



Review of Pakistan

Environmental Protection Agency Regulations, 2000

(Review of Initial Environment Examination and
Environmental Impact Assessment)



National Impact Assessment Programme

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Abbreviations

EPA	Environmental Protection Agency
AJK	Azad Jammu and Kashmir
DG	Director General
EIA	Environmental Impact Assessment
EMP	Environmental Management Plan
EPO	Environmental Protection Order
FATA	Federally Administered Tribal Areas
GB	Gilgit Baltistan
IUCN	International Union for Conservation of Nature
IEE	Initial Environment Examination
KPK	Khyber Pakhtunkhwa
NGOs	Non-governmental organizations
NIAP	National Impact Assessment Program
Regulations	(Review of IEE/EIA) Regulations, 2000
RDF	Refuse Derived Fuel
SEA	Strategic Environment Assessment
The Act	The Pakistan Environmental Protection Act, 1997
ToR	Terms of Reference
TDF	Tired Derived Fuel

I. BACKGROUND

1. The Government of Pakistan and International Union for Conservation of Nature (IUCN) are jointly implementing a National Impact Assessment Program (NIAP) that aims to contribute to sustainable development in Pakistan through strengthening the Environmental Impact Assessment (EIA) process. One of the outputs under the NIAP project is the review and revision of the existing EIA legal framework in Pakistan to increase the effectiveness of the legislation and for improved implementation and enforcement of EIA in the country. The present study i.e. the review and analyses of Pakistan Environmental Protection Agency (Review of IEE and EIA) Regulations, 2000 (Regulations) is one of the components under NIAP.

II. OBJECTIVE & METHODOLOGY

2. The objective of the study is to understand the inadequacy of the Regulations in the context of the general Initial Environmental Examination (IEE) and EIA legal system in Pakistan, through identification of gaps in the said Regulations and implementation issues and to come up with recommendations to bridge these gaps.
3. The methodology adopted to achieve the aforesaid objective entails reviewing of IEE/EIA legal framework in all the provinces, Azad Jammu & Kashmir (AJK) and Gilgit Baltistan (GB). Primarily the Regulations, AJK Environmental Protection Agency Review of IEE and EIA Regulations, 2009 (AJK Regulations), relevant provisions of IEE and EIA of the Environmental Protection Acts (The Acts)¹ and federal and provincial Guidelines (footnote 14-17).
4. In addition, interviews with EPAs including AJK and GB, Climate Change Division, Planning Commission, EIA practitioners/consultants, academia, legal practitioners, Environmental Tribunals, and NGOs are carried out for further clarification. List of persons interviewed is attached (Annex A).
5. Literature review of the following is also conducted:
 - a. Draft Bill prepared by IUCN
 - b. Review Mechanism for Environmental Assessment Reports by Hagler Bailly (NIAP) (2013)
 - c. EIA Regulation & Practice Mappings in Pakistan (NIAP) (2012)
 - d. Accreditation of Environmental Consultants by Hagler Bailly (NIAP) (2013)
 - e. Environmental Protection and the 18th Amendment by Firuza Pastakia (2012)
 - f. Legal Implications of 18th Amendments relating to Environment by Zahid Hamid (2012)
 - g. Capacity Needs Assessment of Environmental Protection Tribunals in Pakistan (NIAP) (2012)

¹ Pakistan Environmental Protection Act, 1997, AJK Environmental Protection Act, 2000, Punjab Environmental Protection Act 1997,, Balochistan Environment Protection Act, 2013, Sindh Environmental Protection Act, 2014

III. IEE/EIA REGULATORY FRAMEWORK

6. Environmental Assessment was introduced in Pakistan as a legal requirement for the first time in 1983 through Environment Protection Ordinance, 1983 (the Ordinance). It was a Federal law applicable to the whole of Pakistan.² Section 8 of the Ordinance required, from every proponent of a project that was likely to adversely affect the environment, to file a detailed environmental impact statement, with support of the environmental protection agency at the time of planning the project. The reporting requirements under Section 8 of the Ordinance were applicable to such industrial activities, discharges of air pollutants and waste, public waters and on such persons and areas as may be prescribed through regulations to be made under the Ordinance. However, no rules or regulations were notified. Moreover, process of an environmental impact assessment was not provided in the Ordinance.
7. In 1997, the Pakistan Environmental Protection Act (the “Act”) replaced the Ordinance. Once again, it was a Federal law, applicable to the whole of Pakistan. The Act, for the first time, defined³ EIA and IEE. The requirement of submission of IEE/EIA for review was before “*construction or operation of the project*”,⁴ unlike the Ordinance, where filing the EIA was at the time of planning the project. The Act provided a process of conducting an IEE and EIA⁵ and penalties⁶ for non-compliance, which was lacking in the Ordinance. Through the Act, the concept of public hearing was made an essential part of the review process.⁷ The Act further provided for making of rules⁸/regulations⁹ for categorisation of projects requiring IEE/EIA and manner in which the process provided in the Act shall apply.
8. In pursuance of the Act, the Federal EPA, in 2000, notified the Regulations. The Regulations provide a list of projects requiring IEE/EIA,¹⁰

2 As per Article 1 (2) of the Constitution the territories of Pakistan comprise of: (a) the provinces of Balochistan, The KPK, the Punjab & Sindh; (b) the Islamabad Capital Territory; (c) FATA, and (d) such states and territories as are or may be included in Pakistan, whereby accession or otherwise

