

FROM EXTRACTION TO ENVIRONMENTAL JUSTICE: ARTICLE 9A AND REKO DIQ IN BALUCHISTAN

Maryam Saeed Khan

LLM Scholar, Superior Law College, Superior University, Lahore, Pakistan.

Email: maryamkhan11491@gmail.com

Abstract

The public revenue, employment, infrastructure and industrial development from extraction of rare earth mineral and precious metals is important. It too can go on and cause serious and permanent damage to the environment. The rights to life, health, dignity, water, livelihood, and property and participation in public affairs may be directly impacted by open pit mines, tailings storage, waste-rock disposal, groundwater abstraction, air pollution, and biodiversity loss/displacement. The legal issue is not whether or not mining should take place but when and how it can take place in a lawful and legitimate manner.

This article analyzes the concept of right to a clean, healthy and sustainable environment in the context of mining industry in Pakistan, with Reko Diq copper gold mining project, Baluchistan as a case study. It examines the constitutional position following the insertion of Article 9A, the historical development of environmental rights in the inter-war period under Article 14, the statutory regimes in the Pakistan Environmental Protection Act 1997 and the Baluchistan Environment Protection Act 2012 and the role of international environmental and human rights law. It also reviews the Supreme Court's consideration of the Reko Diq project that was re-established in Presidential Reference No 2 of 2022 encompassing environmental compliance, water protection, intergenerational equity and provincial authority over mineral resources. The argument of the article is that the Reko Diq project will not be legally and socially viable unless the environmental assessment is made an ongoing rights-based process, not an administrative formality. Realisations of the constitutional entitlement to a healthy environment need to be realised in a manner that is transparent, and that involves meaningful community participation, independent oversight, and effective remedies and enforceable mine-closure obligations.

The contentious issues highlighted in the debate on the right to a healthy environment include those related to environmental impact assessment, water rights, intergenerational equity, mining and Reko Diq in Balochistan, among others.

1. INTRODUCTION

Extracting of critical minerals and precious metal occupies a central place in development of resource rich states. Copper, gold, coal, iron ore are all vitally important for energy transition, technological development and manufacturing. However, mining this kind of minerals and precious metals may lead to environmental problems due to the use of water, the creation of a lot of waste, the change of land and the fact that it may have a long-term effect once the mining process has stopped. The risks are especially high in regions with less rainfall and in areas where the local population relies heavily on fragile ecosystems, and public institutions may be less able to monitor complex projects.

The right to a healthy environment[A right officially recognised by the UN General Assembly Resolution 28 July 2022 agreed by all 193 UN Member States] offers a legal basis to harmonise economic value of mineral development with the protection of human life and ecological systems. The right to healthy environment involves state's regulatory program of environmental risks, prevention of foreseeable harm, access to information and effective remedy. State should protect and respect in order to ensure safe clean and sustainable environment[Jhon H Knox, 'Report of the Special Rapporteur on the Issue of Human Rights

Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment’ (Human rights council 2016) A/HRC/31/52.] It also requires mining companies to identify, prevent, mitigate the adverse impacts connected with their operations.[UN Human Rights council, ‘Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework’ (United nations 2011) A/HRC/17/31 <<https://ohchr.org>>.]and also redress those impacts.

The right to environment has received special attention in the Pakistani Constitution from the provision of Article 9A in the Constitution through the Constitution (Twenty-Sixth Amendment) Act 2024. The right to environment has been given constitutional form in the mining industry by Article 9A which mandates that consideration should be given to the extraction of the mineral wealth in relation to water security, health of the people, biodiversity, pollution control, participation of the community, remediation and closure of mines in addition to revenue, investment and employment.

The Reko Diq copper-gold project in Chagai district, Baluchistan, provides a powerful case study of this constitutional challenge. The project is situated near Nok Kundi, between the borders of Iran and Afghanistan, in one of the most arid and environmentally fragile regions of Pakistan.¹ The project area has sparse vegetation, desert terrain, sand dunes and rocky outcrops; it receives average rainfall of less than 35 millimetres annually, experiences temperatures ranging approximately from –9°C to 45°C and has no perennial surface-water sources.² The surrounding settlements are generally small, rural and isolated. The ESIA records that basic healthcare, education, roads and other public services are limited, while unemployment is estimated at 24% among men and 42% among women.³

Reko Diq is also economically significant. It hosts one of the world’s largest undeveloped open-pit copper-gold porphyry deposits.⁴ Under the reconstituted project, the mine is planned as a truck-and-shovel open-pit operation with ore-processing facilities, water-supply and treatment infrastructure, waste-rock dumps, tailings-storage facilities, accommodation, power infrastructure, roads and rail transport arrangements.⁵ The anticipated initial mine life is 38 years. Construction is planned in phases, with full processing capacity expected to reach approximately 90 million metric tonnes of ore per year and projected annual output of approximately 800,000 metric tonnes of copper-gold concentrate.⁶ The concentrate is expected to be transported by approximately 1,350 kilometres of existing rail infrastructure to Port Qasim in Karachi for export.⁷ Accordingly, the environmental footprint of Reko Diq is not confined to the mine pit in Chagai; it extends to water-source areas, roads, rail corridors, associated facilities and port operations in Sindh.

