

PUBLIC LAND

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**Wasting Public Wealth—The
Antecedents and practice of Public
Land Management in Pakistan**

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ABSTRACT

Land is considered a valuable public asset and its efficient management can bring in ample advantages to its holders. Pakistan, like most other countries in the world, has a sizeable portion of public land. Both the Federal and the Provincial governments hold vast amounts of this valuable asset. However, there is no concise estimate of its size, no central data repository and no balance sheet reflecting its value. Evidence indicates that it has been poorly managed, implying significant forgone revenue to federal and provincial governments. This role in direct management of public lands has evolved out of historical circumstances, primarily the partition. Moreover, laws governing management of these lands evolved out of British laws or have remained the same. Unless the manner of management of these lands changes drastically, the status quo is set to prevail.

INTRODUCTION

Every government around the globe has various types of assets at its disposal, some naturally occurring while others are man-made. One of the most prized asset in possession of governments is land, lying unused or with some infrastructure built on it. If utilised poorly, this valuable asset could become more of a liability with significant opportunity costs. For example, a railway station, a fallow lying land, dilapidated disused city centre, an unused stadium or a long disputed property or poor utilisation of rich urban land are all examples of assets that, if professionally managed, would add to employment and growth. Perhaps more importantly, the revenue stream would provide the fiscal means to governments to pursue development work without resorting to predatory taxation, especially in the cities. This (the use of land based financing to finance urban infrastructure development rather than predatory taxation) was one of the leading recommendations of a G20/Organisation for Economic Cooperation and Development (OECD) Task Force formed in the aftermath of financial crisis of 2008 (Psarakkis, et al. 2020).

This paper wants to draw attention to a very important aspect of economic management in Pakistan: managing public lands! There exists enormous wealth in the country, especially our cities, in the form of government owned land ('public land'). Yet, Pakistan's policymakers and successive governments have been exceptionally incompetent at managing this wealth. Since publically owned lands are an asset that can work wonders for sustainable development of cities, it is important to study its evolution, use/misuse and laws governing them.

PUBLIC LAND IN PAKISTAN

Governments around the world tend to hold vast quantities of assets in cities, especially land. The IMF carried out an analysis of public sector balance sheets of its 15 member countries, and concluded that their non-financial assets were 121 percent of their GDP. In this percentage, land stood at one-fifth of the total, persistently wasted away through corrupt practices.¹

Box 1: Pakistan's Complex Land Record System

Pakistan has an exceptionally complex land management system, especially management of public land. There is no public information regarding the number of landholders or their record. An estimate in 2004, however, stated that there were 190 million land records of 50 million landowners. Within this, the record of public lands was in registers of 14,000 patwaris of revenue divisions scattered across Pakistan, each of them carrying 17 registers that contain demarcations and ownership details (Source: Blue Chip Magazine, Vol 1, Issue 3, August 2004). There is no indication that the complexity has lessened since then. Land management, dispute resolution, demarcation, evaluation and retrieval are the proviso of the Revenue Authorities of a province, with the chain running from Commissioner all the way down to Superdars/lambardars. The officials of the authority have can confiscate or award land to any party as per the decisions made at the AC, DC or Commissioner level, under the provisions various acts. Moreover, they are charged with collecting revenues on behalf of the government. In crop growing areas, for e-g, superdars collect the estimated revenue on mature crops. The assessment is usually done on the basis of book value rather than market value.

¹'How to prevent misuse of government-owned lands'

Land is a huge investment attraction in Pakistan, more so than any other sector. But despite its huge attraction for domestic and non-resident Pakistanis, there is no concise estimate of its total market size and neither are any authentic figures available in terms total investment taking place in land. One estimate, for example, concludes that the market for land in Pakistan is worth \$300 billion to \$400 billion, with 100 industries directly or indirectly related to land related development.² Dowall (2009) claimed that public land in Pakistan's major cities is 20 to 40 percent of the total land. A considerable portion of this land is owned by the Federal and provincial governments, divided among its departments. However, nobody in the public or private sphere has any idea of the total quantum of this public land and its estimated value.

In other words, there is no concise, central estimate of how much land is owned by the federal and the provincial governments. Data on land is patchy, sparse and difficult to obtain. Estimates of figures and their use appear separately in separate publications (official gazettes, for example), audit reports, newspapers, etc. Capital Development Authority (CDA), for example, publishes Islamabad's land data on its website, but does not provide any estimates of public land and its utilisation. The Evacuee Trust Property Board (ETPB), which handles properties left by those who immigrated after partition in 1947, owns 100,000 acres of land (both rural and urban), but this information is not publically available. The table at left reflects the vast landholding status of some of the departments, information about which is scattered rather than being present at a central repository.