3 Sections 2 (xi) and (xxiv) of the Act

4 Section 12 (1) of the Act

5 Section 12 of the Act

6 Section 17 (1) (3) (4) & (5) of the Act

7 Section 12 (3) of the Act

8 Section 12 (6), “as may be prescribed”, where prescribed means prescribed by rules (Section 2 (xxxiv)) (the Act)

9 Section 33 (2) (f) of the Act

10 Regulation 3, 4, 5 & schedule I & II

- review process,¹¹ post-project monitoring and cancellation of licence,¹² and designation of environmentally sensitive areas.¹³ Similar to the Act, the Regulations were also applicable to the whole of Pakistan. **The Federal EPA delegated the implementation of IEE/EIA provided in the Act and the Regulations to the provincial EPAs.**
9. In 1997, the Federal Environmental Protection Agency (that had been formed under the Ordinance) in consultation with other key stakeholders prepared a comprehensive package of guidelines for environmental assessment, which included general¹⁴ and sectoral¹⁵ guidelines. It was intended that these guidelines may be read as a whole and reliance be placed on both, the general as well as sectoral guidelines for compliance (Ministry of Environment). They were Federal guidelines and were also applicable to all the provinces. Further, in 2004, KPK¹⁶ and Balochistan¹⁷ also notified sectoral guidelines for the respective province.
 10. In 2010, through the 18th Amendment to the Constitution of the Islamic Republic of Pakistan, 1973, environment became purely a provincial subject, empowering each province to make its own law.¹⁸
 11. In 2012, Punjab promulgated The Punjab Environmental Protection (Amendment) Act, 2012 (the “Punjab Act”). Punjab Act adopted the IEE/EIA provisions of the Act verbatim, with the only relevant amendment being the enhancement of penalties¹⁹ in the provincial law.
 12. In early 2013, Balochistan framed the law namely The Balochistan Environmental Protection Act, 2012 (the “Balochistan Act”). The Balochistan Act has adopted all the IEE/EIA requirements of the Act,²⁰ however some additional requirements are also incorporated - It specifically requires environmental approvals for mining activities²¹ and setting up of cellular towers.²² Furthermore, review fee²³ is specified for an IEE/EIA. It also provides for measures to be taken during the construction phase of projects.²⁴ Moreover, it defines Strategic Environmental assessment (SEA) and requires the government at all levels of administration to incorporate environmental considerations into policies, plans, programs and strategies.²⁵
 13. The most recent enactment is Sindh Environmental Protection Act, 2014 (“Sindh Act”). Once again, Sindh has kept all of the

11 Regulations 7-16

12 Regulation 19,20

13 Regulation 22

14 Guidelines for Preparation and Review of Environment Report; Guidelines for Public Consultation; Guidelines for Sensitive and Critical Areas; Guidelines for using the Tired Derived Fuel (TDF) in Pakistan Cement Industry; Guidelines for using Refuse Derived (RDF) in Pakistan Cement Industry.

15 Major Thermal Power Station; Major Chemical and Manufacturing Plants; Housing Schemes and New Town Development; Industrial Schemes; Major Road Guidelines; Sewage Scheme; Oil and Gas exploration and Production; Wind Power Projects (Draft)

16 Brick Kiln Units; Construction or expansion of Bus Terminal; Carpet Manufacturing Units; Canal Cleaning; Flour Mill; Forest Harvesting Operations; Forest Road Constructions; Housing Schemes; Marble Units; Petrol and CNG Stations; Poultry Farms; Rural Schools and Basic Health Units; Sanitation Schemes; Sound Plantation; Stone crushing Units; Tourists Facilities in Ecologically Sensitive Areas; Tube-well Construction for Agricultural and Irrigation Purpose; Urban Areas Road Construction; Water courses Construction and Lining; Water Reservoirs in Arid Zones; Water Supply Schemes; Solid Waste Management(Draft)

17 Dairy Farms and Slaughter Houses

18 Pre-18th amendment “environment and ecology” was part of the concurrent list and both Parliament and provincial assemblies had the mandate to legislate on the subject and in case of conflict between a federal and provincial law, the federal law was to prevail

19 Section 17 (1) & (2) of the Punjab Act

20 Section 15 of the Balochistan Act

21 Section 15 (9) of the Balochistan Act

22 Section 15 (10) of the Balochistan Act

23 Section 15 (16) & (17) of the Balochistan Act

24 Section 15 (12), (13), (14) & (15) of the Balochistan Act

25 Sections 2 (aaa) & 13 of the Balochistan Act

IEE/EIA provisions of the Act,²⁶ however some definitions²⁷ and additional process/requirements have been added. Penalties for non-compliance of IEE/EIA obligations have been enhanced to 5 million rupees.²⁸ Furthermore, for the first time, the Sindh Act has incorporated mandatory requirement of post-approval environmental monitoring to determine compliance with the conditions of approval and to determine whether the actual environmental impact exceeds the predicted levels or not.²⁹ For this purpose, the Sindh EPA may require furnishing of information³⁰ on water and air discharges and ambient quality of water, air, noise and soil, before, during and after construction and during operation from the project in charge and may issue such directions, as it may consider necessary to ensure compliance with the conditions of the approval.³¹ The Sindh EPA is also obliged to require, from the person in charge of a project, to furnish an environmental audit, environmental review report or an environmental management plan (EMP) from time to time and may give directions for mitigatory and compensatory measures to be adopted and can further direct to make modifications in the IEE/EIA approval.³² Definition of SEA³³ is included and the government authorities are required to submit SEA to the Agency before formulating any policies, legislation, plans and programs that might cause an environmental impact.³⁴