The history of Reko Diq demonstrates why mining governance must be grounded in legality, transparency and public accountability. In 1993, the Baluchistan Development Authority entered into the Chagai Hills Exploration Joint Venture Agreement (CHEJVA) with a foreign investor holding 75% of the venture, while the Baluchistan Development Authority held 25% together with a 2% royalty.⁸ In 2006, the foreign investor’s position was assumed by Tethyan

¹ Digby Wells Environmental and Hagler Bailly Pakistan, *Reko Diq Mining Project, Pakistan: Environmental and Social Impact Assessment—Executive Summary* (January 2025)

² *ibid*

³ *ibid*

⁴ *ibid*

⁵ *ibid*

⁶ *ibid*

⁷ *ibid*

⁸ *Presidential Reference No 2 of 2022* (Supreme Court of Pakistan, 9 December 2022) para 2

Copper Company Pty Ltd (TCCA), which was later acquired in equal shares by Barrick Gold Corporation and Antofagasta.⁹ The arrangement granted the foreign investor exclusive rights to prospect and explore for copper and gold in the Reko Diq area.

A dispute emerged after the Baluchistan licensing authority declined TCCA's application for a mining lease in November 2011.¹⁰ The Supreme Court subsequently invalidated CHEJVA in *Maulana Abdul Haque Baloch v Government of Baluchistan*, holding that the agreement had been entered into without lawful authorisation, was non-transparent and failed to comply with the regulatory provisions applicable to mining operations in the Province.¹¹ The decision represented more than a contractual dispute. It affirmed that the development of Baluchistan's mineral resources must occur through legally authorised, transparent and accountable arrangements.

The invalidation of CHEJVA was followed by international arbitration. TCCA pursued proceedings under the Pakistan–Australia Bilateral Investment Treaty before the International Centre for Settlement of Investment Disputes (ICSID), while separate ICC proceedings were initiated against the Government of Baluchistan.¹² In July 2019, the ICSID tribunal awarded TCCA approximately US\$5.9 billion in damages, pre-award interest and costs.¹³ The award exposed Pakistan to substantial financial and enforcement risks and made a negotiated settlement increasingly important. Following negotiations extending over more than three years, the Governments of Pakistan and Baluchistan, Barrick and Antofagasta reached a settlement that reconstituted the project.¹⁴

This legal history reveals existing adverse consequence for Baluchistan, the prolonged uncertainty over the development of a major provincial resource, followed by costly international dispute settlement and a significant restructuring of the project's fiscal and ownership arrangements. The dispute delayed the possibility of public revenue, local employment and planned regional investment. At the same time, it exposed the dangers of entering resource agreements without transparent procedures, statutory authority, environmental accountability and sufficient protection of public interests.

The central argument of this article is that a lawful extracting project must satisfy three interconnected requirements. First, it must comply with domestic constitutional and environmental law. Secondly, it must meet applicable international environmental and human-rights standards. Thirdly, it must be governed through a participatory and accountable institutional structure capable of protecting affected communities throughout the entire life cycle of the mine. Approval at the beginning of the project cannot, by itself, discharge these obligations.

2. The Right to a Healthy Environment in International Law

2.1 From environmental protection to human rights

International environmental law initially developed through principles concerning prevention of transboundary harm, sustainable development, environmental assessment and cooperation. Over time, environmental protection increasingly came to be understood as a condition for the enjoyment of human rights.

⁹ *ibid*

¹⁰ *Ibid* para 3

¹¹ *Maulana Abdul Haque Baloch v Government of Baluchistan* PLD 2013 SC 641; *Presidential Reference No 2 of 2022* (n 10) para 3

¹² *Presidential Reference No 2 of 2022* (n 10) para 3

¹³ *ibid* para 4

¹⁴ *ibid* paras 4–5

Environmental degradation may impair the rights to life, health, food, water, housing, privacy, culture and self-determination. The Stockholm Declaration of 1972 recognised the relationship between human welfare and environmental quality. Principle 1¹⁵ stated that human beings have a fundamental right to “freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being”. The Rio Declaration¹⁶ later placed emphasis on sustainable development, public participation, access to information, precaution and the polluter-pays principle.

The international recognition of the right became clearer through United Nations resolutions. In 2021, the Human Rights Council recognised the right to a clean, healthy and sustainable environment as a human right important for the enjoyment of human rights¹⁷. In 2022, the General Assembly similarly recognised the right to a clean, healthy and sustainable environment and linked its realisation with the implementation of multilateral environmental agreements and international environmental law. Although General Assembly and Human Rights Council resolutions are generally not treaties, they are significant evidence of international consensus and contribute to the development and interpretation of environmental-rights norms. The right to a clean, healthy and sustainable environment has substantive and procedural dimensions and is informed by the principle of intergenerational equity.¹⁸

Substantive rights include clean air, a safe and stable climate, access to safe water and adequate sanitation, healthy ecosystems and biodiversity, and protection from toxic pollution.¹⁹

Procedural rights include access to environmental information, meaningful public participation in environmental decision-making, and access to justice and effective remedies.²⁰

Intergenerational equity requires present decision-makers to conserve natural resources and prevent environmental harm so that future generations can enjoy conditions compatible with life, health and dignity.²¹

These dimensions are especially relevant to mining. A project may generate employment and public revenue while simultaneously threatening groundwater, public health, agricultural or pastoral livelihoods, biodiversity and ecological integrity. The Reko Diq ESIA itself identifies potential issues relating to water resources, biodiversity, waste rock, tailings, air

¹⁵ Declaration of the United Nations Conference on the Human Environment 1972 (UN Doc A/CONF48/14/Rev1).

¹⁶ Rio Declaration on Environment and Development 1992 (UN Doc A/CONF151/26/Rev1).

¹⁷ Human Rights Council Resolution 48/13, ‘The Human Right to a Clean, Healthy and Sustainable Environment’, UN Doc A/HRC/RES/48/13 (8 October 2021).

