**Call for inputs: Resettlement as a human rights issue**

**Questionnaire for States, NHRIs, CSOs, International Organizations, IFIs, and business enterprises**

Name of submitting entity, organisation or individual:

**Karachi Bachao Tehreek (Legal), Sindh Indigenous Rights (Legal)**

***Resettlement as a human rights issue***

1. Please indicate and explain the laws and regulations applicable to resettlement in your country, organization or company, including in the context of development projects; infrastructure projects, mining, oil and gas exploitation, industrial projects; urban renewal projects; for disaster prevention; nature conservation and environmental protection; activities to promote tourism, sports or protect cultural heritage; or climate-, disaster- or hazard-induced environmental degradation or to prevent, mitigate or respond to conflict and any form of large scale violence. Please provide copies or links to the text of such policies, laws and regulations currently in force, or any significant draft proposals. In addition, kindly provide any assessment on the implementation and impact of these policies, laws and regulations and their outcomes for the rights of affected individuals and communities.
2. The Government of Sindh (GoS) has introduced three versions of aDraft Policy on Resettlement and Rehabilitation (R&R) 2021 to 2023 that appears to be made to comply with the World Bank Policies (ESS5). During consultation, we submitted to the state that his R&R policy that ignores existing land law and the imperative for their amendment as opposed to a policy without status of binding law. These include the Transfer of Property Act, Land Acquisition Act 1894 (LAA), Government Grants Act, 1895, and the Colonisation of Government Lands Act, 1912, and the Sindh Tenancy Act, 1950. According to the LAA 1894, land can be acquired for ‘public purpose’ or for a company. The legislative history of the amendment to include the word ‘company’ should be researched as it goes beyond the ambit of property rights and acquisition spelt out in the Constitution of Pakistan where Article 24(2) states which allows acquisition only for public purpose.[[1]](#footnote-1) The Sindh Tenancy Act 1950 also needs review as it unfairly treats disputes of tenants under the jurisdiction of the executive through commissioners and collectors as opposed to matters over which courts should have jurisdiction.[[2]](#footnote-2)
3. **The GoS’s Draft R&R** refers to customary rights in its entitlement matrix, but does not define what these are in our local context and how these interact with formal laws. Malir has a system of local customs as well British classification of land as (marosi) (or non-clause when payments lapsed) with ownership rights and leased land. As per customs of collective ownership, Baloch, Barfat, Jokhio tribes in the ancient Dehs of Kathore, Bail, Bolari, Udharwa, Langheji in District Malir and Deh Mahal Kohistan District Jamshoro have used historically shared grazing lands, cattle pathways, traditional public crossings, and water reservoirs. In addition to these easements and other rights, there are multiple distinct forms of economic, social and environmental customs – customary practices protecting wildlife and treating their Dehs as buffer areas of Kirthar National Park; protection and maintenance of the ecosystem of mountains, rivers, and tributaries that support sustainable rain fed (Barani) agriculture; protection of sites of cultural, spiritual, and archaeological significance including those linked to the poetry Shah Abdul Latif Bhitai. In Tharparkar Sindh, prior to 1947, the Colonial government recognized such rights distinct from private ownership rights in qabuli lands or the state’s rights in government lands. A third of the land here is communally owned with collective grazing rights or gowchar which include the right to ‘resources tied to land including cattle pathways, easements, wells, historical waterways, natural reservoirs, and religious and cultural sites’.[[3]](#footnote-3) The Sindh Katchi Abaadi Regularization Act 1987 and the Sindh Gothabad Regularization Act allow for informal settlements to gain tenure and be eligible for improvement.[[4]](#footnote-4) These laws were employed in the 1980s and 1990s to provide legal title to abaadis, and secure them from displacement, but are now being flouted. In the case of Mujahid Colony residents claimed that their neighbourhoods were regularised in the 1990s and the land transferred after regularisation from the Karachi Development Authority (KDA) to the Karachi Municipal Corporation (KMC). Many more houses were built since this time because the state has not met the need for low-income housing. Demolitions in GN and ON created an environment of impunity which enabled the GoS to swiftly and brutally demolish Wahid and Mujahid Colonies in November 2022. When KBT met officials of that District, they stated that ‘*there may be an old disused Nullah’* and therefore this demolition comes under the SC’s 2020 decision to clean nullahs and remove encroachments. The municipal officer also stated that they were simply restoring the area to what it was in a 1972 municipal (KDA) map.
4. In 1975, the GoS issued a notification for the grant of lease of agricultural, cattle and dairy farming, barani or rain-fed land for poultry farming, and wahi-chahi (well) irrigated land for cultivation in Karachi’s rural areas (Malir) and Thatta, Larkana, and Dadu.[[5]](#footnote-5) Such leases would be renewed upon proof that these are being used solely for the purpose of farming, cattle, or poultry in “open katcheris”. Farmers said there would be a public assembly with village elders who’d testify the land was being used for its purpose. In 2019, after a “ban period”, the GoS renewed these leases for another ten years. When such leases expired in 2021,[[6]](#footnote-6) GoS refused to renew them despite farmers using the land productively. This practice has facilitated elite capture of Karachi and Jamshoro’s rural land for gated communities, factories, Malir Expressway and Education City. It has caused displacement, forced re-resettlement, and made the city vulnerable to climate disasters like heat waves.[[7]](#footnote-7)
5. Please indicate and explain any laws and regulations applicable to the evacuation and relocation of persons in the context of emergencies, such as disasters, hazards, armed conflict or internal violence.

