could benefit from softer enforcement measures where no fines are applied for non-compliance but rather up-front payments are made where emissions are reduced and commitments are met.

The Federal and Provincial governments recognize that while the conservation of forests is important for the long-term security of Pakistan, the rights of individuals residing close to forests are of equal importance.

The problem that arises with regard to benefit sharing is the definition of 'carbon rights' and its translation into actual statutory rights. There has to be a law in place that governs this transformation. Furthermore, the beneficiaries of such carbon rights have to be clearly spelt out; whether these rights will belong to the provincial forest departments or the owners of the property or those who have use rights over the property. There needs to be a law in place that provides the legal basis for the claim to the benefits and its distribution.

5.3 Stakeholder Engagement

Stakeholders are defined as the 'groups that have a stake, interest or right' in forestry and those that will be impacted by REDD+. This can include government agencies, formal and informal forest users,

private sector entities, indigenous people and other forest-dependent communities.¹⁵⁷ In order to ensure a comprehensive benefit sharing mechanism, stakeholders need to be carefully identified and engaged.

5.3.1 Engagement of the Public Sector in REDD+ Implementation

Internationally, the participating organizations of the UN-REDD programme; UNFAO, UNDP and UNEP participate in the implementation and oversight of the UN-REDD National Programmes. The Forest Carbon Partnership Facility (FCPF) supports REDD+ programmes in developing nations in two capacities; The Readiness Fund and the Carbon Fund. Pakistan submitted its Readiness Preparation Proposal in 2013 against which it received USD 3.8 million for the next five years to move ahead with the preparation for readiness.

Pakistan's Climate Change Authority is now primarily responsible for the implementation of the project which is to be carried out with due diligence and efficiency in conformity with appropriate administrative, technical, financial and environmental standards. The Fund created under the Pakistan Climate Change Act is the fund that will receive the grant and disseminate the funds to the private sector and local bodies.

The Auditor General of Pakistan will provide oversight of these public funds. Furthermore, if this money is then given to International NGOs it will be scrutinized by the Ministry of Interior. A framework to battle corruption at this level exists under the command and control of the National Accountability Bureau which is the apex anti-corruption organization charged with the responsibility of elimination of corruption through awareness, prevention and enforcement. It operates under National Accountability Ordinance 1999.

5.3.2 Engagement of the Private Sector in REDD+ Implementation

The finance required to reduce emissions under REDD+ makes room for both the public and private sector. Developing countries like Pakistan need substantial support for capacity building in forest governance.¹⁵⁸ Therefore, private sector engagement and investment is necessary for the proper execution of a REDD+ strategy. As per the UN-REDD Programme;

REDD+ is a critical part of the green economy and the engagement and involvement of the private sector is a pre-condition for REDD+ to succeed. If comprehensive engagement is not prioritized there is a high probability that social, financial, economic and political mechanism designed to reduce forest loss will be ineffective, wasting valuable time along with scarce human, political and financial capital.¹⁵⁹

¹⁵⁷ UN-REDD Program, "Guidelines on Stakeholder Engagement in REDD+ Readiness with a Focus on the Participation of Indigenous Peoples and Other Forest-Dependent Communities," (April 2012)
Available at [https://www.forestcarbonpartnership.org/sites/fcp/files/2013/May2013/Guidelines%20on%20Stakeholder%20Engagement%20April%2020,%202012%20\(revision%20of%20March%2025th%20version\).pdf](https://www.forestcarbonpartnership.org/sites/fcp/files/2013/May2013/Guidelines%20on%20Stakeholder%20Engagement%20April%2020,%202012%20(revision%20of%20March%2025th%20version).pdf)

¹⁵⁸ Eliasch Review, "Climate Change: Financing Global Forests," (2008)

Available at < https://archive.org/stream/officialdocuments_uk_9780108507632/9780108507632_djvu.txt>

¹⁵⁹ Iain Henderson, Jacinto Coello et al. "The Role of the Private Sector in REDD+: The Case for Engagement and Options for Intervention" UN-REDD Policy Brief Issue 4 (2013) 10

The private sector has a fundamental role to play as an enabler of forest friendly initiatives.¹⁶⁰ The private sector's role could involve innovation, investment and implementation. However, despite the significant role that the private sector could play, it has very little involvement with REDD related activity in Pakistan.

Involvement of local communities in such projects will be essential to ensure that the wider aim of REDD towards sustainable development, poverty reduction, improved livelihoods, indigenous rights and gender equality are met. This requires a strong institutional and legal framework.

At present, there is no specific legal framework that regulates projects under REDD+. Once an international framework is developed projects such as Billion Tree Tsunami and other private projects can comply with those requirements and acquire carbon credits accordingly. Domestic laws that are to be considered when initiating such projects include forest laws discussed above, investment and taxation laws, company law, environment and planning law as well as land tenure laws and constitutional law that relates to governmental powers along with the Rules of Business.

5.3.3 Engagement at Grass Root Level

Khyber Pakhtunkhwa

In order to ensure stakeholder engagement, the relevant provincial forestry laws mentioned in the sections above are the focal starting point. As per the Rules of Business of KPK, forests fall in the environment, forestry and wildlife department which deals with forest settlement, re-forestation, range management, erosion, cooperatives in Guzara forests, watershed management and applied research in forestry as well as forestry training as elaborated in Schedule II.¹⁶¹ The Rules of Business lay down the organization of this department, assigning a Secretary and other officials subordinate to him. The secretary is responsible for taking decisions with regard to the administration, discipline and proper conduct of business. The policy that will regulate this business is drafted by the Minister in consultation with the Secretary of the Department. The Department will regulate the employees and officers as per the Rules of Business and ensure that the policies are implemented. The KP Civil Servants Act 1972 further lays down the procedure through which disciplinary action can be brought against civil servants. This ensures transparency and due process along with curbing corruption.

The Forest Officer may where he considers appropriate, manage protected forests, reserved forests, *guzara* forests and wastelands with the help and participating of community based organizations, village based organizations, village development committees or any group of persons representing such organizations.¹⁶² Joint Forest Management Committees (JMFC) comprising representatives of the concerned organizations and staff of the Forest Department may be established for this purpose. This ensures stakeholder engagement as each JFMC approves its own bye-laws, carries out timber

Available at <file:///C:/Users/win7/Downloads/Private%20Sector%20Engagement%20Policy%20Brief%20EN%20final%20version%20-%20low-res.pdf>

¹⁶⁰ Ibid 2

¹⁶¹ Government of Khyber Pakhtunkhwa, "Rules of Business," (Peshawar, Pakistan, April 1985) No. SO (O&M) S&GAD/3-3/1985

Available at < http://kp.gov.pk/page/rule_of_business >

¹⁶² Section 102 The Khyber Pakhtunkhwa Forest Ordinance 2002

harvesting under written agreement with the forest department and sell the timber and distributes the net income to the owners. The JFMC collects department charges from the auction of timber and deposits these in the Guzara Forest Development Fund for afforestation and reforestation activities. The JMFC falls under the Forest Department.