¹⁸ Human Rights Council Resolution 48/13, ‘The Human Right to a Clean, Healthy and Sustainable Environment’ (8 October 2021) UN Doc A/HRC/RES/48/13; UNGA Res 76/300, ‘The Human Right to a Clean, Healthy and Sustainable Environment’ (28 July 2022) UN Doc A/RES/76/300

¹⁹ David R Boyd, ‘Good Practices on the Right to a Safe, Clean, Healthy and Sustainable Environment’ (30 December 2019) UN Doc A/HRC/43/53, paras 11–12; United Nations Development Programme, United Nations Environment Programme and Office of the United Nations High Commissioner for Human Rights, *What Is the Right to a Healthy Environment?* (2023) 2

²⁰ Boyd (n 2) paras 10–11; Rio Declaration on Environment and Development (12 August 1992) UN Doc A/CONF.151/26/Rev 1, principle 10

²¹ Rio Declaration on Environment and Development (12 August 1992) UN Doc A/CONF.151/26/Rev 1, principles 3 and 15; *Presidential Reference No 2 of 2022* (Supreme Court of Pakistan, 9 December 2022) para 14

quality, transport, mine closure and associated social impacts.²² A rights-based framework prevents economic benefits from being assessed in isolation from these environmental and human-rights consequences.²³

2.2 International business and human-rights standards

The United Nations Guiding Principles on Business and Human Rights (UNGPs) provide the most important global framework for allocating responsibilities between States and companies. The framework rests upon three pillars: The State duty to protect human rights, the corporate responsibility to respect human rights and access to remedy.²⁴

The State duty requires States to take appropriate measures to prevent, investigate, punish and redress human-rights abuses by business enterprises²⁵. In the mining sector, this includes environmental legislation, licensing requirements, impact assessment, monitoring, disclosure rules, regulatory enforcement and judicial remedies. States must also ensure policy coherence between mining, investment, trade, water, environmental and human-rights policies.

The corporate responsibility to respect human rights requires businesses to avoid infringing the rights of others and to address adverse impacts with which they are involved. This responsibility exists independently of the State's capacity or willingness to enforce domestic law. Compliance with a permit does not automatically establish respect for human rights.²⁶

The UNGPs require human-rights due diligence. The process should identify and assess actual and potential impacts, integrate findings into decision-making, track responses and communicate how impacts are addressed. Due diligence must cover impacts caused or contributed to by the enterprise and impacts directly linked to its operations, products or services through business relationships. It should also involve meaningful consultation with potentially affected groups.²⁷

The UNGPs are particularly useful in extracting minerals because environmental risks are dynamic. The risks identified during exploration may differ from those arising during construction, production, transportation, closure and post-closure management. A single environmental assessment cannot replace continuing due diligence.

The OECD Guidelines for Multinational Enterprises similarly require enterprises to respect human rights and conduct risk-based due diligence. They recognise that enterprises should address impacts they cause or contribute to and seek to prevent or mitigate impacts directly linked to their operations through business relationships, even where the enterprise has not contributed to the impact.²⁸

For mining projects, these standards should be read together with the IFC Performance Standards²⁹ which Cover environmental and social risk assessment, labour conditions, resource efficiency, pollution prevention, and community safety. The document also Address

²² Digby Wells Environmental and Hagler Bailly Pakistan, *Reko Diq Mining Project, Pakistan: Environmental and Social Impact Assessment—Executive Summary* (January 2025) 46–80, 89–139

²³ Human Rights Council Resolution 48/13 (n 1); UNGA Res 76/300 (n 1); John Ruggie, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework* (2011) UN Doc A/HRC/17/31, principles 11, 17–21.

²⁴ John Ruggie, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, UN Doc A/HRC/17/31 (2011), Principles 1, 11 and 25

²⁵ *ibid* Principle 1

²⁶ *ibid* Principle 11

²⁷ *ibid* Principle 17

²⁸ OECD, *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct* (2023) Chapter IV, paras 1–6

²⁹ International Finance Corporation, ‘Performance Standards on Environmental and Social Sustainability’ (IFC 2012).

land resettlement, biodiversity conservation, issues of indigenous peoples, and cultural heritage, the World Bank Group Environmental, Health and Safety Guidelines and the Global Industry Standard on Tailings Management³⁰. These standards are not substitutes for domestic law, but they provide important benchmarks for risk management, community engagement, biodiversity protection, pollution prevention, land acquisition, indigenous peoples' rights, emergency preparedness and closure planning.

2.3 Environmental impact assessment and precaution

The 2010 Pulp Mills and river Uruguay³¹ case is a landmark International Court of Justice decision that formally recognized the requirement to conduct an environmental impact assessment (EIA) under general international law. Environmental impact assessment (EIA) is one of the principal mechanisms through which the right to a healthy environment is operationalised. Its purpose is not simply to produce a technical report. It is a decision-making process designed to identify foreseeable impacts before harm occurs and to allow the public and regulators to evaluate alternatives.

The International Court of Justice has proposed cooperative activity may create a risk of significant transboundary harm. Even where transboundary harm is not established, the underlying principles of prevention, due diligence and precaution are highly relevant to large-scale mining.

The main objective behind the environmental impact assessment is precautionary measures should be taken by decision-makers and not to postpone preventive action merely because scientific evidence is incomplete. Extracting minerals and precious metals like copper and gold often involves uncertainty concerning groundwater movement, acid-rock drainage, tailings stability, biodiversity and cumulative impacts. In such circumstances, the absence of complete certainty should lead to stronger monitoring, adaptive management and safeguards rather than weaker regulation. The strongest way to frame an EIA is not merely a report required before a permit, it is a continuing process of prevention, disclosure, participation, monitoring, mitigation, closure planning and remedy throughout the life of a mine. IFC Performance Standard 1³² requires assessment of environmental and social risks, associated facilities, cumulative impacts, stakeholder engagement, information disclosure and a grievance mechanism.

