



APCEL Climate Change Adaptation Platform

Judicial Commission on Climate Change in Pakistan

by

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Responding to the emerging challenges of climate change, Pakistan adopted the National Climate Change Policy, 2012 (“Policy”) and the Framework for Implementation of Climate Change Policy (2014-2030) (“Framework”). The Policy is a detailed document that covers the challenges and provides a comprehensive, sector wise plan, to deal with them through Adaptation and Mitigation.

The Framework specifies strategies for the implementation of the Policy which are time-bound as follows:

- (1) Priority Actions (within 2 years);
- (2) Short term (within 5 years);
- (3) Medium term (within 10 years); and
- (4) Long term (within 20 years).

Pakistan has a robust jurisprudence on environmental public interest litigation¹, all anchored by the Shehla Zia case (1994)² in which the Supreme Court of Pakistan held that the constitutionally-protected fundamental rights of life and dignity under Articles 9 and 14 of the Constitution of Pakistan, 1973 (“Constitution”), include the right to a clean and healthy environment. This judgment spawned litigation in the High Courts and in the Supreme Court of Pakistan and the judiciary in Pakistan has provided an effective and innovative relief in such matters.

1. Climate Change Commission

On 29 August 2015, a farmer, Mr. Asghar Leghari, moved the Lahore High Court (“Court”) to seek the enforcement of the Policy with the Framework³. His petition contended that such enforcement was a part of his fundamental rights under Articles 9 and 14 as the adverse effects

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¹ See Parvez Hassan and Ahmad Rafay Alam, The Role of Commissions in Public Interest Environmental Litigation in Pakistan, 2011 All Pakistan Legal Decisions, Journal, at 78-89.

² Shehla Zia vs. WAPDA PLD 1994 Supreme Court 693.

³ Asgar Leghari vs. Federation of Pakistan (Writ Petition No. 25501/2015).

of climate change have not only become pronounced but have also started to adversely affect the socio-economic conditions of the petitioner.

The case came up before a former alumnus of the Asia Pacific Centre of Environmental Law (APCEL) at the National University of Singapore (NUS). Mr. Justice Syed Mansoor Ali Shah, the Green Judge of the Court and now the Chief Justice of the Lahore High Court, followed the Shehla Zia case to constitute a Climate Change Commission (“Commission”) for the “effective implementation of the Policy and the Framework”.

The Commission comprised the heads of all relevant federal and provincial Ministries/Departments/Authorities, civil society organizations, academics, and media. In fact, the key players in the country are included in the Commission: the Federal Secretaries of Finance, Food, and Water and Power, the Chairman of the National Disaster Management Agency, the Chairman of the Planning & Development Department, Government of Punjab, Provincial Secretaries of Irrigation, Forest and Health, and heads of the major environmental think tanks in the country. I was appointed the Chair of the Commission.

The Commission focused on the Priority Actions because if these are implemented in their entirety by their target date of 31 December 2015 in the Framework, the ground-work for the implementation of the other segments of the Framework would have been well-laid. Six (6) Implementation Committees (“Committees”) on (1) Water Resource Management; (2) Agriculture; (3) Forestry, Biodiversity, and Wildlife; (4) Coastal and Marine Areas; (5) Disaster Risk Management; and (6) Energy were constituted which were to report on the progress made on the implementation of the Priority Actions till 31 December 2015.

The Reports of Committees highlighted that the glass of the implementation of the Framework appeared to be half-full. The Reports determined that many of the Priority Actions have been completed while the work on the remaining is in progress.

2. Recommendations of the Commission

Based on the Reports of the Committees, the Commission, by consensus, gave sixteen (16) recommendations to ensure the smooth implementation of the Policy and the Framework. The important ones included:

(1) Climate Change Co-ordination

There was a lack of co-ordination at the federal and provincial levels. The Commission succeeded in generating, through the meetings, a workable pattern of co-ordination between the Ministries and the Departments, all fully supported by the dedication of the civil society organizations and the potential of Universities and think tanks. The Commission endorsed the need to strengthen this work paradigm and to be fully encouraged and facilitated in the years ahead.

(2) Financial Allocations and Capacity Building

Budgetary allocation was seen to be the biggest obstacle in the implementation of many projects and plans that could mitigate climate change. Without the supporting resource allocation, many of the Priority Actions may not be implementable and will merely become a wish list. There is also a lack of infrastructure and human resources, particularly at the district levels, for creating awareness and disaster preparedness. The Commission recommended that appropriate budgetary allocations for the implementation of the Framework, in particular the Priority Actions, and capacity building be made. It was also recommended that the early warning systems should be upgraded, modernized and maintained.