Punjab

The Forest Department in Punjab stresses on community involvement and aims to organize workshops for foresters and trainers as well as ensuring sustainable supply of wood and wood products. The Department is regulated by the Rules of Business and falls under the Forestry, Wildlife and Fisheries Department.¹⁶³ The employees of the Forest Department are subject to the Civil Servants Act 1974 whereby their conduct is regulated by the Government and they may be liable to disciplinary action and penalties if they fall short.

Sindh

Sindh has been at the forefront of taking community based management initiatives. The role of women in Sindh is also exponentially more than in other provinces. In 2012, UNDP teamed up with ONE UN Joint Programme on Environment (JPE) and Government of Pakistan through Sindh's Forest Department to provide financial support for rehabilitation and conservation of rangeland resources through community participating. The beneficiaries of the project took responsibility and ownership of the infrastructure that was developed as a result of the project and the project sponsored community workshops conducted in different villages in order to bring a change in mindset at the grass root level.¹⁶⁴ REDD+ may consider working on a similar model and collaborate with the Forest Department of Sindh. The Forest Department's vires for conduct are laid down in Sindh's Rules of Business.¹⁶⁵

5.4 Safeguards

The REDD+ safeguards reflect human rights, environmental and governance obligations that are already contained in Pakistan's legal system. REDD+ safeguards can be seen as a mechanism for ensuring that not only are the actions consistent with domestic and international standards of governance and protection but that they help in furthering their implementation.¹⁶⁶ REDD+ does not create any new obligations rather it focuses on strengthening the commitments that already exist. Therefore, both domestic and international law have a large role to play.

¹⁶³ Government of Punjab, "Schedule I, Rules of Business," (Lahore, Pakistan, 2011), No. SO (CAB-I) 2-3/2011 Available at

file:///C:/Users/win7/Downloads/PUNJAB+GOVERNMENT+RULES+OF+BUSINESS+2011.doc.pdf>

¹⁶⁴ UNDP, Government of Sindh 'Rehabilitation & Increasing the Productivity of Rangelands of Tharparkar through Multiple Land Use and Community Based Integrated Management Under ONE UN Joint Program.' (2012) Available at <http://sindhforests.gov.pk/admin/MediaLibrary/papers_1a.pdf>

¹⁶⁵ Government of Sindh, "Schedule I, Rules of Business," (Karachi, Pakistan, 1988), No. SOR-I (S&GAD) 3/2-85, (Pt III)

Available at <www.sindh.gov.pk/dpt/services/RULES/Rules%20of%20Business.pdf>

¹⁶⁶ UKAID "A Guide to Understanding and Implementing the UNFCCC REDD+ Safeguards" (UKAID) 25

Available at <<https://www.clientearth.org/reports/a-guide-to-understanding-and-implementing-unfccc-redd+-safeguards.pdf>>

The first safeguard mentioned under the Cancun Agreements is that the actions taken pursuant to REDD+ have to complement and be consistent with national forest programmes and relevant international conventions and agreements. The FAO defines national forest programmes as

*Comprehensive forest policy frameworks that demand a broader inter-sectoral approach at all stages, including the formulation of policies, strategies and plans of actions, as well as their implementation, monitoring and evaluation.*¹⁶⁷

The second safeguard that calls for transparent and effective national forest governance structures also mentions that it must do so while taking into account national legislation and sovereignty. Communities have the right to access information in accordance with this safeguard and for that the forest departments should be made the focal institution. NGO's can also play a role to ensure that people are made aware of their rights under the land tenure system. Furthermore, the Right to Information Act 2013 has been passed by the governments of Khyber Pakhtunkhwa and Punjab. Independent Information Commissions have also been established in connection with this. At a federal level, there is the Freedom of Information Act 2006 which however has not been operationalized as the provincial governments have failed to frame the required rules.

The International Covenant on Civil and Political Rights (ICCPR) also lays down that:

*Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*¹⁶⁸

Transparency of forest governance structures can be ensured through the National Accountability Bureau at the apex level that functions under the National Accountability Bureau Ordinance 1999. According to the ordinance, NAB was granted authority to launch investigations, conduct inquiries, and issue arrests warrants against individuals suspected in financial mismanagement, terrorism, corruption in private, state, defence and corporate sectors, and direct such cases to accountability courts.

In this regard, Pakistan's anti-corruption laws also reflect its obligations under the UN Convention Against Corruption (UNCAC):

*[Each State Party] shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.*¹⁶⁹

The institutional frameworks of forest management and governance as mentioned in the Chapter on Land Tenure are the appropriate administrative departments to carry out forest management. Their governance has also been highlighted in the chapter on grass-root engagement above.

¹⁶⁷ National Forest Program "NFP as a comprehensive forest governance framework," (FAO, 2012) Available at <<http://www.fao.org/forestry/nfp/74076/en/>>

¹⁶⁸ Article 19(2) International Covenant on Civil and Political Rights 1966 (ICCPR) Available at <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>>

¹⁶⁹ Article 5 United Nations Convention Against Corruption 2003 UNCAC Available at <<https://www.unodc.org/unodc/en/corruption/uncac.html>>

Access to justice is imperative and crucial to REDD+. The right to a fair trial as laid down in Article 10 of the Constitution is perhaps one of the most important safeguards contained in our Constitution in this regard. The right to a fair trial contains principles of due process such as the right to legal assistance and the right to exercise the right of defence etc.

The third safeguard highlighted under the Cancun Agreements pertains to indigenous peoples and local communities. In Pakistan, this extends more towards local communities who are dependent on forests for their livelihood and general survival and well-being. Under Article 25 of the Constitution all citizens are equal before the law and entitled to equal protection.¹⁷⁰ Local communities cannot be discriminated against on the basis of their economic and social backgrounds. In this regard, the right of self-determination is also very important. As per the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) the right to self-determination is the ability of a people to pursue their economic, social and cultural development and to be secure in their means of subsistence.¹⁷¹ Pakistan has ratified both Covenants and is therefore bound to ensure that its local communities are given the right of self-determination. The Courts are under an international law duty to apply these principles in their fullest.

With regard to local communities and their rights over ‘*guzara*’ and ‘*shamila*’, the ILO Convention No. 169 recognizes the right of ownership over collectively occupied land by holding that:

*The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.*¹⁷²

The ownership of carbon and the concept of benefit sharing will need to be carefully designed in order to ensure that local communities are given a stake and a degree of participation in the activities that take place as a result of REDD+ implementation. In regions of Azad Jammu & Kashmir where local communities have already suffered immensely at the hands of environmental crises and disasters, it is important to provide them with sufficient benefits to ensure that they are adequately compensated.

The participation of all relevant stakeholders is also an important safeguard contained in the REDD+ framework. The relevant stakeholders and their engagement has been discussed in the above chapter and the ambit of this engagement has also been addressed. Access to information is essential in this regard and it is also important to have conflict resolution mechanisms to ensure access to justice. The Environmental Protection Tribunal created under the Environmental Protection Act and the Office of the Wafaqi Mohtasib (Ombudsman) created under the Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order 1983 are both important institutions to ensure that public bodies are challenged where they are unable to carry out their obligations. Provincial Ombudsman offices should

¹⁷⁰ Article 25 Constitution of the Islamic Republic of Pakistan 1973

¹⁷¹ Common Article 1 to ICCPR and ICESCR

¹⁷² Article 14 ILO Convention No. 169

Available at < <http://www.iwgia.org/human-rights/international-human-rights-instruments/ilo-convention-no-169>>

be made more accessible so the access to local communities is not impeded. Consultation with local communities can be ensured through bodies created under the Forest Departments.