3.1 Right to Healthy Environment and Constitution of Pakistan

Pakistan historically lacked an express constitutional right to a clean or healthy environment. Nevertheless, the Supreme Court developed environmental protection through the interpretation of the right to life and human dignity.

In *Shehla Zia v WAPDA*, the Supreme Court considered a challenge to the proposed construction of a grid station in a residential area. The Court adopted a broad interpretation of "life" under Article 9 and held that life was not limited to mere animal existence. It included the amenities and facilities necessary for the enjoyment of life. The Court also read Article 9

³⁰ World Bank Group (or International Finance Corporation, 'Environmental, Health, and Safety (EHS) Guidelines (or the Specific Sub-Guideline Title, e.g., General EHS Guidelines)' (International Finance Corporation / World Bank Group 2007) <<https://www.ifc.org/en/insights-reports/general-environmental-health-and-safety-guidelines>>.

³¹ *Pulp Mills on the River Uruguay (Argentina v Uruguay) (Judgment)* [2010] ICJ Rep 14 (ICJ).

³² International Finance Corporation, *Performance Standard 1: Assessment and Management of Environmental and Social Risks and Impacts* (1 January 2012) paras 7–8, 25–36; Pakistan Environmental Protection Agency (Review of IEE and EIA) Regulations 2000, regs 10 and 14

together with Article 14, which protects the dignity of man and the privacy of home. The judgment accepted that environmental hazards could violate fundamental rights even where the precise scientific consequences were uncertain.³³ This reasoning was important for mining litigation as well. Environmental harm from mining and extracting may manifest through contaminated water, dust, noise, loss of livelihood or threats to health. Each of these impacts can affect the quality and dignity of life protected by the Constitution.

The constitutional position was strengthened by the Twenty-Sixth Amendment, which inserted Article 9A: “Every person shall be entitled to a clean, healthy and sustainable environment.”³⁴ The inclusion of this article into constitution Pakistan completely changes the legal basis on which large scale mining like riko diq must be assessed. Art 9A does not prohibit mining as extracting sector is very useful for economic growth and social development of the people of Baluchistan but it emphasizes that the cooperate activities should not harm the environment as this economic growth should never cost public health and dignifies lives of the people of Baluchistan

In the context of Reko Diq, Article 9A requires the Government of Baluchistan and relevant federal and provincial authorities to ensure that the project’s environmental approvals are not treated as a one-time administrative formality. They must instead operate as continuing safeguards throughout exploration, construction, extraction, transport, mine closure and post-closure rehabilitation.³⁵ This includes reliable baseline studies, strict groundwater monitoring, tailings and waste-rock controls, public disclosure of environmental information, meaningful participation of affected communities, independent inspections, effective grievance mechanisms and financial security for rehabilitation.³⁶ Pakistan’s EIA Regulations require public notice and hearing, while the Baluchistan regime requires an EIA before a project likely to cause adverse environmental effects can begin

Under section 15 of the Baluchistan Environment Protection Act 2012, a project likely to cause adverse environmental effects may not commence construction or operation unless the proponent has submitted an EIA and obtained approval from the competent environmental authority.³⁷ The Pakistan Environmental Protection Agency (Review of IEE and EIA) Regulations 2000 further require public notice, public access to the EIA and a public hearing before the environmental authority decides an EIA application.³⁸ The regulations also require post-approval reporting and require an Environmental Management Plan for the operational phase, including measures for mitigation, monitoring, reporting and auditing throughout the life of the project.³⁹

For a project such as Reko Diq, the EIA must be examined through a human-rights lens. This is because mining may affect rights to life, health, water, livelihood, property, dignity, equality and a clean, healthy and sustainable environment. The relevant inquiry is not limited

³³ *Shehla Zia v WAPDA* PLD 1994 SC 693

³⁴ Constitution of the Islamic Republic of Pakistan 1973, art 9A, inserted by the Constitution (Twenty-Sixth Amendment) Act 2024

³⁵ Baluchistan Environment Protection Act 2012, s 15(1); Pakistan Environmental Protection Agency (Review of IEE and EIA) Regulations 2000, regs 10 and 14

³⁶ International Finance Corporation, *Performance Standard 1: Assessment and Management of Environmental and Social Risks and Impacts* (1 January 2012) paras 7–8, 25–36; Digby Wells Environmental and Hagler Bailly Pakistan, *Reko Diq Mining Project, Pakistan: Environmental and Social Impact Assessment—Executive Summary* (January 2025) 30–37, 46–80, 89–139.

³⁷ Baluchistan Environment Protection Act 2012, s 15(1)

³⁸ Pakistan Environmental Protection Agency (Review of IEE and EIA) Regulations 2000, reg 10

³⁹ *ibid* reg 14; Baluchistan Environmental Protection Agency (Review of IEE and EIA) Regulations 2020, reg 14

to whether the project will generate revenue, employment or foreign investment. It must also ask whether the mine's water use, waste management, air emissions, tailings facility, transport infrastructure and eventual closure are compatible with the rights of affected communities and future generations.⁴⁰

The word "sustainable" in Article 9A is especially significant in Baluchistan, where water scarcity, fragile ecosystems and pastoral livelihoods make environmental damage potentially long-lasting and difficult to reverse. The use of groundwater for mining must therefore be evaluated not solely by reference to technical availability for the project, but also by reference to current and future community needs, ecosystem protection and intergenerational equity.⁴¹

3.2 The Judicial Approach To Environmental Governance

Pakistani courts have repeatedly treated environmental protection as a constitutional and public-law concern. The judiciary has relied upon principles such as sustainable development, precaution, public trust and intergenerational equity. These principles are important in mining because the State is not an ordinary owner dealing with an ordinary commercial asset. Mineral resources are public resources, and governmental authorities exercise regulatory and proprietary powers on behalf of present and future citizens. The public-trust dimension requires public authorities to manage natural resources transparently and for public benefit. It also requires the State to prevent private exploitation from producing disproportionate harm to communities that have little bargaining power. Economic development cannot be treated as a complete answer to environmental injury.