The **National Disaster Management Act 2010** establishes the National Disaster Management Agency (NDMA), which is mandated to create plans and guidelines for managing and responding to disasters and emergencies in the country. This 2019 Disaster Management Plan reflects on disasters after 2010, envisages a multi-agency response to disasters, and seeks to align with the global frameworks such as the Sendai Framework for Disaster Risk Reduction. Perfunctory mention is made of rehabilitation, to the extent that capacity of line ministries, departments, and staff of disaster management authorities must build and strengthen capacity to deal with disasters and rehabilitation. How this is to be done is not explicitly laid out.

1. Has your country, organization or company put in place any resettlement policies, budgets, programmes or schemes? If so, please provide copies of those (preferably in Word format). In addition, please provide any assessment on the implementation and impact of these policies, budgets, programmes and schemes on the rights of the affected individuals and communities.
2. The GoS has approached R&R in an ad hoc manner. In the case of GN and ON, the GoS issued ‘compensation’ cheques to force evacuation in February and March of 2021 in pursuance of a notification issued by a committee known as the ‘Provincial Coordination & Implementation Committee’ (PCIC). It was not made public who served on this committee, or how affectees of violent evictions in GN and ON could contact it to obtain updates on their compensation. In 2022 and 2023, the state stopped rental cheques and evictees filed a contempt case before the Court for cheques and rehabilitation; the court compelled the GoS to pay these overdue cheques in August and September of 2023.[[8]](#footnote-8) They did not adjust them for inflation even though Pakistan is experiencing an unprecedented financial crisis that has driven up the cost of living and the cost of rent, food, and fuel, to exorbitant levels. Food inflation means that the affected people are at risk of food insecurity in the backdrop of Pakistan’s stunting and wasting rates being highest in the world. The cost of rent has further shot up in the last two years partially because of evictions in the city and real estate speculation and financialization of land.
3. The SC directed the GoS to come up with a rehabilitation plan in their August 2020 decision and asked that the evictees of GN and ON be settled in a civilised manner and with all amenities.[[9]](#footnote-9) Over the next two years the GoS failed to present a rehabilitation plan.  The Supreme Court, on August 17, 2023, presented two options in consultation with GoS officials – 1) payment of a lump sum payment according to market value of land they were displaced from plus the cost of construction as per Pakistan Engineering Council for the construction of a 80 sq yard house, or land in Malir (80 sq yards) and construction costs. In July 2021, the GoS made a plan to build 6500 housing units for evictees but did not share this information with them; then they arranged for funds of PKR 11 Arab and did not share this either. Finally, in September 2023, the GoS submitted a compliance report in response to the contempt case against them and said they surveyed land in Taiser Town Malir (Sectors 16, 61, and 87) for resettlement; but this was done without consultations as to whether these areas (far from the evictees centre city neighbourhoods) would be acceptable. In the last three years, the GoS has not reached out to evictees about the appropriateness of relocation sites or interrogate consultatively whether these fulfil the criteria of adequate housing (water, lighting, sanitation, roads, accessibility, affordability and habitability and access to employment options, health-care services, schools, childcare centres and other social facilities).  The state’s reluctance to hold consultation means evictees cannot make informed decisions about the two choices offered in the SC’s order.
4. Please explain the laws and regulations in force in your country, or policies applicable in your organization or company aimed at ensuring that business enterprises, including financial investors and financial institutions, adhere to the applicable national laws and regulations and international human rights standards when they invest or engage in projects involving resettlement when such projects are implemented: a) within your country and b) abroad.
5. The World Bank is heavily investing in Karachi’s infrastructure and its financing package comprises $838 million for water supply, sewerage, public transport, public spaces, urban governance and solid waste management interventions. In June 2021, KBT filed a complaint with the World Bank that its funding for Project SWEEP to upgrade Karachi’s solid waste management was linked to demolitions in GN and ON. As a result, they retracted this funding as GoS to avoid violation of their own principles on involuntary resettlement.[[10]](#footnote-10)
6. Other businesses (local or MNC) do not have a dedicated forum for R&R and one must rely on local courts. Private companies and quasi state companies like the National Logistics Cell (NLC) and the Frontier Works Organization (FWO), labour and machine contractors, are involved in demolition and construction. When we approached their offices to file complaints for wrongful deaths caused by their negligence, they did not have a policy in place and were unwilling to share their contracts for work to enable us to file wrongful death lawsuits.
7. Has your country, organization or company established any agency or other mechanism specifically mandated to deal with resettlement? If so, please provide details on its mandate, budget and work, including copy of any relevant policies, regulations and legislation and an assessment of its impact on the rights of affected individuals and communities.