Conservation of biological diversity and natural forests is also an important safeguard contained in the REDD+ framework. In order to ensure this, it is important to have a mechanism whereby the drivers of deforestation and forest degradation are addressed. The Pakistan Climate Change Act 2017 is the primary driving tool to ensure that this safeguard is protected as the Authority established under the Act can review and assess the condition of the forests in the provinces and ensure through the provincial forest departments that forests and biological diversity are preserved. The protection and conservation of forests and biological diversity can also be incentivized through social and economic benefits. Local NGOs and Forest Departments can be engaged to impart awareness and create schemes whereby forests are protected and the local communities are engaged in the activities to ensure such protection.

The last two safeguards relate to permanence and leakage. These safeguards are specific to REDD+ and there are no international or domestic laws that govern its operation or that could be used as a starting point. The term ‘permanence’ means that reduction in emissions should be long lasting and the term ‘leakage’ connotes a shift in activity from one area to another and where forest conservation in one area creates incentives to deforest other areas.¹⁷³

¹⁷³ UKAID “A Guide to Understanding and Implementing the UNFCCC REDD+ Safeguards: A review of relevant international law” (UK AID) 71

Chapter 6 – REVIEW OF THE INSTITUTIONAL FRAMEWORK PERTAINING TO LAND, FOREST, CLIMATE MITIGATION AND REDD+

A sustainable institutional framework is important for practical incorporation of REDD+ in Pakistan. In order to review the institutional framework that pertains to REDD+ in Pakistan, it is important to first identify who the key stakeholders are. A non-exhaustive list of stakeholders is as below:

- Federal Government: Prime Minister’s Committee on Climate Change, Office of the Inspector General of Forests, Ministry of Climate Change, Pakistan Environmental Protection Agency.
- Provincial Government; Forest Departments under the Ministries
- Civil Society; International NGOs such as WWF, International Union for Conservation of Nature (IUCN); National NGOs such as Orangi Pilot Project and PIEDAR- Pakistan Institution for Environment Development Action Research
- Development Partners; World Bank, UNDP, FAO, UNEP, USAID
- Universities and Research Institutions; Pakistan Forest Institute, Sustainable Development Policy Institute, Agricultural Research Institute, Quetta, Punjab Forest School, Sindh Agriculture University
- Private Sector; banks, timber industry, farmers and investors.

6.1 Federal Bodies

Federal Ministry of Climate Change: The Federal Ministry for Environment devolved to the provinces after the eighteenth amendment. The Ministry of Disaster Management was constituted after the amendment to the Constitution however the sheer magnitude of climate related disasters led to the Ministry being renamed to Ministry of Climate Change. The Ministry has the following mandate:

- (i) Act as a focal federal institution in order to fulfill international obligations
- (ii) Establish National Environmental Quality Standards
- (iii) Facilitate and harmonize environmental standards, laws and policies at a national level
- (iv) Undertake surveys and assessments and maintain a national environmental database
- (v) Represent Pakistan at regional and international fora such as the Conference of Parties (COP) under UNFCCC
- (vi) Deals with current and emerging international environmental funds such as REDD+
- (vii) Supervision of projects

Prime Minister’s Task Force on Climate Change: In October 2008, the Pakistan Prime Minister in pursuit of solutions regarding climate change established an apex body “The Task Force on Climate Change”. “The task force assembles quarterly and semi-annually to discuss the issues related to climate change and their ramifications. These meeting are chaired by the Prime Minister himself. Its mandate includes organization of climate change based research, assemblage of research groups, identification of the knowledge gaps, and assessment of the capacity and compilation of unified research results for the guidance of planners and policy makers.”¹⁷⁴

¹⁷⁴ Ghulam Rasul “An Analysis of Knowledge Gaps in Climate Change Research” (Pakistan of Meteorology Journal) 7.13

The Task Force produced a report identifying the likely impact of climate change on Pakistan which was a significant step forward. The Task Force released its final report in February 2010 which was subsequently used while drafting the National Climate Change Policy 2012. The policy provides a framework for addressing the issues Pakistan is and will be facing due to climate change.¹⁷⁵

Office of the Inspector General Forests: The office of the IG Forests represents the state of Pakistan as the focal person to international obligations. He is therefore the controlling officer for REDD+ in Pakistan.

National Steering Committee on REDD+: The National Steering Committee is already established and represented by provincial secretaries of forests, the Office of the Inspector General of Forests, relevant NGOs and members of academia. The Steering Committee also includes two women as per the recommendation from the National Commission on Status of Women. The National Steering Committee on REDD+ falls under the ambit of the Ministry of Climate Change and is headed by the Federal Secretary of the Ministry. It is responsible for the overall decision making on REDD+.

Pakistan Environmental Protection Council: The Pakistan Environmental Protection Council (PEPC) is the apex body established under the Pakistan Environmental Protection Act and is headed by the Prime Minister of Pakistan. The approval of national environmental policies was devolved to the PEPC as a result of this Act. Additionally, PEPC is charged with the responsibility of providing guidelines for protection and conservation of species, habitats, biodiversity and renewable and non-renewable resources.

Pakistan Environmental Protection Agency: Pakistan Environmental Protection Agency was set up under section 5 of the Pakistan Environmental Protection Act 1997 to prepare the national environmental policies that PEPC may approve. The Agency is also tasked with implementing these policies.¹⁷⁶

Pakistan Environmental Tribunal: The Environmental Tribunals were established under Section 20 of the Pakistan Environmental Protection Act 1997, headed by a Chairperson qualified to be High Court Judge.¹⁷⁷ The bench of the tribunal is to comprise of the Chairperson and at least one other Member.¹⁷⁸ The decision of the Bench is to be expressed in the form of an “opinion of the majority of its members, including the Chairperson, or if the case has been decided by the Chairperson and only one of the members and there is a difference of opinion between them the decision of the Environmental Tribunal shall be expressed in terms of the opinion of the Chairperson.”¹⁷⁹ After the 18th Amendment to the Constitution of Pakistan the Department of Environment was devolved to

Available at

<http://www.pmd.gov.pk/rnd/rnd_files/vol7_issue13/1_An%20Analysis%20of%20Knowledge%20Gaps%20in%20Climate%20Change%20Research.pdf>

¹⁷⁵ Government of Pakistan Ministry of Climate Change, “National Climate Change Policy” (Islamabad 2012) Available at <http://nidm.edu.pk/Documents/Policies/National_Climate_Change_Policy_2012.pdf>

¹⁷⁶ Section 6 Pakistan Environmental Protection Act 1997, Act No. XXXIV of 1997, No. F. 9(46)/97-Legis