4. Reko Diq: Project, Risks and Legal Context

4.1 Background of the project

Reko Diq is located in Chagai district, Baluchistan, in one of Pakistan's most arid regions. The project area is characterised by sparse vegetation, extreme temperatures, low rainfall and the absence of perennial surface-water sources. Nearby communities face limited access to healthcare, education, roads, employment and potable water⁴² The project was originally associated with the Chagai Hills Exploration Joint Venture Agreement (CHEJVA) between the Baluchistan Development Authority and BHP Minerals International Explorations Inc. The arrangement was later transferred through corporate successors to Tethyan Copper Company, which was ultimately owned by Barrick Gold and Antofagasta. When the mining lease was not granted, the dispute resulted in litigation and international arbitration.

In *Maulana Abdul Haque Baloch v Government of Baluchistan*,⁴³ the Supreme Court declared the earlier CHEJVA void, identifying legal and procedural defects in the licensing and contractual process. The subsequent international centre for settlement of investment dispute (ICSID) arbitration resulted in a multibillion-dollar award against Pakistan. A new settlement structure was developed, leading to the reconstituted project.⁴⁴

⁴⁰ Constitution of the Islamic Republic of Pakistan 1973, arts 9, 9A and 14; *Shehla Zia v WAPDA* PLD 1994 SC 693; United Nations General Assembly Resolution 76/300, 'The Human Right to a Clean, Healthy and Sustainable Environment' (28 July 2022) UN Doc A/RES/76/300.

⁴¹ Rio Declaration on Environment and Development (12 August 1992) UN Doc A/CONF.151/26/Rev 1, principles 3 and 15; *Presidential Reference No 2 of 2022* (Supreme Court of Pakistan, 9 December 2022) para 14

⁴² Digby Wells Environmental and Hagler Bailly Pakistan (n 2) 1–3

⁴³ *Maulana Abdul Haque Baloch v Government of Baluchistan* PLD 2013 SC 641.

⁴⁴ Reko Diq Mining Company (Private) Limited (RDMC) is 50% Barrick, 25% Government of Balochistan, and 25% three Pakistani federal state-owned enterprises.

In *Presidential Reference No 2 of 2022*⁴⁵, the Supreme Court held that the new agreements were not prohibited by the Constitution, law or the Court's earlier judgment. The Court noted that the reconstituted arrangement was supported by legislation, negotiations, expert advice and provincial involvement. It also recorded that the agreements did not exempt the project from Pakistan's environmental laws and required compliance with domestic law and international environmental standards.

4.2 Environmental risks at Reko Diq

Reko Diq is proposed as a large, long-life open-pit copper-gold mine near Nok Kundi in Chagai district, Baluchistan. The project area is exceptionally arid: the ESIA records average annual rainfall below 35 mm, extreme temperatures ranging from approximately -9°C to 45°C , sparse vegetation and no perennial surface-water sources.⁴⁶ The project's initial anticipated operating life is 38 years and, at full capacity, it is projected to process 90 million metric tonnes of ore annually.⁴⁷ These features make the environmental risks substantial because the mine's footprint, infrastructure and post-closure liabilities may extend over decades. The most serious environmental risk is groundwater use in a severely water-scarce region. Mining and processing require substantial quantities of water for ore processing, dust suppression, drilling, worker accommodation, potable-water systems, wastewater management and tailings operations. The Reko Diq ESIA contains separate assessment sections on water-supply alternatives, the hydro census of community water users, the Northern Groundwater System, mine-site hydrogeology and groundwater quality.⁴⁸ A second major concern is the proposed Tailings Storage Facility (TSF). Tailings are the finely ground residues left after valuable minerals are extracted from ore. They can contain residual minerals, process chemicals and substances that may pose long-term environmental risks if containment systems fail or deteriorate. The ESIA identifies tailings management, TSF design criteria, TSF location alternatives, tailings-disposal technology alternatives, hydrogeology of the TSF area and geochemical analysis as distinct matters requiring assessment.⁴⁹ Other issues like Tailings-storage-facility risk, Acid-rock drainage and metal leaching, Waste-rock dumps and soil contamination, and Mine closure and post-closure liabilities.

4.3 The ESIA process

The project's ESIA was undertaken between May 2022 and September 2024 by Digby Wells Environmental and Hagler Bailly Pakistan. The executive summary states that the assessment considered national and international standards, stakeholder engagement, groundwater, biodiversity, energy and greenhouse gases, waste management and closure⁵⁰. The ESIA is a significant development because it provides a structured baseline for regulatory decision-making. It also describes a stakeholder engagement plan, a grievance redress mechanism and an environmental and social management and monitoring plan. These mechanisms are consistent with the UNGPs and international project-finance standards, however Environmental assessment must also be adaptive. Baseline data can become outdated; climate conditions may change; mining plans may be modified; new information may emerge; and impacts may occur at a greater scale than predicted. Approval must therefore be accompanied

⁴⁵ *Presidential Reference No 2 of 2022* [2022] Supreme Court of Pakistan Reference No. 2 of 2022, 2023 PLD.

⁴⁶ Digby Wells Environmental and Hagler Bailly Pakistan, *Reko Diq Mining Project, Pakistan: Environmental and Social Impact Assessment—Executive Summary* (January 2025) 1–3.