14. Presently KPK is following the Act and the Regulations and is in the process of drafting its own law.
15. All the Provinces are following the Regulations. While Balochistan³⁵ and Punjab³⁶ Acts have specifically saved (adopted) the Regulations, Sindh Act is silent on their status, but practically, Sindh is still following them.
16. As stated in para 8 above, provincial EPAs were delegated by the IEE/EIA implementation under the Act and the Regulations before 18th amendment, and practically, they were, and still are, looking at all matters relating to the same.³⁷ Under the Sindh Act, the Sindh EPA is responsible for all matters relating to IEE/EIA.³⁸ In Balochistan Act, the Balochistan EPA can designate any “Government Agency” to carry out the functions relating to IEE/EIA.³⁹ “Government Agency” is defined⁴⁰ to include: a department of provincial government, a development authority, a local authority (also includes regional or district setup of EPA), company/corporation established or controlled by the provincial government, Balochistan EPA, etc. In Punjab the provincial EPA or any provincial government department, development authority, company/body corporate established and controlled by the provincial government, local council, local authority exercising the powers

26 Sections 2 (xv) & (xxx) & 17 of the Sindh Act

27 Section 2 of the Sindh Act- Environment review (xvix); Environment management Plan (xvi); Environment Audit (xiv)

28 Section 22 of the Sindh Act

29 Section 19 of the Sindh Act

30 Section 19 (2) of the Sindh Act

31 Section 19 (3) of the Sindh Act

32 Section 20 of the Sindh Act

33 Section 2 (l) of the Sindh Act

34 Section 18 of the Sindh Act

35 Section 42 (2) of the Balochistan Act

36 Section 34 (2) of the Punjab Act

37 where ever the word “EPA” appears in the report it would mean provincial EPA in the provinces and EPAs of GB and AJK, as the case may be. Federal EPA would be responsible for implementation in the Federal Capital Territory (Islamabad)

38 Sections 2 (ii), 17, 18, 19 & 20

39 Section 15 (1) of the Balochistan Act

40 Section 2 (x) of the Balochistan Act

- of the provincial EPA has the mandate to look into matters relating to IEE/EIA.⁴¹
17. The IEE/EIA legal framework in GB is the Act and the Regulations. The Act and the Regulations were extended to GB in 2002⁴² and in 2007 the GB EPA was set up when Ministry of Environment delegated its powers under the Act to GB EPA.⁴³ The Federal Guidelines are also applicable to GB.
18. AJK has its own AJK Environmental Protection Act, 2000 (AJK Act) and AJK Regulations and IEE/EIA provisions of the legal framework are almost identical with the Act and Regulations with very minor changes. AJK Regulations provide that IEE/EIA federal guidelines both general and sectoral, issued by federal EPA, from time to time, shall stand adopted in AJK as far as practicable.⁴⁴

41 Sections 2 (xxxvii), (xvii), (xxv), (xxvi) & 17 (1)

42 Letter No. 10/5/2001- NA.II (Kashmir Affairs & Northern Areas)

43 SRO No. (I)/2007 & letter No. 1(A-1)96-DD.I

44 Regulation 6 (1)

IV. GAPS IN THE EXISTING REGULATIONS BOTH TEXTUAL AND IMPLEMENTATION

Screening:

19. The process of screening is dealt by the Regulations,⁴⁵ which classifies projects in two categories: projects requiring IEE⁴⁶ (Schedule I) and projects requiring more detailed EIA⁴⁷ (Schedule II). IEE is a preliminary environmental review of a proposed project to determine whether it is likely to cause adverse environmental effects requiring preparation of a full-fledged EIA or not. For projects falling under IEE category, the EPA can either approve it and the approved project can be started right away or it may ask submission of an EIA i.e. full environmental assessment wherever it is considered that environmental impacts might be of such nature that detailed, full and comprehensive investigation is required. The EPA cannot refuse an IEE altogether.
20. Schedule II lists projects for which an EIA is mandatorily required and any project from Schedule II would automatically be subject to a detailed environmental assessment study. It is established that the environmental impacts of certain activities are going to be serious and Schedule II lists such projects and categorically puts them in the category where EIA becomes mandatory in all situations. The regulations give a standardized list where, for certain projects, EIA is a mandatory requirement, whereas for certain other projects EIA may become mandatory after some preliminary investigation through IEE.
21. The Regulations also control development activities in environmentally sensitive areas.⁴⁸ What is an environmentally sensitive area is not defined in the Acts/Regulations and the EPA can declare any area as an environmentally sensitive area and all projects that are to be set up in such an area shall require filing of an EIA and can only be started once environmental clearance is given.

45 Regulations would include AJK Regulations unless there is some difference and in that case AJK Regulations would be quoted separately

46 Regulation 3

47 Regulation 4

48 Regulation 22/20 in case of AJK Regulations

22. Although the Regulations give a standardized list through schedules, the EPA also has room for discretion, and projects not falling under any category can be subject to IEE/EIA scrutiny. The EPA has the mandate to ask for an IEE/ EIA for any project even if it does not fall under any schedule, on the written recommendations of the Advisory Committee constituted under the Regulations.⁴⁹ Further, any project for which the federal EPA⁵⁰ has issued guidelines for construction and operation, the proponent is required to file, with it, an application for approval with an undertaking that the guidelines shall be fully complied with.⁵¹ Provinces of Balochistan and KPK have notified a number of guidelines (Para 9 & footnote 13, 14) for projects that are not mentioned in the two schedules and Balochistan and KPK are practically using them, although strictly they are not covered under the Regulations.⁵²
23. Moreover, even where the project is not mentioned in the two schedules, the proponent is required to file an EIA if the project is likely to cause an adverse environmental effect,⁵³ however, the Regulations do not provide who is going to determine the nature of the environmental impact. The term adverse environmental effect is defined in the Acts.
24. Balochistan has specified certain projects that require an EIA/IEE, as the case may be, within the Balochistan Act. It provides that prospect licences for mining, quarrying and crushing are not to be granted without an IEE or an EIA whichever may be applicable.⁵⁴ Moreover, it requires approvals from the Balochistan EPA prior to setting up of cellular base transceiver stations (BTS).⁵⁵ It also states that no concession areas for any development activity shall be awarded to any developer without the consultation and approval of Balochistan Government/ Balochistan EPA.⁵⁶
25. First and foremost issue of screening is the inadequacy/insufficiency of the two schedules. It is pointed out⁵⁷ that present categorization needs a thorough technical review. Problems include missing project types, projects in the wrong category and an incorrect threshold between IEE and EIA. For example, renewable energy (solar, wind, etc.), large buildings, tanneries and hospitals are not included in any list. Some projects in Schedule I (IEE) can at times have significant impact because of their size or other reasons and therefore, need reviewing for re-classification. For example, cross-country oil and gas pipelines can have a significant impact but are covered by an IEE whereas they should be covered by an EIA. Similarly, coal-fired power plants, even if smaller than 200 MW, merit an EIA. Rebuilding, reconstruction of existing metal roads is exempted from IEE and EIA altogether whereas at times major projects are done under the garb of "reconstruction".
26. Furthermore, it is pointed out⁵⁸ that for some types of projects the total project cost is used to determine the size of the EIA. With inflation, the thresholds have changed and in many cases the existing division is meaningless. For example, highways with total cost of Rs. 50 million or less require an