¹⁷⁷ Section 20 Pakistan Environmental Protection Act 1997 No. F. 9(46)/97

¹⁷⁸ Section 2 (b) Environmental Tribunal Rules 1999 S.R.O (1)/2001

¹⁷⁹ Section 20 (4) Pakistan Environmental Protection Act 1997

the provinces and provincial legislations now deal with the respective tribunals.¹⁸⁰ The Punjab Environmental Tribunal Rules were enacted in 2012 that set out the rules for the cases to be tried under the law. Section 13 stated that the “Tribunal shall make every effort to dispose of a complaint or an appeal or other proceedings within 60 days.”¹⁸¹ However, it was noted in Punjab that following the devolution the tribunals would remain closed for long periods of time resulting in a backlog of cases. “The tribunal had been dormant since June 2011 and has over 1700 cases pending.”¹⁸² Similar reports have emerged from other provinces as well. In 2014, it was reported that the Sindh Environmental Tribunal had been closed for 20 months because the Chairperson’s post had been vacant and due to a lack of interest the authorities were not making any efforts to find a replacement.¹⁸³

Recently, the Pakistan Tehreek Insaf-government (PTI) in KPK was criticized for failing to even form the KP Environmental Protection Tribunal in the province. “The environment-related issues remained unresolved in the province due to non-existence of Environment Protection Tribunal for the last three years. The people are filing environment cases in the Peshawar High Court in the absence of the tribunal.”¹⁸⁴ However, the PTI-government has invested on the “Billion Trees Tsunami Project.” Also the deputy general has stated that the Law department has cleared a draft containing rules for the tribunal, and is now awaiting approval.¹⁸⁵

Pakistan Climate Change Council: The Pakistan Climate Change Act 2017 establishes the Pakistan Climate Change Council which is responsible for enforcement of the Act, implementation of international agreements with respect to climate change including UNFCCC and approve guidelines and policies for protection of renewable and non-renewable resources threatened by climate change.¹⁸⁶

Pakistan Climate Change Authority: The Climate Change Authority is also established under the Pakistan Climate Change Act. It is to perform the function of formulating policies on climate change, prepare Climate Change Technology Action Plan, prepare projects for funding under the REDD+ Mechanism, formulate and implement low carbon and green growth strategies and advise government on implementation of goals and fulfilling obligations under international conventions and treaties.¹⁸⁷

Schedule 1 of the Act refers to the following for implementation in Pakistan:

UNFCCC 1992, Kyoto Protocol to UNFCCC 1997, the Paris Agreement 2015 and other agreements relating to climate change, to which Pakistan is a signatory.

¹⁸⁰ Sonia Malik, “Environmental Tribunal Only 15% of cases decided 20% of fines recovered,” *The Express Tribune* (June 2012)

Available at <<https://tribune.com.pk/story/387884/environmental-tribunal-only-15-of-cases-decided-20-of-fines-recovered/>>

¹⁸¹ Section 13 Punjab Environmental Tribunals Rules 2012

¹⁸² “Pollution penalties new rules framed for environmental tribunal” *The Express Tribune*. (May 2012)

Available at <<https://tribune.com.pk/story/377017/pollution-penalties-new-rules-framed-for-environmental-tribunal/>>

¹⁸³ Ishaq Tanoli “Environmental tribunal not working for 20 months,” *Dawn* (April 2014)

Available at <<https://www.dawn.com/news/1098211>>

¹⁸⁴ Akhtar Amin “KP govt fails to form Environmental Protection Tribunal,” *The News* (November 2016)

Available at <<https://www.thenews.com.pk/print/162902-KP-govt-fails-to-form-Environment-Protection-Tribunal>>

¹⁸⁵ Ibid

¹⁸⁶ Section 3 Pakistan Climate Change Act 2017

¹⁸⁷ Section 8 Pakistan Climate Change Act 2017

Pakistan Climate Change Fund: The Pakistan Climate Change Fund is also created under the Pakistan Climate Change Act 2007. The Fund is to be managed by the Authority mentioned above and shall be utilized for expenditures incurred by the Authority in performance of its functions and for financial assistance to suitable adaptation and mitigation projects along with sustainable development of resources and research. The Fund shall be maintained by the funds and endowments received through the various projects conducted by the Authority such as REDD+.

Council of Common Interests: As Forestry falls in the competence of the provinces and REDD+ and carbon credits fall in the purview of the Federation it becomes important to mention the Council of Common Interests which is a constitutional body consisting of the Prime Minister, Chief Ministers of the Provinces and three members from the Federal Government. The Council of Common Interest formulates and regulates policies. The thirtieth meeting of the CCI was convened on 15.12.2016 to approve the national forest policy.

Ministry of Inter-Provincial Coordination: The Inter-Provincial Coordination Division of the Ministry of Inter-Provincial Coordination is responsible for promoting uniformity of approach in formulation of policy as well as its implementation in the Provinces and the Federal Government in areas of common concern.¹⁸⁸ It works as the secretarial division of the Council of Common Interests.

6.2 Provincial Bodies

Provincial Forest Departments: Provincial forest departments have been discussed in great detail in Chapter 4, section 4.4. The Forest Departments are responsible for establishing provincial REDD Steering Committees and planning units and for carrying out the ground work vis-a-vis REDD obligations.

Forest and Wildlife Department, Balochistan: The Department is headed by the Office of the Chief Conservator of Forest and Wildlife (North) and the Office of the Chief Conservator of Forest and Wildlife (South). The Department is responsible for the conservation of wildlife and the management of protected areas such as national parks and wildlife sanctuaries. It is mandated to address the issues of land degradation through soil conservation and reforestation and afforestation of the province of Balochistan. The Department is charged with managing all matters related to the carbon sink and, *inter alia* through the regulation of forests and timber, combat climate change and reduce Balochistan's contribution to the phenomena of global warming.

The Environment Department, Khyber Pakhtunkhwa: The Environment Department of the Government of Khyber-Pakhtunkhwa comprises of the offices of the Chief Conservator of Forests, the Conservator of Wildlife, the Directorate of Fisheries, the Directorate of Transport and the Directorate General Environment Protection Agency.¹⁸⁹ The Department is charged with the protection of the environment as well as the preservation, protection and conservation of forests and wildlife in Khyber Pakhtunkhwa.

¹⁸⁸ Schedule 1, Entry 2, Item No. 18A Rules of Business 1973 (Islamabad)
Available at < <http://202.83.164.29/cabinet/userfiles1/file/ROB-22-07-16.pdf>>

¹⁸⁹ Schedule I, Item No. 3 Khyber Pakhtunkhwa Government Rules of Business 1985, No. SO(O&M) S&GAD/3-3/1985
All provincial environment protection agencies have been established pursuant to section 8 of the Pakistan Environmental Protection Act, 1997.

Forest and Wildlife Department, Sindh: The Forest and Wildlife Department of the Government of Sindh which is headed by the Chief Conservator of Forests and the Conservator of Wildlife.¹⁹⁰ Its functions include issues of or related to afforestation, reforestation, forest management and utilization, the protection of wildlife and the preservation of national parks and game reserves in Sindh.

Forestry, Wildlife and Fisheries Department, Punjab: The Forestry, Wildlife and Fisheries Department is responsible for the legislation and policies in the province of Punjab in relation to management of forests, fisheries and wildlife.