⁴⁷ *ibid* 8–9

⁴⁸ *ibid* 46–60

⁴⁹ *ibid* 21–24, 60, 123–126, 136–139.

⁵⁰ Digby Wells Environmental and Hagler Bailly Pakistan

by conditions requiring ongoing disclosure, independent verification and regulatory intervention.

5. Analysis of the Supreme Court's Reko Diq Opinion

5.1 Environmental law remains applicable

One of the most important aspects of the Supreme Court's opinion is its recognition that the Reko Diq agreements contain no exemption from Pakistan's environmental laws. The Court recorded that Barrick was required to comply with both domestic law and international environmental standards.⁵¹ This principle is legally important because investment agreements and project contracts cannot lawfully create an environmental vacuum. Even where a project receives special fiscal treatment or legislative protection, the ordinary environmental powers of the State must remain effective. Stabilisation clauses should not be interpreted as preventing the enactment or enforcement of bona fide environmental measures. The Court's approach is consistent with the UNGPs, which require States to retain sufficient policy and regulatory space to fulfil their human-rights obligations when entering into business-related agreements. It also reflects the principle that commercial certainty cannot override constitutional rights and environmental legislation

5.2 Water conservation and public resources

The Supreme Court specifically addressed environmental considerations relating to water use in the Reko Diq project. It recorded that the project agreements contained no exemption from Pakistan's environmental laws and that the operator would be required to comply with domestic law and international environmental standards.⁵² The Court was also informed that the project would adopt measures for water conservation.⁵³ These assurances require particular scrutiny because Reko Diq is located in Chagai district, one of the most arid and water-stressed areas of Baluchistan.

Water scarcity in Baluchistan is structural rather than temporary. The Asian Development Bank describes Baluchistan as Pakistan's least water-secure province, the province most exposed to climate-change risks and the least able to cope with water-related development challenges.⁵⁴ Mean annual precipitation in the province ranges from approximately 50 to 350 millimetres, and water availability is estimated at about 560 cubic metres per hectare per year—substantially lower than the estimated average of 2,500 cubic metres in Pakistan's other provinces.⁵⁵ The region's dependence on uncertain rainfall, groundwater and episodic floodwater makes water planning particularly difficult.

Agriculture and livestock are heavily dependent on this limited resource base. Agriculture accounts for approximately 93% of total water use in Baluchistan, while around 75% of the population lives in rural areas and depends substantially on agriculture and related activities for livelihood.⁵⁶ This context is significant for a mining project because industrial groundwater abstraction must not be assessed in isolation from the existing water needs of rural households, pastoral communities, livestock keepers and agricultural users.

The Baluchistan Climate Change Policy 2024 notes that the province's agricultural sector depends heavily on groundwater extracted through tube wells and that this dependence has

⁵¹ *Presidential Reference No 2 of 2022* (n 1) para 5

⁵² *Ibid* para 9(vii).

⁵³ *ibid* paras 5–6

⁵⁴ Asian Development Bank, *Baluchistan Water Resources Development Sector Project: Sector Assessment* (2019) 2

⁵⁵ *ibid*

⁵⁶ *Ibid*

been undermined by recurring droughts and excessive exploitation of aquifers.⁵⁷ The Policy states that approximately 70% of Baluchistan's farmers face inadequate access to a consistent water supply from canals or minor irrigation schemes.⁵⁸ It further records that declining groundwater levels have rendered the traditional *karez* irrigation system non-functional in various areas, affecting rural livelihoods and increasing dependence upon erratic rainfall and tube-well extraction.⁵⁹

5.4 Provincial autonomy and community benefits

In *Presidential Reference No 2 of 2022*, the Supreme Court confirmed that legislative competence over mines and mineral development, other than minerals used for nuclear energy, rests exclusively with the Provincial Assemblies.⁶⁰ Baluchistan therefore has a central constitutional role in regulating mineral development at Reko Diq, subject to the Constitution, applicable federal law, provincial mining legislation and environmental law.⁶¹ Provincial authority, however, does not permit the Government of Baluchistan to treat Reko Diq solely as a commercial asset or to disregard the rights of affected communities. The Supreme Court observed that the project should benefit the people of Baluchistan, particularly the people of the Rakhshan Division, through local employment, skills development, drinking-water provision, health facilities, schools and infrastructure.⁶² The Court further emphasised that natural resources must be managed with the interests of future generations in mind.⁶³

The beneficiaries of mineral wealth are therefore not confined to governmental institutions, state-owned enterprises or private shareholders. Communities affected by mining must be treated as rights-holders. They must have access to timely and comprehensible environmental information, meaningful participation in decisions affecting their water, land, health and livelihoods, and access to effective remedy where adverse environmental or human-rights impacts occur.⁶⁴ This is particularly important in Chagai district, where the project is located in an arid and underdeveloped region with limited access to basic services, including clean water, healthcare and education,⁶⁵ and in case of the distribution of Reko Diq's benefits should be transparent, equitable and responsive to the needs of Baluchistan.