There is no such dedicated agency. The Chief Minister’s office and their cabinet, the Local Government, and Planning and Development have been the key government offices taking responsibility for R&R.

1. How does your country, organization or company finance the cost of resettlement projects?

The rehabilitation and resettlement is carried out by the provincial government and therefore the cost is borne by the Government of Sindh. The proposed Sindh R & R policy states that an itemised budget will be allocated which will entail an approved PC-1 (stage 1 for the approval of any budgeted scheme).

The “Resettlement of Affectees of Gujjar, Mehmoodabad & Orangi Nullahs” scheme was approved in December 2021 for inclusion in the Annual Development Plan (ADP) of the Sindh Budget. This development scheme, specifically for the resettlement of the Affectees, is worth PKR 9423.789 Million or PKR 9.423 Billion. The target date set for its completion is/was June 30 2024 according to the PC-1 document and the GoS Budget books. The resettlement of the Affectees, according to the PC-1 document of the scheme, is to be done on a total area of 258.23 acres which will have 6500 housing units and the size of each unit will be of 80 sq. yards.The R&R plan of the locally displaced persons of GN and ON announced by the provincial government has been booked as a development scheme in its annual budget books (specifically the Annual Development Program or ADP). This indicates that the R&R is merely a scheme or a time-limited project as opposed to plan. There have been committees such as the Provincial Coordination & Implementation Committee (PCIC) formed to oversee the GN and ON resettlement but no authority/ body has been formed which would have legal recognition and a commitment to resettling or compensating the local displaced persons. Schemes under the ADP can be stopped placing them under monitoring & evaluation reviews and committees can be dissolved at any given point in time. Furthermore, neither schemes nor committees can be individually audited for transparency and effectiveness.

1. Does your country, organization or company mandate a human rights impact assessment plan before projects or policies that require settlement? If so, please provide details.

There is no mandate for a human rights assessment except the Sindh Environmental Protection Act 2014 under which the state is obliged to review Environmental Impact Assessment (EIA) reports, publish details of proposed projects including demolitions and resettlements, and invite the public to provide comments and express concerns. But in fact, the law is rarely complied with; the EIA reports and hearings are cursory to the point of meaninglessness. In the case of Gujjar and Orangi Nullahs, the National Disaster Management Authority (NDMA) held an EIA hearing in November 2021, more than nine months after the demolitions commenced, and did not answer the objections raised by residents and activists.