Forest, Wildlife and Environment Department of the Government of Gilgit-Baltistan: The Forest, Wildlife and Environment Department of the Government of Gilgit-Baltistan consists of the Conservator of Forest and the Directorate of Khunjarab National Park.¹⁹¹ The Forest and Wildlife Department are responsible, *inter alia*, for the following:¹⁹²

1. The promotion of social forest on private lands and the management of public forest estates so as to maximize production of wood and minor forest produce and to create new forest resources;
2. The prevention of poaching and the implementation of the Forest Act and the rules framed thereunder.
3. The establishment of *guzara* forests and recreational parks and the education of the general public on the benefits of trees, forests and the ecology.
4. The management and conservation of forests along with the protection of wildlife and the environment.

6.3 Non-Governmental Organizations

International Union for Conservation of Nature: The IUCN office in Pakistan was established in 1985 and is an important contributor to environmental work at both policy and community level. At present it focuses on biodiversity conservation particularly in forest areas. The IUCN is often represented at meetings of the National Steering Committee.

World Wide Fund for Nature-Pakistan: World Wide Fund for Nature, WWF-Pakistan is a member of the WWF International Network, one of the world's largest and most experienced independent conservation organizations. It carries out conservation work according to the Global Programme Framework. WWF-Pakistan is working towards improving sub-watershed management and environmental awareness around Ayubia National Park and has prepared an Action Plan and Capacity Building for a National Forest Monitoring System NFMS) for REDD+.

Sustainable Development Policy Institute: Sustainable Development Policy Institute (DSPI) was founded in August 1992 on the recommendation of the Pakistan National Conservation Strategy. Its mandate is to conduct policy advice, research and advocacy and promote the implementation of policies, programs, law and regulations based on sustainable development. It aims to catalyze the transition towards sustainable development.

¹⁹⁰ Schedule I, Item No. 12 Sindh Government Rules of Business 1986, No. SOR-I (S&GAD) 3/2-85 (Pt. III) Available at < <http://www.sindh.gov.pk/dpt/services/RULES/Rules%20of%20Business.pdf>>

¹⁹¹ Schedule I, Item 7 Gilgit-Baltistan Rules of Business 2009, SRO (1)/2009

¹⁹² Schedule II, Item 7 Gilgit-Baltistan Rules of Business 2009

National Rural Support Programme: National Rural Support Programme (NRSP) is a nationwide programme where forestry is promoted through grass root development initiatives, community farm nurseries and tree farms.

SUNGI Foundation: SUNGI Foundation works with communities of KPK and AJK. Its forestry is promoted under the SUNGI Forestry Initiative through farm nurseries and tree farming, also motivating communities for protection of natural forests and joint management.

Society for Conservation and Protection of Environment: Society for Conservation and Protection of Environment, more commonly known as SCOPE works with the desert communities of Sindh for sustainable land use and building livelihood sources. Dry land forestry is one of the main activities of SCOPE.

6.4 Research Institutes and Universities

Pakistan Forest Institute (PFI): The Pakistan Forest Institute falls under the ambit of the KP Forestry, Wildlife and Environment Department. However, it has the national mandate for forest research and education. The mission of the Institute is to provide support through effective research and trained manpower for scientific management of forests and rangelands etc.

The following universities in Pakistan also impart training and education on forestry:

- Peshawar University, Peshawar
- Allama Iqbal Open University, Islamabad
- University of Arid Agriculture, Rawalpindi
- University of Agriculture, Faisalabad
- University of Agriculture, Tando Jam, Sindh

Chapter 7 – RECOMMENDATIONS

The UNFCCC requires countries to include a national REDD+ institutional and legal framework that draws on the existing system. The chapters above have identified the laws in place that deal with land tenure issues in Pakistan and stakeholder engagement and identified the relevant institutions for execution of REDD+ activities.

In our view, REDD+ has to be firmly entrenched in Pakistan's legal system in order for it to have grass root level application. In other words, REDD+ will only be a success in Pakistan if it has the ability to benefit the common man. The implementation of REDD+ and the trickle-down effect of its benefits therefore have to be institutionalized. A proper mechanism for REDD+ finance has to be created at both an international and domestic level.

The finance mechanisms under the Cancun Agreement can broadly be categorized as: firstly, upfront investments i.e. advance payments for building capacity and to support implementation of policies, secondly, performance based payments for REDD+ related actions and performance based payments for carbon which are to be delivered upon demonstration of verified emissions reductions generated by REDD+ activities.¹⁹³

In order to achieve results based finance a unified and harmonized forest monitoring system has to be in place along with a national forest reference emission level i.e. the base line has to be identified. The most likely issue that can be identified in this regard is that there is no definition for carbon rights in Pakistan. A legal definition for carbon rights is therefore essential to determine the beneficiaries of REDD+ activities.

Carbon benefits are accrued from undertaking a REDD+ activity. However, without legal identification these benefits and rights do not have the status of legally identifiable property. Furthermore, the distinction between the owner of the carbon and the stakeholders who have a right to the carbon must also be made. If carbon is considered a forest resource, then its ownership will vest in the owner of the forest. Land tenure rights as seen in Chapter 4 are complex and not easily discernible and therefore this can become problematic. The definition of carbon is crucial to REDD+ but is also very complex as it is something that is novel and has not been made part of Pakistan's legislation in the past. The Climate Change Act, though monumental for the purposes of REDD+, does not define carbon rights.

In the context of benefit sharing it again becomes important to determine what (a) the baseline is and (b) carbon credits are. Benefit sharing can be considered the final product of the project to generate and consequently distribute the funds accrued from related activities. The basis for the claim to these benefits must be codified in law to ensure that there is no pilferage and that the distribution is done in a transparent and just manner. Therefore, the key elements that need to be highlighted in the legal framework for benefit sharing are as follows:

- (a) defining what the benefit is;
- (b) identifying the beneficiaries to the claim of benefit;

¹⁹³ USAID "Institutional mechanisms for sharing REDD+ benefits," (World Resources Institute, 2009) 1

- (c) the process for distribution; and
- (d) the transparency measures to be adopted to ensure fair and honest distribution.

It is also important to highlight the status of private efforts to curb deforestation and forest degradation and enhance carbon stocks through afforestation. The status of these projects and the rights that emanate from such activities must be clearly identified.

Pakistan has already taken a giant leap towards institutionalizing REDD+ by passing the Climate Change Act of 2017. The premise of this Act is to meet Pakistan's obligations under international conventions that relate to climate change and to provide comprehensive policies and measures to address the effects of climate change.¹⁹⁴ The Climate Change Authority created under this Act is tasked with preparing projects for funding under the REDD+ mechanism.¹⁹⁵ It is additionally responsible for advising the Government on implementation of its international conventions and treaties as well as on establishing a national registry and data base on greenhouse gas emissions in accordance with internationally adopted quantifications methodologies, standards and protocols.¹⁹⁶

Furthermore, the Authority has to work in collaboration with Government agencies and NGOs to conduct studies and set targets for the development of carbon markets and for designing programmes for incentives relating to REDD+. ¹⁹⁷ By giving the Authority this mandate, the Act has done away with some of the technicalities that underpin the constitutional framework under the eighteenth amendment. The Federal Government has essentially taken over the function of forestry in connection with REDD+ and removed the road-block created by the eighteenth amendment and the fact that forest legislation was made at a provincial level and therefore was not harmonized.