5.5 Judicial Protection of Mineral Resources and Environmental Rights

The superior judiciary has an important constitutional role in protecting both the mineral wealth of Baluchistan and the environmental rights of communities affected by its extraction. In the earlier Reko Diq litigation, the Supreme Court set aside the judgment of the High Court of Baluchistan and declared the Chagai Hills Exploration Joint Venture Agreement

⁵⁷ *ibid*

⁵⁸ *ibid*

⁵⁹ *ibid*

⁶⁰ *Presidential Reference No 2 of 2022* (Supreme Court of Pakistan, 9 December 2022) para 9(ii)

⁶¹ Constitution of the Islamic Republic of Pakistan 1973, arts 142(c) and 144; Baluchistan Environment Protection Act 2012, s 15

⁶² *Presidential Reference No 2 of 2022* (n 1) para 10(iii)

⁶³ *ibid* para 14

⁶⁴ Human Rights Council Resolution 48/13, 'The Human Right to a Clean, Healthy and Sustainable Environment' (8 October 2021) UN Doc A/HRC/RES/48/13; United Nations General Assembly Resolution 76/300, 'The Human Right to a Clean, Healthy and Sustainable Environment' (28 July 2022) UN Doc A/RES/76/300; United Nations, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework* (2011) UN Doc A/HRC/17/31, principles 18, 21 and 25–31.

⁶⁵ Barrick Mining Corporation, 'Reko Diq Copper-Gold Project' <<https://www.barrick.com/English/operations/reko-diq/default.aspx>> accessed 11 September 2026

(CHEJVA) void because it had been concluded without lawful authorisation, lacked transparency and failed to comply with the regulatory provisions governing mining operations in the Province.¹ The judgment in *Maulana Abdul Haque Baloch v Government of Baluchistan* therefore established that Baluchistan's mineral resources cannot be transferred, developed or exploited through arrangements that bypass statutory requirements, public accountability or constitutional standards.

Judicial protection, however, has institutional limits. The superior courts can interpret the Constitution, invalidate unlawful agreements, review arbitrary administrative action and protect fundamental rights; they do not replace the technical and statutory functions of the Baluchistan Environmental Protection Agency, mining authorities or other specialised regulators.

Supreme judiciary's Reko Diq jurisprudence lies in two connected propositions. First, mineral wealth in Baluchistan must be developed through lawful, transparent and constitutionally authorised arrangements that serve the people of the Province. Secondly, the agreements remain subordinate to environmental law and the fundamental right to a clean, healthy and sustainable environment. The Court's recognition of environmental compliance and international standards must therefore be understood as a continuing legal condition of the project, not as a conclusive finding that all future environmental risks have been eliminated.

6. A Rights-Based Regulatory Model for Reko Diq

6.1 Participation and access to information

Meaningful participation is central to the right to a healthy environment. Communities must receive timely, understandable and complete information about the project's environmental and social risks. Technical reports should be accompanied by summaries in relevant local languages, including Balochi and Urdu, and should explain water abstraction, tailings management, emergency response and closure plans.

Consultation should include pastoralists, women, Indigenous or tribal communities, workers, migrant groups and persons living along transport routes. Meetings should be held at accessible locations and at times that allow participation. Community representatives should not be selected solely by the company or government. Independent facilitators may be necessary where there is a substantial imbalance of power.

Participation must also be continuous. It should occur during construction, operation, expansion, closure and post-closure monitoring. A community's inability to object after an approval has been granted must not prevent it from raising new concerns arising from changed circumstances.

6.2 Independent monitoring

The regulatory authorities require sufficient financial, technical and institutional capacity to monitor a project of Reko Diq's scale. Monitoring should not depend exclusively on information supplied by the operator. Independent experts, universities, civil-society organisations and community monitors should be able to participate.

A credible monitoring structure should include real-time or periodic water-quality and groundwater data, public disclosure of tailings-facility performance, independent audits, inspection reports published promptly, monitoring of dust, and noise and air quality.

The regulator should possess clear powers to impose corrective measures, fines, suspension orders and rehabilitation requirements. Environmental approval without enforcement capacity is a formal right without practical protection.

6.3 Grievance mechanisms and remedies

The UNGPs recognise the importance of both State-based and non-State grievance mechanisms. Operational-level grievance mechanisms should be legitimate, accessible, predictable, equitable, transparent, rights-compatible and based on dialogue.⁶⁶

A Reko Diq grievance mechanism should be independent from the operational management team and capable of receiving complaints confidentially. It should permit complaints by individuals and groups, prevent retaliation, provide written reasons and establish time limits for decisions. It should not prevent access to courts, environmental tribunals, ombudsman institutions or constitutional remedies.

Where harm occurs, remedies should include restoration, compensation, medical assistance, alternative water supplies, livelihood rehabilitation, public apology where appropriate and guarantees of non-repetition. The remedy should be proportionate to the severity of the harm and should not be limited to direct employees of the mine.

6.4 Tailings, water and closure

Three areas require enhanced legal treatment.

First, water. The project should operate under a publicly disclosed water-allocation and monitoring plan. The plan should identify environmental flows, community needs, emergency supplies and response thresholds. Any expansion should require a fresh assessment rather than automatic approval.

Secondly, tailings. The project should comply with the Global Industry Standard on Tailings Management and should use independent technical review. The operator should maintain emergency-preparedness plans, disclose material risks and establish funding sufficient for long-term management.

Thirdly, closure. Closure must be planned from the beginning. The closure plan should identify the final land use, dismantling of infrastructure, treatment of contaminated water, stabilisation of waste facilities, revegetation, long-term monitoring and post-closure institutional responsibility. A financial assurance mechanism should prevent the public from bearing the cost of rehabilitation if the company becomes insolvent or abandons the project.

6.5 Human-rights due diligence⁶⁷

The project should maintain a human-rights due-diligence system aligned with the UNGPs. The system should assess not only environmental impacts but also the related effects on life, health, water, livelihood, property, culture, labour rights, equality and participation.

The due-diligence process should be conducted before each major project phase, updates regarding mine plan changes, such process should be based on consultation with affected groups, and should be reported publicly with measurable indicators and The State should require disclosure of the company's environmental and human-rights performance, subject to legitimate confidentiality protections. Transparency is especially important where governmental entities are shareholders or beneficiaries.