1. In the context of resettlement, how does your country, organization or company ensure that persons, groups and communities:
	1. Give their free, prior and informed consent and be genuinely consulted on exploring alternatives to resettlement and on the modalities of the resettlement, prior to it being planned and carried out;

Forced evictions in Gujjar and Orangi Nullahs were carried out without reasonable notice. Residents claimed they were informed only a few days prior to evictions through announcements at mosques although the state claimed they published notices in newspapers. *Reasonable notice* must be interpreted in light of the real estate market in big cities where homes are in short supply should constitute enough time for families to adequately relocate.

* 1. Have access to administrative and judicial remedies to challenge the resettlement decision, its process, conditions or outcome. To what extent have affected individuals or communities been provided access to legal aid? Please provide links or copies (preferably in Word format) of key court or other dispute settlement decisions related to litigation or claims on resettlement;

In the case of GN and ON, the GoS and the Supreme Court derived the two-options resettlement plan without consultation with affectees and expect lawyers for the case will present evidence at the next hearing as to whether this is acceptable to the community or not. There is no dedicated forum to challenge the resettlement decision.

* 1. Are not resettled until such time as a comprehensive, human rights compliant resettlement plan and policy is in place and the resettlement site or areas meets the conditions for an adequate standard of living, including adequate housing;

 None.

* 1. Have access to complaints or grievance mechanisms in case of problems with the process or outcome of the resettlement, including where actors other than State authorities are involved.

 No.

1. Does your country, organization or company collect data or otherwise track the situation of persons who have been subject to resettlement, which would allow to monitor overtime whether the affected community survives as such and is able to thrive at the resettlement site for example by enjoying adequate housing, access to essential services, livelihoods, etc.? If so, please provide information on what indicators are used to make such an assessment.

We are not aware of the state tracking. Arif Hasan, urban planner and architect with the Urban Resource Center, has done studies on the Lyari Resettlement project two decades ago. They found that most people resettled complained they lost access to social networks and jobs, closeness to families and people who could assist with finding jobs, security, and access to schools where children could walk safely. They also complained they did not have necessary utilities, amenities, solid waste management services in new sites compared to their original neighbourhoods and they had to travel more to reach the work site. Most people rebound from peripheral relocation sites to their old neighbourhoods to preserve social, cultural and economic ties.[[11]](#footnote-11)

1. What legal, institutional and/or practical legal arrangements have been put in place or would in your view need to be put in place to ensure that international human rights standards and national regulations are upheld before, during and after resettlement; that adequate compensation is provided to all affected, regardless of the level of security of tenure they enjoyed prior to the proposed resettlement; and that living conditions after resettlement comply in practice with international human rights law, national law and regulations or relevant court rulings.

R&R policies need to be made with a view to the land grab and unplanned, destructive urbanization, especially around the city, in contravention of agricultural lease renewal and zoning laws. Ameliorative laws that give legal tenure to villages and katchi abaadis are being rolled back instead of being implemented in letter and spirit.

The SC ordered the demolitions carried out by the GoS in GN and ON - but the nature and scope of work that followed was beyond the ambit of this slim directive. The Supreme Court (SC) ordered the NDMA to clean Nullahs and remove encroachments and undertake ‘ancillary activities such as ‘disposal and transportation of silt and slush’ from the nullahs.[[12]](#footnote-12) Later state organisations embarked on construction of roads and nullahs post-demolitions and conducted other non-nullah cleaning related demolition operations. What was necessitated was a joint citizen and state task force formed by the court to verify which homes qualify for demolition under the court’s directive both legally as well as physically.

Residents were not engaged in discussion on the proposed projects and this magnified the injustices. Community residents understand the flow of the Nullah and their area’s infrastructure of roads and could have provided technical advice; however, they were never taken on board or consulted with.[[13]](#footnote-13)

1. Is there any group particularly at risk of resettlement or particularly vulnerable to negative resettlement outcomes in your country or in the experience of your organization or company?