Under section 19 of the Act, the Authority can also make regulations for carrying out the functions of this Act.¹⁹⁸ This is the legal framework within which REDD+ can be incorporated. The regulations will serve as subordinate legislation to the 2017 Act and can include a system whereby the deficiencies and lacunae mentioned above can be incorporated. As the Act extends to all of Pakistan it will apply to every province.

Within this framework the following issues can be dealt with and incorporated:

1. A definition for forests that will apply to all the provinces. Harmonization of definitions is essential in being able to monitor the number of trees and consequently the carbon stocks in every province. Since reforming forest legislation pertaining to each province can be a long and arduous process, it is easier to simply issue a regulation that unifies the definitions.

¹⁹⁴ Preamble to the Climate Change Act, 2017:

whereas it is expedient to meet Pakistan's obligations under international conventions relating to climate change and to provide for adoption of comprehensive adaptation and mitigation policies, plans, programmes, projects and other measures required to address the effects of climate change and for matters connected therewith and ancillary thereto.

¹⁹⁵ Ibid Section 8(f)

¹⁹⁶ Ibid Sections 8 (k) and (l)

¹⁹⁷ Ibid Sections 8 (q) and (r)

¹⁹⁸ Section 19: Power to make regulations:

For carrying out the purposes of this Act, the Authority may by notification in the official Gazette and with the approval of the Minister-in-Charge of the Federal Government, make regulations not inconsistent with the provisions of this Act and the rules made thereunder

Alternatively, a direction under Article 149 of the Constitution can also be given to the provinces to adopt a unified definition of forests and other REDD+ related terminology.

2. A legal framework for carbon rights including their definition and the scope of trading as well as a mechanism that lays down ownership of these rights and means of transfer.
3. A benefit sharing system that involves local communities, incentivizes their involvement and identifies the system of benefits and their distribution should be chalked out.
4. Transparency laws should be incorporated in the system of benefit sharing to ensure that the monetary benefits of REDD+ are distributed without any pilferage and misuse.
5. The institutions involved in implementing REDD+ activities should be clearly identified in order to ensure that there are a limited number of institutions which have clearly demarcated responsibilities. This will go a long way in remedying the current institutional disconnect and paralysis caused by multiple organizations with overlapping jurisdiction and mandates.
6. Public organizations with large areas of land under their purview, such as Pakistan Railway, Frontier Works Organization, the Armed Forces etc. can be directed to conduct mass afforestation programmes with identifiable benefit schemes.
7. The Regulations should require the Authority to conduct a thorough review of the provisions of international treaties relevant to REDD+ in order to get a clear understanding of Pakistan's contemporary international obligations vis-a-vis the environment, climate change and forestry in particular.
8. The Fund created under the Climate Change Act 2017 is the central fund for all grants, endowments and funds that accrue from REDD+ related activity. REDD+ financing has to be conducted at three levels; firstly, from the international donors to the national/federal fund, secondly from the national fund to the provinces and lastly from the provincial government departments to the stakeholders at the grass root level. The Climate Change Act comprehensively deals with the first step as all money that is internationally owed to Pakistan will come through the Climate Change Fund. The Regulations will however have to map out the passage of these funds from the Climate Change Fund to the provincial forest departments and then from the departments to the beneficiaries.
9. Workshops should be conducted at provincial levels and local communities should be engaged to ensure that those with use rights over forests are made aware of the advantages of preserving and conserving forests.
10. Forest management systems should be streamlined and their executive functions should be clearly defined and mapped out to ensure easier access to the public. Joint Forest Management Committees (JMFC) comprising representatives of the concerned organizations and staff of the Forest Department may be established for this purpose.
11. Specialized workshops should be conducted exclusively for women and their inclusion in decision-making processes be encouraged.

ANNEXURE A: RECOMMENDATIONS FROM PARTICIPANTS OF THE WORKSHOPS

At the close of this report the recommendations put forth by the participants of the workshop are being reproduced under the headings in which they were proposed. The participants were divided into three groups with each group setting forth different proposals. Their recommendations were as follows:

a. Law and policy should recognize/formalize user rights of local communities in Reserve Forests.

Group 1: Forest management plan should not be suspended unilaterally.

Customary laws should be recognized by statute.

Carbon may be recognized as forest produce.

Group 2: Amend the laws on reserved forests.

Develop an accountability mechanism.

Group 3: Give limited rights in reserved forests but manage the rights sustainably to ensure conservation of reserved forests.

b. All categories of legitimate tenure rights holders (e.g. managers (govt.), users, owners, concessionaires, tenants) are entitled to an equitable share of benefits coming from REDD+ and to compensation for any loss due to restrictions under REDD+.

Group 1: To avoid conflicts it is important to define shares of the parties (right holders) in the different forest-categories.

All rights holders need to be involved in the determination of shares.

Group 2: Rights-holders/rights should be clearly defined.

There was a need for clear conflict resolution mechanisms.

Group 3: The legal framework for benefit-sharing must be formulated in consultation with all stakeholders before implementing REDD+.

Develop a policy which encourages private sector investment in carbon sequestration/REDD+ framework.

Benefit-sharing should not be equal but should rather be proportionate.

Carbon should be treated as a commodity/forest produce.

c. Formal Agreements should be reached between provinces/regions on REDD+ implementation defining roles and responsibilities in a harmonized manner.

Group 1: Agreements on REDD+ implementation with the Federal Government should be province-specific.

Agreements should be between the Federal Government and the Provinces.

Group 2: Implement a clear mechanism for benefit-sharing under REDD+.

The benefit-sharing mechanism should be revisited periodically.

Group 3: Define the role of the Federal Government with regards to the conflict resolution between regions, provinces and private owners.

d. National and provincial land use planning should be developed. Conversion of forest to other categories of land use (mining, agriculture, infrastructure...) should be critically reviewed. Forest conversion should be limited to special circumstances of national interest.

Group 1: Special circumstances should be clearly defined.

Land use change model should be incorporated in provincial and national forest legislation.

Group 2: Land use policy should be strictly implemented.

Existing forest lands (possessed by Forest Departments) in the shape of artificial plantations/cultivable lands are in most cases not mutated or transferred. Consequently, for non-forestry purposes which must be banned by Federal ordinance.

Developing national and provincial land use plans must be made a priority.

Group 3: No recommendations were put forth by Group 3.

e. Law and policy should provide for private and community forest plantations to be managed through simplified management plans for SFM.

Group 1: Maintain the distinction between private forests and community forests in the case of Gilgit-Baltistan.

Group 2: Communities holding forest plantations should be trained to be able to devise a forest management plan.

Laws should provide for a reasonable minimum area over which a management plan may be effectively implemented.

Group 3: Community participation in planning/execution should be ensured.

f. Gender equitable inheritance should be provided by specific law and policies.

