

Protection Cluster Land & Property Rights Working Group

Final Draft Concept Note

Housing, Land and Property Rights Issues Arising from the Floods

- Pakistan has recently witnessed the worst flood in its history. According to initial surveys, twenty millions people have been affected across the country with consequential loss of lives, houses, crops, livestock etc. While the floods are receding, the affected families urgently need to be rehabilitated on lands and their houses rebuilt as winter is approaching fast.
- Without the provision of land and houses to the 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. So there is an added urgency for making an adequate intervention.
- 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).
- 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.
- The first and foremost effort should be to rehabilitate owners on their own lands and houses. However, this seemingly simple exercise may involve substantial problems. In the event of flood having washed away 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.
- Other than titled owners of Land & houses stated above, rehabilitation of following categories of affected people would need careful consideration:

- People who were owners of land that has fully or partially been taken away by river action (alluvision and diluvision). Some of these owners may become “Landless”
- People who still have land but it has become uninhabitable i.e. virtually landless.
- People who had built houses on the State land allotted to them but the land has been taken away by floods.
- People who had built houses on State land under illegal occupation and land has been washed away
- 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.
- Slum-dwellers in urban areas who had houses built on encroached land with some legal rights or without any legal right.
- Tenants, who are registered in land records, and who had been provided houses, by land owners on their titled land; without any legal entitlement.
- Tenants, who are not registered in land record, who had been provided houses, with no legal entitlements, by land owners on the titled land;
- 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.
- Various classes of the people who lived in river belts that is traditionally inundated in summer and are now in water
- People who inhabited lands which have now become waterlogged.
- Afghan refugees or internally displaced persons who had their houses built on state or private land, without entitlement.
- Bonded labourers and their future in case of return

7. All the above stated categories will include various types of vulnerable head of families /family member like women, children, elderly, infirm & perennially sick, invalids etc whose Rights are sometimes culturally denied. These categories would need to be given special Attention. Problems will also arise when and if government needs compulsory public acquisition of private land for the settlement of the people.

8. The unprecedented human catastrophe and the complex property rights system makes it imperative that a well planned, co-ordinated and concerted intervention be made by specialized agencies to advise and assist the Governments and the people of Pakistan in their hour of need and for which UN has launched a special appeal.

Recommendations:

- The Government should declare a moratorium on land sales and the status quo on all disputes related to property the social rights in the affected areas until the transition to reconstruction is completed;
- The Government should ensure that Section 17.4 of Land Acquisition Act that allows for forcible acquisition of land should not be invoked for the return or resettlement of affected communities except for the public interest
- The protection cluster should raise awareness within the NDMA and Federal Government, and among the donor community on the above mentioned issues;

- All clusters should take into consideration the land and housing problems listed above in their programme and policy recommendations.
- Government / Revenue departments should take into account the urgent need to address land and housing issues arising from the floods as they impact dramatically on the lives of vulnerable groups;
- There should be a proper legislation for dealing with the disputes of land and housing arising out of the floods with the spirit of protecting the vulnerable groups. This legislation should also provide the forum for quick resolution of the disputes through alternative dispute resolution mechanisms with the ultimate recourse to common law courts.
- The Government should 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.
- Short, medium and long term land tenure options (for landless of the flood affected areas and people who lost their land due to flood)
- It is recommended that government shall consider in offering support mechanism in terms of compensation to the vulnerable families and people who cannot return to their land because of its environmental hazardousness.
- Ongoing land/property programmes for the vulnerable population in the flood affected areas shall be supported by the government/donors/agencies etc saving them from discontinuation.
- Instead of bringing in external expertise to conduct such surveys it is recommended that the humanitarian agencies/Donors etc shall consider building the capacity of the revenue departments in shape of strengthening their human resource capacity by hiring more revenue officials who in turn will work for the revenue departments sharing the burden of work and they will conduct the surveys more effectively; as these officials have the skills, knowledge of exact damage and demarcation of individual land holding; therefore, instead of creating a parallel system to conduct surveys, the revenue departments may be extended cooperation and resources enabling them to perform their duties efficiently and effectively.
- The United Nations agencies to play 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.