7. Recommendations

The Reko Diq project should be governed through the following measures:

- * **Treat Article 9A as an enforceable substantive and procedural right.** Environmental approvals should be interpreted consistently with the right to a clean, healthy and sustainable environment.
- * **Make environmental approvals conditional and reviewable.** Approval should include measurable conditions concerning water, biodiversity, tailings, pollution, community health, transportation and closure.

⁶⁶ United Nations Guiding Principles on Business and Human Rights (n 7) Principle 4.

⁶⁷ United Nations Guiding Principles on Business and Human Rights (n 7) Principle 31

- * **Establish independent monitoring.** Monitoring should involve the Baluchistan Environmental Protection Agency, independent experts, universities and community representatives.
- * **Publish environmental information.** ESIA documents, permits, monitoring data, inspection reports, incident reports and closure plans should be accessible to the public.
- * **Protect water as a priority resource.** Groundwater abstraction should be subject to scientifically verified limits, community safeguards and adaptive management.
- * **Ensure meaningful community participation.** Consultation must be continuous, inclusive, culturally appropriate and conducted in languages understood by affected communities.
- * **Strengthen grievance and remedy systems.** Non-judicial mechanisms should supplement, not replace, access to courts and statutory environmental remedies.
- * **Create a mine-closure fund.** Financial security should be sufficient to cover rehabilitation, water treatment, tailings management and post-closure monitoring.
- * **Separate ownership from regulation.** Government shareholding must not compromise the independence of environmental regulators.
- * **Operationalise intergenerational equity.** A defined portion of revenues should support future generations, environmental restoration, education, health and sustainable regional development.
- * **Require cumulative and life-cycle assessment.** Assessment should cover associated infrastructure, transportation, port operations, future expansion and post-closure impacts.
- * **Convert corporate commitments into enforceable obligations.** References to international standards, the UNGPs and water conservation should appear in permits, agreements and monitoring plans.

8. Conclusion

The right to a healthy environment provides the legal and ethical basis for determining whether mining contributes to sustainable development or merely transfers environmental costs to vulnerable communities and future generations. In Pakistan, the right is now expressly guaranteed by Article 9A and is reinforced by the constitutional protection of life, dignity, equality, property and provincial interests in natural resources.

The Reko Diq project presents genuine opportunities for employment, public revenue, infrastructure and regional development. It also presents serious risks arising from water abstraction, tailings, waste-rock management, biodiversity disturbance, emissions, transport and long-term closure. The project's economic significance cannot reduce the level of environmental protection required by the Constitution and environmental legislation.

The Supreme Court's opinion in *Presidential Reference No 2 of 2022* provides an important foundation by affirming that the project remains subject to domestic environmental law, international environmental standards, water conservation and the principle of intergenerational equity. The next challenge is implementation. Environmental commitments must become measurable, transparent and enforceable duties.

Reko Diq will be a test of whether Pakistan can reconcile mineral development with constitutional environmental rights. The decisive issue will not be whether the project produces copper and gold, but whether it protects water, health, dignity, community participation and ecological integrity during the entire life of the mine. A project that satisfies these requirements may serve as a model of responsible mining. A project that treats

environmental approval as a one-time formality will remain vulnerable to legal challenge, social conflict and long-term ecological harm.

Bibliography

International instruments and documents

Declaration of the United Nations Conference on the Human Environment, Stockholm, 16 June 1972, UN Doc A/CONF.48/14/Rev.1.

Human Rights Council Resolution 48/13, 'The Human Right to a Clean, Healthy and Sustainable Environment', UN Doc A/HRC/RES/48/13 (8 October 2021).

International Court of Justice, *Pulp Mills on the River Uruguay (Argentina v Uruguay)* (Judgment) ICJ Rep 14.

OECD, *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct* (2023).

Rio Declaration on Environment and Development, 12 August 1992, UN Doc A/CONF.151/26/Rev.1.

Ruggie J, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, UN Doc A/HRC/17/31 (2011).

UN General Assembly Resolution 76/300, 'The Human Right to a Clean, Healthy and Sustainable Environment', UN Doc A/RES/76/300 (28 July 2022).

World Bank Group, *Environmental, Health, and Safety Guidelines for Mining* (2007).

International Finance Corporation, *Performance Standards on Environmental and Social Sustainability* (2012).

Global Tailings Review, *Global Industry Standard on Tailings Management* (2020).

Pakistani constitutional and statutory materials

Constitution of the Islamic Republic of Pakistan 1973.

Constitution (Twenty-Sixth Amendment) Act 2024.

Baluchistan Environment Protection Act 2012.

Pakistan Environmental Protection Act 1997.

Pakistan Environmental Protection Agency (Review of IEE and EIA) Regulations 2000.

Baluchistan Mineral Rules 2002.

Foreign Investment (Promotion and Protection) Act 2022.

Pakistani judicial decisions

Maulana Abdul Haque Baloch v Government of Baluchistan PLD 2013 SC 641.

Presidential Reference No 2 of 2022, Supreme Court of Pakistan.

Shehla Zia v WAPDA PLD 1994 SC 693.

Project and institutional materials

Digby Wells Environmental and Hagler Bailly Pakistan, *Reko Diq Mining Project, Pakistan: Environmental and Social Impact Assessment—Executive Summary* (January 2025).

Reko Diq Mining Company, *Environmental and Social Impact Assessment for the Reko Diq Mining Project* (2024).

Asian Development Bank, *Reko Diq Mining Project: Environmental and Social Impact Assessment*, Project No 58013-001.

United States International Development Finance Corporation, *Reko Diq Mining Project, Pakistan: Environmental and Social Impact Assessment*.