

Protection Cluster

Land & Property Rights Working Group Post Flood Guidelines

Objectives:

- To identify emerging potential issues of land and property rights of flood-affected people in Pakistan
- To categorise flood-affected population on the basis of issues of land and property rights
- To highlight at appropriate forums i.e. Government of Pakistan, UN agencies and Civil Society Organizations issues as well as provide workable solutions of land and property rights during the relief and early recovery phases facilitating development of a sound return strategy for the flood-affected population
- To devise the way forward for Public Departments and Civil Society Organizations in the particular context of lands and property rights for future interventions.

Introduction:

Pakistan has recently witnessed the worst flood in its history. According to initial surveys, twenty million people have been affected across the country with consequential loss of lives, houses, crops, livestock etc. While the floods are receding, the affected families, especially those falling into the category of most excluded and vulnerable urgently need to be rehabilitated on lands and their houses rebuilt, as winter is approaching fast.

Without the provision of land and houses, especially to the most excluded and vulnerable flood affectees, the sustainability of recovery and reconstruction efforts will be severely undermined. Furthermore, it will adversely affect the already fragile social equilibrium in a country like Pakistan that is fighting war against terror; and facing political unrest which is causing fragmentation of family and serious economic out migration So there is an added urgency for making an adequate intervention.

Legal Complications:

The property rights system in Pakistan is complicated; a huge percentage of land belongs to the citizens while State also has ownership of some lands and the State has a right to acquire private land in public interest after payment of compensation. (Land Acquisition Act 1894). Added to this are socio-cultural norms that pre-dominantly and gravely influence women in relinquishing their right to property and inheritance.

The land registration/documentation system is also complex and varies in urban and rural areas whereas different laws deal with different situations and entitlements (The Registration Act 1908, the Land Revenue Act 1867). Furthermore, the situation becomes more complex in the presence of centuries old customs and attitudes disempowering women from their due legal share in property/inheritance. This land system has come under tremendous pressure due to growing population as well.

Early Recovery:

The first and foremost effort should be to rehabilitate, especially the most excluded and vulnerable amongst the owners on their own lands and houses. However, this seemingly straightforward exercise may involve substantial challenges. In the event of flood having washed away agreed and prominent land marks and survey coordinates, difficulty will arise in the identification/delineation on the ground of a particular field of land. Disputes may arise among neighboring landlords about the boundaries of their holdings. Intervention of Land Revenue department

with relevant land Record will therefore become absolutely necessary for the demarcation of individual holdings in the rural areas. Situation regarding owners getting possession of their urban housing will comparatively be simpler. There's a possibility of women being excluded from this, admittedly, challenging and gender 'unfriendly' process; on account of their added recovery responsibilities; and lack of immediate availability of necessary documentation.

All the categories will include the remit of excluded and vulnerable head of families / family member like women, children, older persons, persons with chronic diseases and illness, persons with disabilities etc whose rights are often culturally denied. These persons would need to be given special attention and accountable action with regard to inclusion, representation and participation. It is expected that problems may arise when and if government needs compulsory acquisition of private land for the settlement of the people. The families who have lost land and property documentation will face a difficult situation as this may be a barrier to proving identity and thus potential land and property rights.

The unprecedented human catastrophe and the complex property rights system make it imperative that a well planned, co-ordinated and concerted intervention be made by specialized humanitarian actors to provide technical advise and assist the Governments and the people of Pakistan for a harmonized and aligned action - for which UN has launched a special appeal. Land reclamation has been identified as recovery need in McRAM as well.

Categories of People Affected by Floods:

Other than titled owners of Land & houses stated above, the rehabilitation of the following categories of affected people needs urgent consideration:

- i) People whose livelihoods exclusively rely on and were owners of land that has fully or partially been taken away by river action (alluvion and diluvion). Some of these owners may become "Landless"
- ii) People who still have land but it has become uninhabitable i.e. virtually landless.
- iii) People who had built houses on the State land allotted to them but the land has been taken away by floods.
- iv) People who had built houses on State land under illegal occupation and land has been washed away
- v) People who had land that was part of a scheme (like Katchi Abadi) but it was still not allotted to them/allotment was in process and now the land has been washed away or become uninhabitable.
- vi) Slum-dwellers in urban areas who had houses built on encroached land with some legal rights or without any legal right.
- vii) Tenants, who are registered in land records, and who had been provided houses, by land owners on their titled land; without any legal entitlement.
- viii) Tenants, who are not registered in land record, who had been provided houses, with no legal entitlements, by land owners on the titled land;
- ix) The artisans in rural areas e.g. carpenter, potter, barber, black smith, tailor etc: who were provided houses by the land owners on their lands but without any legal entitlements, in return for some services or under some custom.
- x) Various classes of the people who lived in river belts that is traditionally inundated in summer and are now in water.
- xi) People who inhabited lands which have now become waterlogged.
- xii) Afghan refugees or internally displaced persons who had their houses built on state or private land, without entitlement.
- xiii) Bonded labourers and upholding of their human rights at their return
- xiv) Small holders who had previously been illegally occupying kathcha land, who now risk being prevented from returning to these lands by larger influential landholders. These larger influential landholders have also been occupying large tracts of Kathcha lands illegally and may take this opportunity to increase their landholdings in Kathcha areas at the expense of small landholders.

Recommendations :

A). Recommendations for the Government

1. Offer exemption from land/property taxes for the vulnerable in the flood affected areas only, for obtaining revenue records as due to emergency the revenue staff has the tendency to exploit the situation.
2. Support ongoing land/property programmes for the vulnerable population in the flood affected areas to protect them from being discriminated or shunted out of the process.
3. Offer support mechanism in terms of compensation to the vulnerable families and people who cannot return to the due to its environmental hazardousness
4. It is recommended that all 14 categories as mentioned above shall be considered at the time of formulation of the definition of the potential beneficiaries in any future land/property rights related intervention by the Government.
5. Short, medium and long term land tenure options (for landless of the flood affected areas and people who lost their land due to flood) to be explored, especially in the areas where the villages have been completely washed away and as a early recovery measure settlement of these villages shall be given top priority.

B). Recommendations for the humanitarian community

1. All agencies should work through existing structures such as the revenue department to conduct surveys and implement relief efforts rather than bringing in external expertise.
2. All agencies should work to strengthen the capacity of existing structures and capitalize on local knowledge including the exact damage and demarcation of individual land holding on a local level.
3. There should be proper civil society oversight of the demarcation process, and proper redress procedures put in place to ensure that people are able to appeal decisions, as there is a real danger that feudal powers (particularly in Sindh) could exploit the power they have over district level government authorities for their own benefit during land surveys.
4. The HCT should advocate to ensure that previous residents of illegal settlements in hazardous areas prior to the floods are recognized as shelterless families to be accommodated in the housing/land interventions at Provincial level.
5. Agencies should ensure the inclusion of all vulnerable groups during all interventions on land issues, with reference to the 14 categories of persons included in this document.
6. All clusters should take into consideration the respective land and housing challenges listed above in their programmes and policy recommendations – all along keeping a consistent eye on consequent implications of these problems on the most vulnerable affected people.
7. It is also recommended that for sustainable return of the IDPs to their villages, early recovery interventions shall be designed and implemented by all the Land and Property Rights related organizations i.e. UN/INGOs/NGOs etc and they shall play technical advisory role for all the land/property matters in collaboration with Boards of Revenue to extend cooperation gained through past experiences and extensive partnership with Federal Government after earthquake of 2005.
8. Ongoing land/property programmes for the vulnerable population in the flood affected areas shall be supported by the donors/agencies etc to protect them from being discriminated or shunted out of the process.