49 Regulation 5(2) (Regulation 23 provides that the DG shall constitute an Environmental Assessment Advisory Committee for the purposes of rendering advice on all aspects of environmental assessment, including categorization of projects)

50 AJK EPA in case of AJK

51 Regulation 5(1)(b)

52 % (1) (b)

53 Regulation 5(1)(a)

54 Section 15 (9)

55 Section 15 (10) & (11)

56 Section 15 (8)

57 Hagler Bailly Pakistan

58 Ibid

IEE. No highway, however small, can be constructed in Rs. 50 million.

27. The Schedules were notified in 2000 and have never been revised. The Regulations do not provide any requirement nor any mechanism for revision of schedules except that the Advisory Committee is given the mandate to render advice on categorisation of projects.⁵⁹
28. The provisions regarding sensitive areas are vague and not detailed. The Agency can declare any area as a sensitive area, however, the Regulations fall short in giving the criteria and mechanism for declaring sensitive areas.
29. The Advisory Committee has a very central and significant role for the screening stage i.e. to render advice for categorisation of projects, and recommendations for conducting IEE/EIA even where it is not required by the schedules, however the Regulations fall short to provide for its working.
30. It is pointed out,⁶⁰ that practically only 5 to 10% of the projects requiring EIA are actually subjected to this requirement. This is a very serious implementation issue that in spite of schedules, projects are not subjected to IEE/EIA. The main problem is of institutional capacity dealt in detail hereunder.
31. The Regulations do not provide a list of projects not requiring any scrutiny, i.e. a green list.
32. In addition to gaps in the Regulations, listing certain projects in the Balochistan Act is problematic since it attempts to give priority to these projects over Schedule listings. The scheme of the Acts is to give broad legal requirements and the details of the procedure and categories are provided in the

Regulations and further amendments must follow this broad scheme of things for clarity.

Scoping:

33. Scoping is the process to determine what issues, impacts and alternatives require further investigation/study. It is a systematic exercise that sets the Terms of Reference (ToR) for the EIA. Prioritizing issues though scoping is crucial for meaningful, efficient and effective EIA process. Scoping may be undertaken differently in different jurisdictions. In some jurisdictions it is the responsibility of the proponent while in others either the competent authority or an independent body are responsible for making scoping opinion. Once a draft document is prepared, it is normally consulted with different stakeholders. In some jurisdictions, consultations are done only with government authorities and experts, while in more developed systems consultation is extended to affected persons and general public also.
34. The Acts as well as the Regulations have no provisions on scoping. However, the Guidelines for the Preparation and Review of Environmental Reports and for Public Consultation do mention scoping both for IEE/EIA. Further, federal and provincial sectoral guidelines provide for a checklist to be considered for preparation of environmental reports. The Guideline for the Preparation and Review of Environmental Reports do point out the limitations of sectoral guidelines and provide that scoping is a vital step and sectoral guidelines should only be considered as basic checklist and for each project independent consultations with the Agency and other stakeholders including experts should be conducted in making the ToRs.
35. The Regulations completely bypass the “scoping” stage and begin from the “review”

59 Regulation 23/21 of AJK Regulations

60 EPA KPK & Punjab

process, which is much later in the scheme of things. This is a very serious gap leading to grave practical implications. A good scoping exercise with the consultation of relevant stakeholders, especially experts, determines the quality of ToRs on which an EIA report is subsequently built. Due to lack of any provisions in the Regulations on scoping, the preparation of an EIA becomes the sole responsibility of the proponent without experts' inputs, leading to vague, unfocused and many a times, an inadequate report. Guidelines do provide scoping and consultation with experts and public, however, practically they are not followed and the core reason is lack of clarity on the legal status of the Guidelines.

36. How binding the Guidelines are is debatable. The Regulations state that where Guidelines have been issued, an IEE/EIA shall be prepared, to the extent that is practicable in accordance with the Guidelines and the proponent shall justify any departure from the same.⁶¹ This is not a well-drafted provision and is ambiguous, leaving room for different interpretations. Furthermore, this is not clarified in any court and each province is interpreting it differently. It is pointed out,⁶² that practically, the Guidelines are not followed strictly.
37. Sectoral guidelines are not available for all the categories provided in Schedule I (IEE) and Schedule II (EIA). Some of the very serious projects for which there are no guidelines are dams, mining, hazardous waste, nuclear plants, hydroelectric power generation, pesticides, fertilizers, airports, etc. Hence no specific ToRs or checklists are available and it is at the discretion of the proponent in whichever way s/he wants to conduct the assessment. The rationale to conduct these studies just becomes a

formality a formality without meaningful inputs in this situation.