Women, children and transwomen (Khwaja Siras) are particularly impacted, Women because they do not have property documents in their name and therefore are not as involved as men in resettlement related court work. Khwaja Siras suffer from systematic housing discrimination as most landlords charge them more. However other risks are created by lack of due process and proper remedial mechanisms for demolitions, forced evictions, and R&R. At the survey stage, a flawed drone survey missed structures and these did not receive an ID even though these structures were demolished and will therefore have to incur problems claiming R&R. At the demolition stage, the state made an arbitrary policy to not compensate structures that lost less than 30%, commercial and religious structures. At the registration stage, some structures did receive an ID, but these were not registered in the government database. When evictees went to register their cases with the office the lack of a systematic method of submission and verification meant most were left in the dark and there was no information sharing about which missing/unaccounted for cases were included or not. Families were also excluded where multiple were living in one home but only one household got an ID. Renters and sub-letters also got displaced but are unaccounted for in the R&R plan.

1. How does the legal and policy framework governing resettlement, expropriation, and compensation ensure that displacement and resettlement does not disproportionately affect some communities in a discriminatory and negative way, and that all affected persons are treated equally and without any discrimination and that nobody is left out? How is non-discrimination ensured taking into account the different tenure status of persons affected by resettlement who may potentially have land or housing ownership; other recognized tenancy rights (e.g. renters, property or land use rights), or may just reside in the affected area without possession of any formally recognized tenancy status?

Discriminations are being reinforced through lack of implementation of existing land and housing laws, and negligence in producing accurate and reliable data on affected people. The Draft R&R and the SC’s decision in the case of the Nullahs has ordered R&R for all regardless of title (leases or stamp paper - unofficial title), but at the same time have deemed all properties as encroachments to evade the LAA 1894 and its mandate to compensate people according to market value.

1. Do you require proof of formal property ownership such as title deeds as an eligibility criterion for resettlement? For those who lack formal property rights, do you require other eligibility criteria such as cut-off dates and proof of other forms of documentation?

The Draft R&R Policy would compensate both title as well as non-titled.

1. What are criteria for determining compensation for those who need to be resettled? Is it cash only, land for land or other mix of criteria? What are the scales of compensation for different types of land and housing, for instance between rural and urban housing or land? Is there compensation for movable or intangible assets? Finally, what is the average time for disbursal of compensation for the people affected?

See the criteria in the Draft R&R policy.

1. Does your country, organisation or company have a recent experience with resettlement that posed particular challenges and what were those? In retrospect, what should have been done differently?

For States and CSOs: in case any such resettlement project was financed by a multilateral or bilateral donor or funding institution, or implemented with the support of an international agency, have the affected communities been able to access any grievance mechanism in relation to the process or outcome of the resettlement and to obtain redress and what was the outcome for the complainants?

n/a

1. Does your country, organisation or company have a recent experience with large-scale resettlement, which has been planned and executed in a human rights-complaint manner, leaving both affected and host communities at resettlement sites enjoying to an equal, if not higher, level the right to adequate housing and other human rights? If yes, what are the process elements that contributed to make this resettlement a success?

 n/a

**How to submit information**

Written contributions not exceeding 2,500 words in length should be sent in English, French or Spanish in Word format to hrc-sr-housing@un.org; and ohchr-registry@un.org (supporting documents may as well be submitted in PDF).

Please indicate **“Input for SR housing - report on resettlement”** in the email subject line. Please include references to reports, text of legislation, policy documents, judgements, statistical information with hyperlinks to their full text or source or attach them to your submission.

All submissions will be posted on the webpage of the mandate, except if confidentiality is explicitly requested.

1. Article 24(2) of the 1973 Constitution of Pakistan: “No property shall be compulsorily acquired or taken possession of *save for a public purpose*, and save by the authority of law which provides for compensation therefor and either fixes the amount of compensation or specifies the principles on and the manner in which compensation is to be determined and given.’ [↑](#footnote-ref-1)
2. In *Ghulam Ali versus Province of Sindh*. P L D 2020 Sindh 284, 2019, the court held that until this law is amended, the executive branch of the government will not decide tenancy disputes and these will be within the jurisdiction of District Courts. Salahuddin Panhwar and Adnan Iqbal Chaudhary, JJ, para 44(1). “After the separation of the judiciary from the executive, the Assistant Commissioner, the Additional Commissioner and the Commissioner/Collector, do not have jurisdiction to make judicial determination under sections 27, 29 and 30 of the Sindh Tenancy Act, 1950, and to that extent the said provisions are ultra vires Articles 175, 202 and 203 of the Constitution of Pakistan, 1973.” [↑](#footnote-ref-2)
3. Coal Rush: The Impacts of Coal Power Generation on Tharis’ Land Rights – Alliance for Climate Justice and Clean Energy.” n.d. Accessed July 28, 2023. Landless farmers or Haris depended on this for livelihoods. Yaksala land includes that leased out by the state, but also provides a path to ownership for the landless. Before colonization land use by indigenous Bheel and Kohli tribes in the ‘villages of the inner desert area was governed entirely by local custom, characterized by a shared access to historical grazing tracts and natural water reservoirs’ This changed when the British introduced a series of laws to privatize, control and dispossess indigenous people.