Group 1: Any forest policy should address gender equity in distribution of REDD+ benefits. Distribution of benefits in this manner would empower females and ensure their participation in forest management. Such benefits should not however extend to inheritance.

Group 2: Gender equity will benefit REDD+ activities.

In special cases it was noted that distribution of equitable rights must however be mindful and compliant of customary laws.

Group 3: Inheritance laws as they stand are sufficient.

Direct participation by women in any beneficial REDD+ scheme would, however, help ensure its success.

g. The existing institutional structure (National Steering Committee) should be improved by giving chance of rotating chairperson amongst the provinces and establish and support provincial steering committee as well as REDD+ cells at provincial level.

Group 1: The NSC should have permanent members from all the provinces.

Keeping in view the limited capacity of the PFI for NFMS, a National Climate Change Centre should be established in Islamabad.

The chair of the NSC should be rotated between the Provinces and the Federation.

Group 2: An Implementation Committee should be established at the provincial level.

Group 3: The chair of the NSC should be rotated between the provinces.

Owners of forests should be given positions in the NSC.

ANNEXURE B: INTERNATIONAL AGREEMENTS THAT RELATE TO REDD+

- Additional Protocol to the American Convention on Human Rights in the Area of Economic
- African Charter on Human and Peoples' Rights (Banjul Charter) (1981)
- African Convention on the Conservation of Nature and Natural Resources (1968)
- Agenda 21 (1992)
- American Convention on Human Rights "Pact of San Jose, Costa Rica" (ACHR) (1969)
- American Declaration on the Rights of Duties of Man (1948)
- ASEAN Agreement on the Conservation of Nature and Natural Resources (1985)
- Cartagena Protocol on Biosafety to the Convention on Biological Diversity (The Biosafety Protocol) (2000)
- Convention for the Protection of the Natural Resources and Environment of the South Pacific Region (1986)
- Convention for the Safeguarding of the Intangible Cultural Heritage (2003)
- Convention on Biological Diversity (CBD) (1992)
- Convention on Environment Impact Assessment (EIA) in a Transboundary Context (1991)
- Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (1976)
- Convention on Nature Protection and Wild Life Preservation in the Western Hemisphere (1940)
- Convention on the Conservation of Migratory Species of Wild Animals (CMS or Bonn Convention) (1979)
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1976)
- Convention on the Elimination of All Forms of Racial Discrimination (CERD) (1965)
- Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005)
- Convention on the Rights of the Child (1989)
- Convention on Wetlands of International Importance (Ramsar Convention) (1971)
- Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration) (1972)

- Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (1998)
- Declaration on the Right to Development (1986)
- Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities (1992)
- Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (“Convention of Belem Do Para”) (1995)
- International Convention for the Protection of Birds (1950)
- International Covenant on Civil and Political Rights (ICCPR) (1966)
- International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966)
- International Labour Organisation Convention Concerning Indigenous and Tribal Peoples in Independent Countries (Convention No. 169) (1989)
- International Tropical Timber Agreement (ITTA) (1985/2006)
- Inter-regional Framework Cooperation Agreement between the European Community and its Member States, on the one part, and the Southern Common Market and its Party States on the Other Part (1999)
- Mercosur Framework Agreement on Environment (2004)
- Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits arising from their Utilization (ABS) to the Convention on Biological Diversity (2010)
- Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests (Forest Principles) (1992)
- Non-Legally Binding Instruments on All Types of Forest (NLBI on Forest) (2007)
- North American Agreement on Environmental Cooperation (NAAEC) (1993)
- Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (OP-CEDAW) (1999)
- Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (2008)
- Ramsar – Convention on Wetlands of International Importance (Ramsar Convention) (1971)

- Regional Convention for the Management and Conservation of the Natural Forest Ecosystems and the Development of Forest Plantations (1993)
- Rio Declaration on Environment and Development (1992)
- The United Nations World Charter for Nature (1982)
- UN Convention Against Corruption (UNCAC)
- UNEP draft Principles of Conduct in the Field of the Environment for the Guidance of States in the Conservation and Harmonious Utilization of Natural Resources Shared by Two or More States (UNEP draft Principles) (1978)
- UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage (1972)
- UNESCO Universal Declaration on Cultural Diversity (2001)
- United Nations Convention to Combat Desertification (UNCCD) (1994)
- United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) (2007)
- United Nations Framework Convention on Climate Change (UNFCCC)
- Universal Declaration of Human Rights (UDHR) (1948)
- WTO/GATT Agreements

ANNEXURE C: REFERENCES

Laws

- Anti-Dumping Duties Act 2015
- Constitution of the Islamic Republic of Pakistan 1973
- Countervailing Duties Act 2015
- Cutting of Trees (Prohibition) Act 1992
- Gilgit-Baltistan Rules of Business 2009
- Jammu and Kashmir Forest Act 1987 (1930 AD.)
- Khyber Pakhtunkhwa Rules of Business (Peshawar, Pakistan, April 1985)
- Land Acquisition Act 1894
- Pakistan Climate Change Act 2007
- Pakistan Environmental Protection Act 1997
- Pakistan Halal Authority Act 2016
- Punjab Rules of Business (Lahore, Pakistan, 2011)
- Rules of Business 1973 (Islamabad)
- Sindh Rules of Business (Karachi, Pakistan, 1988)
- The Balochistan Wildlife (Protection, Preservation, Conservation and Management) Act 2014
- The Forest Act 1927
- The Khyber Pakhtunkhwa Forest Ordinance 2002
- The Punjab Plantation and Maintenance of Trees Act 1974
- Torture, Custodial Death and Custodial Rape (Prevention & Punishment) Act 2014 (*proposed*)

UN Conventions and Documents

- COP decision 1/CP.16 (III C Paragraph 73; UNFCCC 2010)
- Food and Agriculture Organization of the United Nations. “Global Forest Resources Assessment,” (Rome, Italy, 2005)
- Kyoto Protocol to the United Nations Framework Convention on Climate Change UN Doc FCCC/CP/1997/7/Add.1, Dec. 10, 1997; 37 ILM 22 (1998)
- The Paris Agreement 2015
- United Nations Convention Against Corruption 2003 UNCAC

- United Nations Framework Convention on Climate Change “The Bali Road Map Intro,” (March 2013)
- United Nations Framework Convention on Climate Change. ‘Clean Development Mechanism (CDM),’ (November 2015)
- United Nations Framework Convention on Climate Change. “Status of Ratification of Kyoto Protocol,” (April 2016)
- “Unpacking the “Warsaw Framework for REDD+”, the Requirements for Implementing REDD+ under the United Nations Framework Convention on Climate Change, Climate Law and Policy,” (Climate Law and Policy, February 2014)

Articles (Journals/ Newspapers/Books etc.)