38. Another issue with all the Guidelines is their discretionary language and compliance with the same is not made mandatory under the same even where Guidelines are available.
39. Guidelines do mention engaging with stakeholders, affected communities, local people/wider community, Agency, other government departments/agencies and local councils, environmental practitioners and NGOs at scoping stage, however no parameters are given for scientific consultations. Consequently, even where EIA report mentions engaging with local communities, it is very informal, unscientific and a formality at best.
40. Currently the scoping process provided in Guidelines is identical for IEE and EIA. If followed correctly, for IEE reports, it would be too cumbersome especially considering the institutional limitations of the Agencies (discussed below).

Environmental Assessment & Preparation of IEE/EIA:

41. The Regulations do not provide how to undertake environmental assessments/investigation. This is an important step, which is missing, consequently affecting the quality of IEE/EIA reports. Guidance can be drawn from the EIA definition of the Act that provides for different components/heads of an EIA and can be helpful in preparing EIA reports. Defining an EIA⁶³ it states - "*Environmental Impact Assessment means an environmental study comprising collection of data, prediction of qualitative and quantitative impacts, comparison of alternatives, evaluation of preventive, mitigatory and compensatory*

61 Regulation 6(2)

62 Inputs from Balochistan, KPK and Punjab EPAs

63 Section 2 (xi)

measures, formulation of environmental management and training plans and monitoring arrangements, and framing of recommendations and such other components as may be prescribed”.

42. The Guidelines for the Preparation and Review of Environmental Reports provide details of the contents that are to be included in IEE/EIA reports as well as the drafting style of the report. Sectoral Guidelines also lay down sector-wise requirements for preparing environment assessment reports.
43. Review of sample EIAs of some major projects in Punjab⁶⁴ show that the quality of IEE/EIA reports is very poor and the exercise is taken as a mere formality. For example, all possible alternatives are never explored, and few basic alternatives are simply mentioned. Baseline data furnished in the reports is insufficient and rarely the sources and the methodology of collection of the data are provided. At the most, generally the EIA reports are a project justification mechanism and the real purpose is lost.
44. Quality of IEE/EIA reports can only be improved if it is backed by thorough, honest, and focused inquiry and investigation, by competent persons, and only if general public, affected communities, independent experts and other stakeholders are meaningfully engaged at all relevant stages. A very serious gap, as stated above, is that the Regulations do not have any provisions for this stage. They do not specify who has to prepare the EIA/IEE, how it is to be prepared, within what timelines is it to be prepared and who the necessary stakeholders are in its preparation process.
45. The Guidelines provide parameters for preparing EIA reports and involving experts and concerned communities at these stages. However, as observed above, Guidelines are not followed generally. Resultantly, most of the EIA reports lack crispness, accuracy and depth of understanding.
46. Another serious concern is the time of preparation of an IEE/EIA, provided in the Act 1997 the proponent is to submit the EIA before the construction or operation of the project. The timing of submission of EIA reports just before construction/operation of a project is fundamentally flawed. Unless EIA is prepared before planning a project (as was provided in the Ordinance), any sincere and meaningful effort to explore all viable options is not possible. Preparation of an EIA before construction, when land is identified, money allocated, project is designed, and lots of money already spent, makes it impossible to explore alternatives meaningfully. Exploring environmental concerns at this late stage when everything else is finalised becomes a mere formality. At this stage an EIA can logically focus only on convincing the decision-makers of the viability of the project and at the most, minor changes in the project's running can be achieved. Although, the time of submission is provided in the Act and Regulations have nothing to do with it, still it is a significant gap of the legal framework and materially affects the effectiveness of the EIA process provided under the Regulations and mentioning it here is relevant and important. All the stakeholders consulted for this study have also pointed out this issue of timing of preparation of EIA.
47. Another factor contributing to the poor quality of EIA reports is the weakness of the review process, dealt below. However, suffice to state that a stringent review process is the key for improving the IEE/EIA assessment systems and consequentially, the quality of these reports.

⁶⁴ EIA for setting up D G Cement Factory in Kahoon Valley (2004); EIA for setting up Best Way Cement Factory in Kahoon Valley (2004); EIA of remodelling of Canal Bank Road (Dharampura underpass to Canal View Bridge) (2007); EIA Kalma Chowk Flyover (2011); EIA of Bus Rapid Transit System in Lahore along Ferozepur Road (2012);

48. One practical difficulty is the non-availability of baseline data and lack of expertise to collect the same that contributes in poor quality of EIA reports materially. It was pointed out by GB EPA that sometimes EIA reports lack proper baseline data for the project site, and instead general data for the whole province is given.
- Review:**
49. The Acts and the Regulations provide for IEE/EIA “review process” and it is a mandatory requirement to get IEE/EIA approvals, as the case may be, from the Agency, before construction or operation of a project requiring the same. An analysis of the review process hereunder is based on the Regulations as well as the relevant provisions in the acts.
50. The EPA is the reviewing body and it is obliged to consult with the public, different committees and other government agencies while reviewing IEE/EIA in addition to the information furnished by the proponent.⁶⁵
51. As stated above, the EPA is entrusted to review IEE/EIAs. The Director General (DG)⁶⁶ of an EPA, appointed by the relevant government, heads it and all powers, including reviewing of IEE/EIAs is vested with the DG/Deputy Director appointed. The DG/Deputy Director has the power to delegate his powers to other personnel within the EPA on a case-to-case basis. In practice, each province has its own structure that is examining the IEE/EIA submitted to the Agency.⁶⁷
52. The Regulations envisage various committees that the EPA is to consult while reviewing both IEE and EIA.⁶⁸ The first such committee is the “Committee of Experts” that the DG may constitute for facilitating the reviewing body and in case any such committee is constituted, the reviewing body shall consult it.⁶⁹
53. The governments are also required to establish various “Sectoral Advisory Committees” consisting of eminent experts, educationists, researchers and NGOs for assisting the relevant EPAs.⁷⁰ The Regulations state that if such advisory committees are constituted, the reviewing body may also solicit their views while making decisions on IEE/EIAs.⁷¹ The advice of the Environmental Assessment Advisory Committee can also be rendered while reviewing IEE and EIA.⁷²
54. Another committee provided by the Regulations is the Inspection Committee that the DG may constitute to inspect the site of the project.⁷³ The Regulations further state that the review of an IEE/EIA shall be based on, among other things, views of the above-mentioned committees.⁷⁴
55. As stated above, the EPA is obliged to consult with the public while reviewing an IEE and EIA,⁷⁵ the Acts and the Regulations provide a mechanism for “public participation” only for reviewing an EIA.⁷⁶