https://acjce.com/research-publication/uncategorized/coal-rush-the-impacts-of-coal-power-generation-on-tharis-land-rights/. [↑](#footnote-ref-3)
4. Sindh Katchi Abaadi Act 1987 & the Sindh Gothabad Regularisation Act 1987.

<https://skaa.sindh.gov.pk/storage/rulesRegulations/mDRPPgkvuS3100OJFsrTNMRZmNWZo1fxjwGvIWJq.pdf>

http://sindhlaws.gov.pk/setup/publications\_SindhCode/PUB-15-000777.pdf [↑](#footnote-ref-4)
5. *Govt. Of Sind Land Utilization Department*. March 27 1973. Notifications No. KBI/1/30/72/1413/3236 to 3639. 1975. ss. 4, 12. [↑](#footnote-ref-5)
6. *Government Of Sindh Gazette, Land Utilization Department*. August 4, 2010. Notification No. KBI/1/30/72/1413/3236 to 3639. 1975. ss. 4, 12. [↑](#footnote-ref-6)
7. Hasan, Arif, Dh uha Alvi, and Anum Mufti. 2022. Review of *Inside the Underbelly of Karachi*. *Dawn*, November 27, 2022. <https://www.dawn.com/news/1723403>. Areas reserved for farms have been replaced by elite housing such as Bahria Town (186.15 square kilometres), DHA City (47 square kilometres), ARY Laguna DHA City (60 acres) and ASF City (3,000 acres). ‘Many others, such as Commander City, Gulmohar City, Seven Wonders City, Karim Palm City, are between 100 and 300 acres. [↑](#footnote-ref-7)
8. Shehri v CM Murad Ali Shah, Application for Contempt filed by affectees of Gujjar, Orangi and Mehmoodabad Nallahs. Crl.O.P.4-K/2023 in Const. P.09/2010. [↑](#footnote-ref-8)
9. Niamatullah Khan v. the Federation of Pakistan. 2020. Supreme Court of Pakistan [↑](#footnote-ref-9)
10. “Fact Sheet: World Bank’s Engagement in Karachi.” n.d. World Bank. <https://www.worldbank.org/en/news/factsheet/2021/03/29/fact-sheet-world-bank-engagement-in-karachi#:~:text=The%20World%20Bank>.

ENVIRONMENTAL and SOCIAL FRAMEWORK, ESS5: LAND ACQUISITION, RESTRICTIONS ON LAND USE AND INVOLUNTARY RESETTLEMENT. ” n.d. Accessed October 8, 2023. https://thedocs.worldbank.org/en/doc/796881511809516397-0290022017/original/EnvironmentalSocialStandardESS5FactSheetWBESF.pdf. [↑](#footnote-ref-10)
11. Hasan, Arif. 2004. Review of *LIVELIHOOD SUBSTITUTION: THE CASE of the LYARI EXPRESSWAY*. Karachi: URC Series. [↑](#footnote-ref-11)
12. Niamatullah Khan v. The Federation of Pakistan. 2020. Supreme Court of Pakistan [↑](#footnote-ref-12)
13. Members of the Orangi Nullah Mutasirin Committee said that Had they been consulted with they would have advised about the various design flaws and saved cost and the area from future disasters. For example, at Sharah-i-Orangi, a bridge was raised in height and rendered homes that were previously at road and nullah level almost seven feet below the road and the nullah; hundreds of such homes around this area are now prone to flooding from the nullah. [↑](#footnote-ref-13)