Table 1

<i>Government Departments and Their Land Holdings</i>	
Organisation	Total area
Railway	167,690 acres
ETPB	100,000 acres
Cantonment	600,000 acres
Pakistan Steel	18,660 acres
Auqaf (Punjab)	75,000 acres

But as stated above, these lands are underutilised, inefficiently managed and constitute a waste/ lost opportunity courtesy of poor management and corrupt practices. The following table, as well as graphs, amply depicts this fact.

In the province of Khyber Pakhtunkhwa (KP), Auqaf department owes a total of 65,101 kanals of land all over the province. Of this, by end 2020, seventy-one percent (46,655 kanal) was under illegal occupation. From the remaining twenty-seven percent (17,712 kanal) land under Auqaf's possession, the total income in 2021-21 stood at Rs 197 million, implying an income of Rs 11 million/kanal. Going by this calculation, Auqaf department is losing an annual prospective income of Rs 514 million per year against its occupied land.³

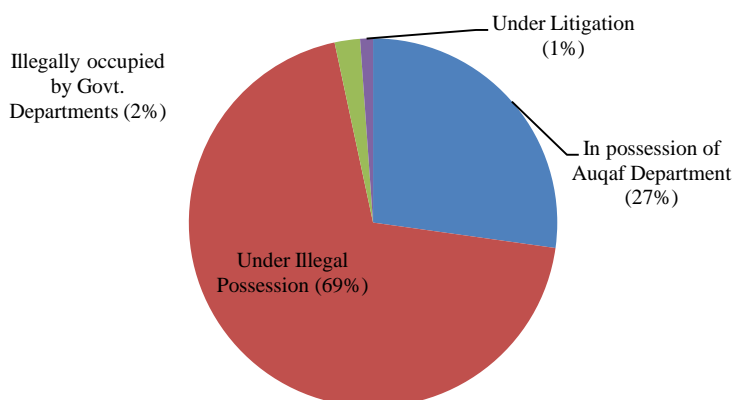
²'Pakistan's 2020 real estate prospects and challenges'.

³Presentation to Standing Committee, Auqaf Department, KP Govt.

Table 2

State of Public Land Utilisation by Various Departments

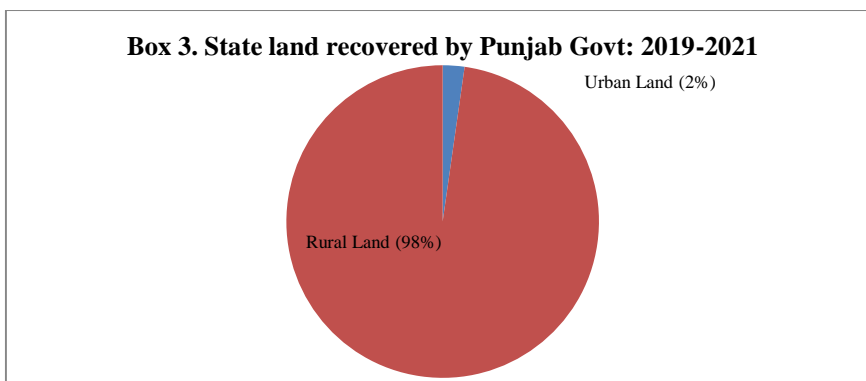
Organisation	Land utilisation
Civil Aviation Authority (CAA) and PIA	Six expensive foreign properties of PIA, bought in places around the world like New York, Amsterdam and Mumbai are lying vacant since early 1980s. There are a total of 31 airports listed by CAA. Of the total flights received in 2018-19 (177,214), 90 percent were received only by 8 airports. 5 airports received less than 10 flights during the whole year, with Sui and Sehwan receiving none ⁴
Pakistan Post (PP)	PP owns 4,172 buildings across the country asides from 49 valuable but empty plots (mostly in urban areas). Of these, 3,252 are residential buildings, mostly for staff. As of 2018, 625 such properties were illegally occupied
Railway	There are 70,100 residential buildings (besides hundreds of ‘service’ buildings) owned by Railway in every major city, but not a single penny from them accrues as rent since they are used by Railway officials for free (the officers, meanwhile, charge monthly rent from the attached servant quarters). Their market rental value is in billions of rupees per month. Between 2012 and 2019, around 4,000 acres of its occupied land is claimed to have been retrieved, while more than 2000 acres still remained occupied. ⁵ A large number of railway stations remain unutilised, while a number of railway stations have been abandoned, meaning land remaining unused. It has its own land marketing company, REDAMCO (established in 2012), which sells/leases out Railway land. Till now, it has earned Rs 200 million
Auqaf (Punjab)	Out of the total possession of land measuring 75,000 acres, 45,000 acres remain uncultivated/ unused