65 Regulation 11(4)

66 Director in case of GB and Deputy Director in case of Baluchistan.

67 In Punjab there is a Director for EIA along with a Deputy Director and two Assistant Directors who are assigned to review the IEE/EIA reports; Sindh has two persons reviewing IEE/EIA reports; Baluchistan and KPK also have dedicated personnel reviewing IEE and EIA reports

68 Regulation 11 (2), (3) & (4)

69 Regulation 11 (2)

70 Section 5(6) of the Acts

71 Regulation 11(2)

72 Regulation 23/21 of AJK Regulations

73 Regulation 11 (3)

74 Regulation 11(4)

75 Ibid

76 Section 12 (3) of the Act, & Punjab Act; 11 (3) of AJK Act; 15 (3) of the Balochistan Act; and 17 (3) of the Sindh Act read with Regulation 10

56. The process for reviewing IEE and EIA is almost the same with some minor differences. Stepwise process is given in the following paras and the distinctions are pointed out as well.
57. The Proponent shall submit⁷⁷ ten hard copies and two electronic copies of IEE/EIA with the EPA along with the non-refundable review fee as given in the Schedule III of the Regulations.⁷⁸ Along with the IEE/EIA, an application in the form prescribed in Schedule IV of the Regulations is to be submitted.⁷⁹ Within 20 working days of filing an IEE/EIA, the EPA is either to confirm the completion of the documents for initiating the review process or require additional information or return the IEE/EIA for revision.⁸⁰
58. Upon receiving a completed EIA report, the EPA issues a confirmation of completion to the proponent and simultaneously gives a public notice in Urdu and English local newspapers informing the public of the date/time/place for public hearing.⁸¹ The notice shall contain details of type of project, its exact location, the name and address of the proponent, etc. and at least a 30 days notice is given.⁸²
59. The EPA shall also circulate the EIA to the concerned government agencies.⁸³ The review of the IEE/EIA shall be based on data furnished by the proponent, comments from the public and government agencies and views of the committees mentioned above.⁸⁴ All comments received by the EPA from the public or any government agency shall be “collated, tabulated and duly considered” before rendering a decision on EIA.⁸⁵
60. The EPA shall make every effort to complete the review of an IEE within 45 days and EIA within 90 days.⁸⁶ On completion of the review, the decision of the EPA shall be communicated to the proponent in the form prescribed in Schedule V (IEE) and Schedule VI (EIA).⁸⁷ The Act provides that the Agency shall communicate its decision within 4 months from filing/completion of IEE/ EIA applications failing which the IEE/EIA shall be deemed to have been approved to the extent to which it does not contravene the provisions of the Act and the rules and regulations.⁸⁸ The Regulations further explain that the 4 months period mentioned in the Act shall commence from the date of filling of an IEE/EIA in respect of which confirmation of completeness is issued.⁸⁹ The relevant government has the power to extend the 4 months review period.⁹⁰
61. It has been pointed out by a number of people interviewed during the process of this study that a vibrant review system is essential for improving the IEE/EIA processes and for making them meaningful. There are a number of gaps in the review process and the most

77 Regulation 8 (1)

78 10,000 for IEE and 15,000 for EIA for total project cost from 5,000,001- 10,000,000 rupees; 15,000 for IEE and 30,000 for EIA for projects whose cost is greater than 10,000,000 rupees in all the provinces except for Balochistan. The Balochistan Act has inserted clause 15(16) on review fee- for IEE it is 50,000 rupees flat rate and for EIA it is 100,000 rupees flat rate. Further for all other projects environmental approval fee of rupees 25000 to the Agency is to be paid (section 15(17)).

79 Regulation 8 (a)

80 Regulation 9

81 Regulation 10 (1)

82 Regulation 10 (1)-(3)

83 Regulation 10 (4)

84 Regulation 11(4)

85 Regulation 10(5)

86 Regulation 11(1)

87 Regulation 12

88 12 (4) of the Act/Punjab Act; 11 (4) of AJK Act; 15 (4) of the Balochistan Act; 17 (4) Sindh Act and for IEE the time limit is 2 months in the Sindh Act read with Regulation 15.

89 Regulation 15, AJK has no such clause

90 Regulation 16/ 15 of AJK Regulations

significant being the institutional capacities of the EPAs that are responsible for review. The EPAs are understaffed, underfunded, at times underqualified, and not free from political influence of their respective governments. However, most of these issues cannot be addressed here since these are the gaps of the Acts and beyond the scope of this exercise. Nonetheless stating them here is essential to understand the complete picture and to make meaningful recommendations.