(3) Glacial Melt and Water Resource Management

The Glacier Monitoring Research Centre, Water and Power Development Authority, Lahore, Pakistan, reported that there has been excessive melting of glaciers in the recent past. This excessive glacial melt necessitates that storage capacity of water be enhanced. Except for one, there has been no allocation of funds for the development of other dams. The Commission recommended that plans for financial allocations for increasing storage capacity should be developed. It was also recommended that a separate ministry/national commission on water be established which solely deals with water resource management and its conservation.

(4) Agriculture and Food Security

It was highlighted that the water level in the country is dropping. Further, Pakistan needs to check the cultivation of the high delta crops and rationalize its crop water use based on crop physiology, change the cropping pattern and selection, and adopt crop zoning policies based on climate change vulnerability.

The Commission recommended that modeling and analytical studies should be undertaken at agro ecological zone level to understand productivity, substitution potential, constraints and opportunities. Farmers should be educated about the improved water management technologies and techniques for cropping and encouraged to adopt the same. They should also be geared to be adaptable to increasing temperature, shorter seasons, more erratic rainfall and water supply by changing crop variety, crop species and by changing the planting dates to match season conditions to crop characteristics. Media and modern technology should be used to create awareness and provide information to farmers to help them make such decisions. Steps should also be taken to ensure that adequate food stocks are maintained to cope with any crop failure due to climate change.

(5) Protection of Ecologically Sensitive Habitats

Pakistan should actively make efforts to protect the forests, biodiversity and wildlife. The notified protected areas of Pakistan should be thoroughly managed. Sustainable Forest Management initiatives and REDD+ projects need to be promoted and implemented. Additionally, projects/initiatives like the Billion Tsunami Tree in Khyber Pakhtunkhwa should be replicated in other parts of Pakistan to increase the number of trees to ensure zero carbon growth.

(6) Coal and the Future Energy Mix

Post-COP 21 Paris 2015, there was a clear international recognition for cleaner and renewable sources of energies and to move away from fossil fuels and coal. Pakistan must recognize the inevitable that in the future, coal-based economies will not be “sustainable”. Resultantly, Pakistan should aim to change its energy mix by tapping into and investing in renewable energy resources to meet its energy requirements.

(7) Access to the International Climate Finance

Large volumes of international finance are available for developing countries to address climate change, including but not limited to the Green Climate Fund (GCF), Climate Investment Funds (CIF), Adaptation Fund (AF) and Global Environment Facility (GEF). The centerpiece of this mechanism is GCF, designed to disburse USD\$100 billion per annum from 2020 onwards to help the developing countries combat climate change. Pakistan must make concerted efforts to acquire GCF accreditation to become eligible to access GCF funds and to strengthen its overall capacity to access international climate finance.

3. Outlook for the Future

The Lahore High Court has directed the continued role of the Commission in the effective implementation of the Policy and the Framework. The Court Orders also require a report on the implementation of the balance Priority Actions.

The Commission has also been directed by the Court to facilitate the consideration and adoption of the National Water Policy. It has commenced its review of how it can help the Federal Government meet the Constitutional challenge of co-ordinating a policy that deals with a subject that falls within the purview of provincial competence.

The Chairman of the Commission has had meetings with the leadership at the Planning & Development Department, Government of Punjab, to ensure budgetary allocations for certain projects recommended by the Commission. The requested budgetary allocations were, in fact, included to the satisfaction of the Commission.

The Commission is playing an important role in providing a forum where all the stakeholders, federal and provincial government officials, civil society, academia, and think tanks, participate in a joint effort to implement the Framework. It has shown that such an approach can be effective. In particular, the Commission has been a facilitator for co-ordination on climate change issues between the Government of Pakistan and the largest Province in the country, Punjab. There is already some thinking of replicating this with the other Provinces in the country.

Although this was not recommended by the Commission, several members of the Commission felt that a national Climate Change Authority would best provide a national and cohesive strategy for moving forward with the Policy. The “hold back” for this recommendation was a recent 2010 amendment – the 18th Amendment to the Constitution – which has resulted in the exclusive competence of the Provinces in the matters relating to the environment.

In spite of the constitutional hold back, the momentum developed by the Commission is well-serving the climate change issues in Pakistan in that it has provided a forum for monitoring the

implementation of the Policy. The establishment of the Commission by the judiciary in Pakistan was a unique and innovative handling of climate change issues in the country. This jurisprudence will likely resonate in other countries where climate change matters are not receiving due priority by the Government.