Box 2. Status of 65,101 Kanal of KP Auqaf Land

⁴ Source: ‘Major traffic flow by airports during the year’, CAA

⁵ Source: Railway Year Book 2017-18

This is land of just one department in KP that remains unutilised due to illegal occupation or other such instances. Overall, there's considerable amount of state land that remains encroached upon. As per the details available, in the last few years, KP government has recovered 4,100 kanals (valued at Rs 60 billion) in 30 districts of the province, indicating that a lot more land remains to be recovered.⁶



We find a somewhat similar case in the Punjab, where the provincial government has claimed recovering vast swathes of illegally occupied government land in the last three years (shown in accompanying graph). As per the details, the state government retrieved a total 180,411 acres of illegally occupied land between 2018 and 2021, with an estimated value of Rs 462 billion.⁷

Box 4. Classification of State Owned Land

State-owned land is generally classified into the following categories-

- (a) State land assigned to individuals for various uses including cultivation, storage etc. on a temporary basis. This type of land can normally be resumed by the state;
- (b) State land granted to individuals under various schemes like cattle breeding, horse studs etc. In this category, the ownership belongs to the state and it is possessed by the citizens on a temporary basis against a nominal annual rent to be paid by user to the state;
- (c) Governments used to grant lands to the influential citizens as Jaagir (gift, largesse). The Mughals and then British mostly did it. After independence, Jaagirs were abolished and the government resumed possession of lands;
- (d) State Land is cultivated directly under the State. Under this arrangement, the land is cultivated by tenants and agreed rent is paid either in cash or in kind to the state;
- (e) State land that is temporarily allotted on some payment schedule to the citizens under various colony schemes so that the citizens could make these lands cultivatable. After these are made usable or cultivatable, then the ownership may be transferred in the name of that citizen;
- (f) There are many parcels of state land that are under illegal occupation of the citizens and state does not have the will to evict them or does not want to evict them;
- (g) State lands that are under some government scheme or are under afforestation; and
- (h) State lands that are barren and are not under cultivation or cannot be made cultivatable due to its inhospitable terrain or unsuitable soil
- (i) 'Shamilat land' is a grant given by the State, out of State land, to the owners of the village to be used for their common purposes and is usually granted at the time of settlement;

Source: 'A Guide on Land and Property Rights in Pakistan' (2012), UN Habitat.

⁶ 'KP govt recovers Rs 60 bn land from encroachers'

⁷ DAWN, 22nd August 2021, p.4. Complete list of retrieved land by districts is given at Annexure-A

The issue of land grabbing, dubious leases and encroachments on public lands is common, and examples are too numerous to fit into this research effort. Out of 100, 000 acres public land under ETPB, for e-g, 20,000 acres have been under illegal occupation, with occupants including other government departments. In one particular case, it was found that the *Auqaf* department had leased out public property for setting up a petrol pump, whose rent was fixed at a measly Rs 4,000 per month for 30 years.⁸ In Karachi, there are an estimated 7,882 residential units that have been built on public land. Out of these, 4,100 units remain occupied without paying any rent since 1970s.⁹ In Islamabad, 30 government-owned properties have been used by seminaries without paying any rent since 1966.¹⁰ On Lahore's Mall road, which arguably constitutes it's most valuable location, shops established on public land are still rented out for as low as Rs 3,000 per month. Hundreds of acres of public land behind the state bank building on the same road is being used by businesses without paying any worthwhile rent for the use.

Arguably the most noticeable aspect of these lands, more than the fact that some of it has been recovered, is that they had remained (and a considerable portion still remains) under illegal occupation, inflicting a substantial quantum of opportunity cost primarily in the form of forgone monetary rents. The quantum of the probable cost, though, remains un-calculated.

All the above mentioned are closely related to historical evolution of public land management. The following section briefly goes over the genesis of public land issue in Pakistan, the legal underpinnings of this particular issue, and why public lands are such an important concern in terms of public wealth?