62. Engaging experts becomes critically important where the regulator has limited capacities. As mentioned above, the Regulations require a number of committees, however review and analysis of the practical situation shows that either these committees are never engaged, and even where they are engaged, they fail to provide significant support to the EPA. The paramount issue is lack of funds to engage independent and qualified technical and other experts. The Regulations and recently promulgated Balochistan and Sindh Act, do provide for the review fee to be paid by the proponent, however, the same cannot be utilised to engage experts and goes to the provincial treasury instead of coming directly to the EPA. The review fee is significantly on the lower side considering the market requirements and even if it is paid to the EPA, it would not be sufficient to hire quality experts. The problem of financing the experts is also pointed out by the EPAs that when one is hired, the EPA fails to get meaningful assistance primarily because there is no allocation of funds for hiring experts, hence there are no incentives for independent experts.
63. Although there are a number of committees provided in Acts and Regulations, it is not a mandatory requirement to engage such committees and practically many a times experts are not engaged. Furthermore, necessary details such as how these committees are to be constituted, the qualifications of committee members, their tenure, remuneration, etc. are missing. This gap renders the whole concept of “engaging with experts” for reviewing IEE/EIA meaningless. The law fails to institutionalize the idea of expert committees and this weakness is reflected in practice.
64. Public participation is another critical tool for enhancing the quality of review process and it can really facilitate the agencies if used properly. As stated above, public participation in the EIA process does not begin until an EIA report is submitted to the provincial agency. The public has no notice of the proposed activity or project, and no opportunity to participate and express their views, until after the EIA is prepared. Engaging the public at this point is too far late in the process.
65. Public participation at the time of review has many gaps also. Many a time notices of public hearing are published in newspapers which have limited circulation and the title/heading of such notices could be totally misleading; hence, they could go unnoticed due to a designed strategy. In many situations, it becomes impossible to gather public due to security and other reasons. At times, public hearings are conducted after construction has begun, when EIA report itself is prepared after construction has started. Where everything goes well and public hearings do take place at the right time, concerns of the public are noted; still they are not reflected in the final decisions of the EPA. These are procedural issues, which are there due to lack of detailed procedure provided in the Regulations and due to institutional weaknesses.
66. There are other issues in the law, which also contribute to lack of meaningful participation of the public in the review process. The Regulations do not require the EPA to inform the public of its final decision concerning a

proposed project or activity and the decision is communicated solely to the project proponent.⁹¹ However, the Sindh⁹² Act has added a provision requiring EPA to communicate its decision taken on EIA/ IEE to the persons who have furnished the comments. The regulations do require the EPA to consider the concerns of the public, but they fall short ensuring that. There is nothing in the law suggesting ongoing, two-way dialogue between the public and the EPA and this contributes in making the whole process of public consultation a mere formality. Finally, there are no mechanisms provided in the Regulations to ensure that the public is actually consulted and its concerns are considered by the Agency and reflected in the decision-making.

67. Another weakness of the Acts is that in case the decision to approve or reject IEE/EIA is not taken within the stipulated time it will be deemed approved. Due to institutional issues or inefficiency of EIA personals or in worst situation due to collusion between proponent and EPA's EIA review personnel, a review is not done in time and EIA is deemed approved. Further, the approval is valid for a period three years even if the ground reality in the vicinity changes, if the proponent starts construction within three years, s/he is not required to prepare a new EIA report even if factors have drastically changed.
68. Various representatives of EPAs, Environmental Tribunals, NGOs, lawyers etc. have pointed out that one of the major issues of IEE/EIA process is the timing of the same as stated above in detail. Presently, if the law is practiced perfectly according to the Environmental Acts and Regulations, the time

of submission of IEE/EIA reports is prior to the construction of the project and not at the time of planning. There would be no meaningful review unless it is at a stage when the entire project can be scrapped or modified in its place. Presently all decisions have already been taken - land identified, machinery bought when EIA is prepared and approval is only required as a rubber stamp especially for Public sector projects.

Inspection/Monitoring:

69. The Regulations provide for pre-approval inspections⁹³ and post-approval monitoring.⁹⁴ The EPA while granting approval in furtherance of IEE/EIA, may impose two types of conditions.⁹⁵ Firstly, the proponent is required to comply with the conditions provided in the IEE/EIA i.e. conditions of design and mitigatory and other measures as provided in the IEE/EIA. Secondly, the EPA may impose any other conditions.
70. The proponent is required to acknowledge acceptance of these conditions by executing an undertaking as provided in Schedule VII of the Regulations.⁹⁶ Consequently, the proponent, before commencing operation of the project, is required to obtain written confirmation, from the Agency that the conditions of approval are duly complied with.⁹⁷ The above-mentioned request for confirmation shall be accompanied by an Environmental Management Plan (EMP).⁹⁸
71. Sindh Act has defined EMP and it is the only environmental enactment that has done so. It provides that EMP *means a site-specific plan developed to ensure that all necessary measures are identified and implemented in order to protect the environment and comply*

91 Regulation 12
 92 Section 31 (3)
 93 Regulations 13, 14 & 18 (16 in Case of AJK)
 94 Regulation 19/Regulation 17 of AJK
 95 Regulation 13(1)
 96 Regulation 13 (2) (a)
 97 Regulation 13 (2) (b)
 98 Regulation 14(1)

with the environmental legislation.⁹⁹

Practically all EIA reports have EMP attached therewith since it is a requirement of in the Regulations.