- “Agriculture” Economic Survey (2009)
- Akhtar Amin, “KP govt fails to form Environmental Protection Tribunal,” *The News* (November 2016)
- Ahmed Javed and Fawad Mahmood, “Changing Perspectives on Forest Policy” (International Institute for Environment and Development, 1998)
- Anwar Ali, “Management of Guzara Forests; Policies and Their Implications in Hazara Division North-West Frontier Province,” (ICIMOD, Kathmandu, Nepal, 2005)
- Asif Saeed (2003) “The Underlying Causes of Deforestation and Forest Degradation in Pakistan” (XII World Forestry Conference, Canada, 2003)
- Assessing Forest Degradation, Towards the Development of Globally Applicable Guidelines’ (2011) Forest Resources Assessment Working Paper 177/2011
- Babar Shahbaz, Tanvir Ali and Abid Q. Suleri “A Critical Analysis of Forest Policies of Pakistan: Implications for Sustainable Livelihoods.”(2007) 12.4 Mitigation Adaptation Strategies for Global Change.
- “Definitional issues related to reducing emissions from deforestation” (FAO Corporate Document Repository) Decision 11/CP.7, UNFCCC, 2011.
- Definitions and Basic Principles of Sustainable Forest Management in Relation to Criteria and Indicators,’ (FAO Corporate Document Repository)
- Dicky Simorangkir, ‘Understanding Forest Tenure in South and Southeast Asia,’ Forestry Policy and Institutions Working Paper.

- Economic and Social Development Department, “What is Land Tenure” (FAO Corporate Directory Repository)
- Eliasch Review, “Climate Change: Financing Global Forests,” (2008)
- Emmanuel Zafar, “Administrative Law,” (Khyber Law Publishers, Lahore, Pakistan, 1998)
- Environmental Legislation in Pakistan and the OECD Guidelines for Multinational Enterprises: A Gap Analysis (2012)
- Gabrielle Kissinger, Martin Herold and Veronique De Sy, “Drivers of Deforestation and Forest Degradation” (Lexeme Consulting, Vancouver Canada, August 2012)
- Government of Pakistan. “Forests- The Guardians of Present and Future Generations” (Environmental Policy and Law, 1981)
- Ghulam Rasul “An Analysis of Knowledge Gaps in Climate Change Research” (Pakistan of Meteorology Journal) 7.13
- H.G. Lund. ‘What is a Degraded Forest?’ (Forest Information Services, 2009, USA)
- Ian D. Thompson, Manuel R. Guariguata, K. Okabe, C. Bahamondez, R. Nasi, V. Heymell, and C. Sabogal. “An operational framework for defining and monitoring forest degradation” Ecology and Society 18.2 (2013)
- Iain Henderson, Jacinto Coello et al. “The Role of the Private Sector in REDD+: The Case for Engagement and Options for Intervention” UN-REDD Policy Brief Issue 4 (2013)
- Irfan Haider, “Timber mafia denuding Murree forests of trees.” *Dawn*. (February 2014)
- Ishaq Tanoli, “Environmental tribunal not working for 20 months,” *Dawn* (April 2014)
- Jean-Paul Lanly, ‘Deforestation and Forest Degradation Factors’
- Leo Peskett, David Huberman et al., “Making REDD Work for the Poor Man,” (Poverty Environment Partnership Report, October 2008)
- Martin Herold, Louis Verchot, Arild Angelsen, Danae Maniatis, Simone Bauch, “A Step Wise Framework for Setting REDD+ Forest Emission Levels and Forest Reference Levels,” Info Brief (April 2012)
- “National Forest Policy 2015” (Government of Pakistan Ministry of Climate Change 2015, Islamabad, Pakistan)
- National Forest Program “NFP as a comprehensive forest governance framework,” (FAO, 2012)

- Nausheen Ahmed 'Land Rights for Pakistani (Muslim) Women: Law and Policy,' SDPI (November 2010)
- Pakistan Tobacco Company "Corporate Social Responsibility," (May 2010)
- "Pollution penalties new rules framed for environmental tribunal" *The Express Tribune*. (May 2012)
- Rina S. Khan, "Earthly matters: Can Pakistan's forests be saved?" *Dawn*. (19 January 2014)
- Rina S. Khan. "Pakistan's Fast Disappearing Forests." *The Express Tribune*. (25 February 2014)
- 'NAP, Zarb-e-Azb made it the safe year' *The Nation* (1 January 2016)
- R. M. Martin, "Deforestation, Land Use Change and REDD" (FAO Corporate Document Repository)
- Shahzad Anwar, "Logging; G-B stripped of more than 50% forest cover" *The Express Tribune* (January 2015)
- Sonia Malik, "Environmental Tribunal Only 15% of cases decided 20% of fines recovered," *The Express Tribune* (June 2012)
- S.R. Khan and A. Naqvi, "The Environment – Poverty Nexus: An Institutional Analysis," (2000) Sustainable Development Policy Institute Working Paper 49 (Pakistan) 19
- "Stern Review on The Economic Effects of Climate Change" (Population and Development Review 2006)
- Sustainable Development Policy Institute, "Clustered Deprivation: District Profile of Poverty in Pakistan" (2012)
- Richard Wolkowski and Bril Lowery "Soil Compaction: Causes, Concerns and Cures" University of Wisconsin-Extension (2008)
- The REDD Desk "Carbon Stock Enhancement" (REDD encyclopedia)
- UNDP. "About Pakistan," UNDP in Pakistan, (2016)
- UN-Habitat "A Guide on Land and Property Rights in Pakistan," (Islamabad, Pakistan, December 2011)
- UKAID "A Guide to Understanding and Implementing the UNFCCC REDD+ Safeguards" (UK AID)
- USAID, "Institutional mechanisms for sharing REDD+ benefits," (World Resources Institute, 2009)

- Urs Geiser, “State Forest Administration, Donor Support, and Forest Realities in Khyber Pakhtunkhwa Province of Pakistan,” (University of Zurich, 2013)
- The World Bank “Rural Population (% of total population)
- World Population Review. “Pakistan Population 2017,” (February 2017)

Pakistan Government Document/Articles

- Farrukh Iqbal Khan ‘Nationally Appropriate Mitigation Actions (NAMAs) for Pakistan,’ (Ministry of Environment, November 2010)
- Forestry, Environment and Wildlife Department. ‘Billion Trees Tsunami Afforestation Project.’
- Government Federally Administered Tribal Areas “Directorate of Forests”
- Government of Pakistan Climate Change Division. ‘Framework for Implementation of Climate Change Policy,’ (Islamabad, Pakistan, November 2013)
- Government of Pakistan Ministry of Climate Change. “National Climate Change Policy 2012,” (Islamabad, Pakistan September 2012)
- Government of Pakistan. ‘Action Plan for the implementation of the national forest monitoring system of Pakistan,’ (August 2015)
- Impact of War in Afghanistan and Ensuing Terror on Pakistan’s Economy,’ (Pakistan Economic Survey 2014-2015)
- Pakistan Forest Institute. (Peshawar, Pakistan)
- Pakistan Forest Institute. ‘Land Cover Atlas of Pakistan 2012,’ (Peshawar 2012).

Case Law

- Al-Jehad Trust v. Federation of Pakistan 1999 SCMR 1379
- District Bar Association, Rawalpindi v. Federation of Pakistan. PLD 2015 SC 401
- Pakistan Football Federation v. The Government of Pakistan. 2017 CLC 1
- SGS Societe Generale v. Pakistan. 2002 CLD Lah. 790
- Societe Generale De Surveillance S.A. v. Pakistan. 2002 SCMR 1694