BRIEF HISTORY OF EVOLUTION OF LAND OWNERSHIP AND ITS DISTRIBUTION

The modern-day acquisition of land for public purposes, or declaring land as government or 'crown' property, has a history dating back almost 200 years. It began with the 'Bengal Regulation of 1824', enacted by East India Company, meant for acquiring land for its personnel and for building large-scale infrastructure. This regulation was modified/repealed several times (1850, 1863 and 1870), finally replaced by the 'Land Acquisition Act of 1894', which is still the primary acquisition law used by the government in Pakistan.

Before the East India Company, all land belonged to the ruler. But with the advent of the Company followed by direct British administration after 1857, there began a process of granting private ownership/ entitlements of government lands to individuals that continued up till the end of their rule in 1947, a policy standing in contrast to the Mughal policies whereby land giveaways could be later retrieved for reasons ranging from death of landholder to the Emperor's non-approval/dis-likeliness. The reasons for land distribution and giveaways under the British administration were diverse, from buying loyalties, establishing denser population centres in the western part of the sub-continent to earning revenue through commercialised agriculture. In the case of revenue generation from agriculture, for example, it was reasoned that the collective ownership

⁸Civil Petitions No.522-L, 523-L & 588-L of 2013

⁹'Federal govt land worth trillions remains illegally occupied in Karachi'

¹⁰'Government houses in Islamabad used as seminaries'

model followed before the British did not yield enough revenue and was inefficient/unproductive. Moreover, it was not geared towards commercial production of crops, something that held a lot of promise in terms revenue generation. Thus, the process of giving away highly subsidised land began after the British surveyors carried out surveys and undertook revenue settlements in each district.¹¹

The vast scale of distribution is best illustrated by the table that reflects settlements of ‘canal colonies’ in what now constitutes Pakistani Punjab.¹²

Table 3

Subsidised Land Distribution in Canal Colonies of the Punjab

Colony	Time	District	Land distributed (in acres)
Sidhnai	1886-88	Multan	250,000
Sohag Para	1886-88	Montgomery (Sahiwal)	86,300
Chenab	1892-1930	Gujranwala, Lyaalpur (Faisalabad), Jhang, Lahore and Shiekhupura	1,824,745
Chunian	1895-1905	Lahore	102,500
Jhelum	1902-1906	Shapur, Jhang	540,000
Lower Bari Doab	1914-1924	Montgomery (Sahiwal), Multan	1,192,000
Upper Chenab	1915-1919	Gujranwala, Sialkot and Sheikhupura	78,800
Upper Jhelum	1916-1921	Gujrat	42,300
Nili Bar	1916-1940	Montgomery (Sahiwal), Multan	1,650,000

The British left, but the distribution of public land never stopped, and continues unabated till this day! At the time of independence, vast swathes of public land (in rural areas and cities) came to be settled by migrants without any authorisation since there were not enough housing units to cope with such a huge surge, with substantial portion of that land being regularised by 1960.¹³ By 1951, the process of establishing canal colonies and land giveaways had resulted in 80 percent of the agricultural land being privately owned, while the sizeable portion of land in cities remained under government ownership (‘Crown Land’). Similarly, ownership of specific land like forests remained with the government.¹⁴

Box 5. What is ‘Public Purpose’?

Black’s Law Dictionary (5th Edition) defines it as “A *public purpose or public business* has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity and contentment of all the inhabitants or residents within a given political division, as, for example, a State, the sovereign powers of which are exercised to promote such public purpose or public business”

¹¹‘The Punjab Canal Colonies, 1885-1940, 1979’, p.1

¹²Identity Based Policies and Identity Manipulation: Evidence from Colonial Punjab’, p.47

¹³Further details in section titled ‘Government Footprint’

¹⁴‘State and private enterprise in Pakistan’

Just as government has continuously been giving away land under the garb of ‘public purpose’, it has been in a continual process of acquiring more private land under various laws. Thus, the pattern of public land holding does not remain constant. For example, government recently acquired land for construction of Diamer-Bhasha Dam, while the Khyber Pakhtunkhwa (KP) provincial assembly passed a bill in November 2019 under which all mines and minerals of ex-FATA became public property owned by the KP government.¹⁵ Interestingly, all over Pakistan (especially in Punjab and Sindh), government has been acquiring (at market rates) the same land from private individuals for its projects (roads, power houses, factories, dams, etc.) that were once provisioned to the same families at highly subsidised rates (as in the case of canal colonies)!