72. At the time the EPA receives the request for confirmation of compliance, it may carry out inspection of the site and machinery and may seek further information and may impose further conditions.¹⁰⁰ Duly authorized staff of the Agency shall be entitled to enter and inspect the project site, factory building and plant and equipment installed therein.¹⁰¹
73. Post-approval monitoring begins once the construction of the project is completed. The proponent is required to submit a report to the EPA on completion of construction of the project¹⁰² followed by an annual report summarising operational performance of the project, with reference to conditions of approval and maintenance and mitigatory measures adopted by the project.¹⁰³
74. The duly authorised staff of the EPA shall be entitled to enter and inspect the project site, factory building and plant and equipment installed therein and the proponent is required to ensure full cooperation to facilitate the inspection. The proponent is obliged to provide any information required by the EPA.¹⁰⁴
75. Where the EPA receives information, or finds out through inspections, that conditions of approval have not been complied with or that the information given in IEE/EIA was incorrect, the EPA may cancel the approval after giving notice and hearing the proponent.¹⁰⁵
76. The Regulations place heavy emphasis on project proponents to keep the EPAs informed regarding compliance with the conditions provided in the EIA. The proponent is to report to the EPA and to provide accurate information. The parameters, nature, format and extent of these reports are not specified. Furthermore, the Regulations do not provide for strict and substantial timelines during the construction period and annual reports are only required from the proponents after completion of the project. There is no specific penalty for not complying with the reporting requirements in the Regulations. An Environmental Protection Order (EPO) may be issued but in practice, it is rarely done.
77. Another serious gap in the Acts is the lack of institutional structure and mechanism for post-approval monitoring, except for Sindh Environmental Protection Act, 2014 which provides for monitoring and auditing. The Acts, as stated above, primarily rely on self-reporting of the proponent and do not specify who, under the Provincial EPA, is empowered to inspect and what the process and parameters should be. There is no compulsion on the proponent to report and to implement the conditions committed to under EIA approval. Without a strong monitoring regime, the whole EIA process becomes questionable. Presently powers to issue EPO have been delegated to District Officers as stated by the Punjab EPA. The local government assists EPA, however, it is an ad hoc arrangement without any laid down rules and procedures.

99 Section 2 (xvi)

100 Regulation 14(2)

101 Regulation 18

102 Regulation 19 (1)

103 Regulation 19 (2)

104 Regulation 18

105 Regulation 20 (1) & (2)

V. RECOMMENDATIONS

Rules or Regulations:

78. The Balochistan¹⁰⁶ and Sindh¹⁰⁷ Act both require that IEE/EIA shall be prepared for project which are prescribed in the Rules. While under the Punjab Act the legislature has a choice either to prescribe Rules or Regulations. For Balochistan and Sindh it is advisable to draft Rules for IEE/EIA under relevant sections of each law, while for Punjab Regulations may be drafted. It is simpler to draft Regulations and for future amendments.

Timing

79. For effective and meaningful implementation of IEE/EIA, it is crucial to change the timing of preparation and submission of IEE/EIA. The IEE/EIA has to be prepared and submitted at the planning stage of the project. It is important that at the time of planning and prior to acquisition of land or any other major investment an IEE/EIA is conducted considering all alternatives available to project prior to actual finalizing of a project and final selection of site. This amendment will be required in both, the relevant provisions of Environmental Acts and Rules/Regulations.

Scoping and Preparation

80. The entire process of scoping to be introduced in the Rules/Regulations, detailed procedure to be provided of involvement of public and especially experts in making of ToRs for IEE and EIA. Preparation of IEE and EIA reports to be structured on ToRs formulated in scoping and mandatory guidelines.

Public hearing

81. Detailed procedure of public hearing to be provided from issuance of public notice till addressing of concerns raised by public in the hearing.

Guidelines Mandatory

82. Firstly, it is important to make guidelines mandatory through the relevant Rules/Regulations. Secondly the language of guidelines needs to be amended and procedures, data, steps etc. to be made mandatory rather than left on the discretion of the proponent or consultant preparing the IEE/EIA.

106 Section 15(6)

107 Section 17(5)

Consultants

83. Rules/Regulations to provide qualifications for consultants preparing the IEE/EIA. Certified consultants to prepare IEE/EIA.

Schedules

84. There are serious flaws in the schedules, missing categories, wrongly placed categories, etc. The schedules need to be amended with the assistance of environmental scientists for better implementation of the law. The Rules/Regulations to provide a procedure for periodic review and amendments of the schedules to keep them updated and meaningful.

IEE and EIA same steps

85. The procedure for IEE and EIA is nearly identical. It is suggested that the procedure for IEE to be simplified and to be streamlined to be efficient and effective.

Review

86. It is critical for a meaningful review to involve quality experts in the reviewing process. A panel of experts, primarily from the academia, who are independent and have no stake in the project to be asked to review IEE/EIAs on threshold of given guidelines and ToRs. Panel of experts may be engaged on permanent basis for reviewing of IEE/EIA. The Rules/Regulations to provide details of the constitution of the expert panel, its functions, powers, and procedure of working including preparing critical report on the IEE/EIA report reviewed. It is essential to establish a separate fund under the environment acts

that will be able to fund the expert panel. The money received under the head of review fees from the proponents to go straight to this fund. The fee structure to be designed in such a way that it sustains the panel of experts.

Deem approval

87. The deeming clause to be removed. The provision providing for deemed approval after a lapse of 4 months of submission of IEE/EIA under the Acts and Regulations to be removed.

Monitoring and Inspection

88. A separate section for monitoring of EMPs to be established within EPA. Punjab is planning to constitute a green force for implementation of directions and enforcement of EPOs. A green force may be constituted under the Acts and their detailed procedure to be provided in the Rules/Regulations. For self-reporting, a detailed format to be provided. Coordination with District Officers for regular monitoring of EMPs. EMPs to be available on the website of EPAs for public to view and report in case of violation of the same. Public to be informed in public hearing of draft EMP.

Sensitive areas

89. It is essential to declare certain areas as sensitive areas. It is vital to insert another schedule with a list of sensitive areas. In addition to sensitive areas, DG EPA, on recommendations of advisory committee, should be empowered to restrict certain activities in certain areas that do not have the carrying capacity to sustain such activities.



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