In terms of government servants (civil service, armed forces, judiciary), the issue of doling out subsidised land is closely tied to the Constitutional and legal obligation for provision of housing (discussed in detail in following sections), with rules undergoing change over time. Up till 2007, for e.g. a Grade-22 bureaucrat was entitled to get a single plot. But in 2007, the then PM Shaukat Aziz approved an additional plot for Grade-22 officials as a ‘gift’ upon his/her retirement. Briefly put, plot costing Rs 10 million at market rate is doled out at Rs 0.1 million to government servants.¹⁶ Up till end 2020, under this policy, a total of 604 additional plots were doled out to judges, bureaucrats and generals, which the IHC declared illegal on 25th August 2021.

Interestingly, the antecedents of such giveaways remain controversial. For example, in ‘The Supreme Court Judges Leave, Pension and Privileges Order 1997’, nowhere is there a mention of judges being eligible for subsidised plots. Similarly, the provision of agricultural land to retired generals of army was started in the 1960s when General Ayub Khan was at the helm, with his initial request for land grants to army men dismissed by General Douglas Gracy, Pakistan’s first army chief, in 1947.¹⁷

Recently, with the coming to fore of the scandal involving more than two plots to judges and high ranking bureaucrats in one of Islamabad’s sector,¹⁸ it is clear that the rent-seeking for subsidised, extremely valuable plots at throwaway prices remains well-entrenched has attained new highs.

THE CONSTITUTION AND LAWS UNDERPINNING ACQUISITION OF LAND BY THE STATE

Land and land related matters are dealt under several Articles of Pakistani Constitution of 1973, i.e., Article 23, 24, 152, 172 and 173. While the former two (Article 23 and 24) enshrine private property rights, the latter two (172 and 173) deal with owning and disposing of publically owned properties. Article 172 posits that any property not privately owned will be considered government property (provincial or federal), while Article 173 gives provinces and the federal government the right to grant, sell, mortgage or dispose off any public property under their ownership. The Constitution of Pakistan, under Article 152, allows the federal government to acquire property situated in a province or ask the province on its behalf to acquire the property for a purpose under which it has the power to make laws through the Parliament. It can also acquire a

¹⁵Bill passed to declare all ex-FATA mines and minerals government property’.

¹⁶‘When will I get my plot’ (translated from Urdu).

¹⁷Ayub Kahn was a Brigadier at that time.

¹⁸For the moment, IHC has declared these allotments as illegal.

province' land under mutual consent. As such, there is no defined limit on the extent of the land that can be acquired by the central or the provincial government.

An important component of these is a particular sub-clause of Article 24 (3 'e' 'ii') of the Constitution, which has a direct bearing upon the provision of subsidised land. Although the article provides for security of individual property rights, its clause 2 and 3 provide for compulsory acquisitions under public purpose pretext, which includes "providing housing and public facilities and services such as roads, water supply, sewerage, gas and electric power to all or *any specified class of citizens*". Therefore, there exists a legal and Constitutional basis for the public sector's involvement in terms of providing land and housing facilities, primarily under the 'public purpose' aegis (derived from the 1894 Land Acquisition Act) which is based upon the Roman Empire era principle of '*Salus populi suprema lex*', that the interests of the public are supreme and that the private interests are subordinate to the interest of the state!

Further, Under Article 142(c) of the Constitution, provinces have the right of amend the rules contained in Land Acquisition Act of 1894. Accordingly, Punjab government came up with its own Land Acquisition Rules of 1983 that have to be read in conjunction with the 1894 Act. Interestingly, local governments have their own set of rules under respective local government acts, which empower them to acquire property besides the ones that have been conferred upon them by the provincial government. For e-g, the KP Local Government Act 2013 confers the right upon local governments to acquire, manage and develop public land. Additionally, without the consent of local government, the provincial government has no authority to take back or divest away the properties conferred upon the local government.¹⁹ In provinces, it is the respective Board of Revenue (BOR) that is the custodian of public properties. Further, there are 'Development Authorities' that dot the federal and provincial landscape, who oversee land acquisition and land development and matters related to it. For example, there are three housing development authorities (Capital Development Authority or CDA, Federal Government Employee Housing Authority or FGEHA, and Public Housing Authority or PHA) operating simultaneously in Islamabad. Similarly, in Karachi, there are seventeen different agencies that are dealing with land titling and registration matters (with 24 sub-registrars), including matters related to government owned lands.²⁰ This only serves to complicate matters related to public land use.

The basic law of acquisition is the 'Land Acquisition Act 1894', complemented by laws like Cantonment Land Administration Rules (CLAR) 1937 and Financial Regulations 1986. There are a plethora of other laws as well that deal with the issues of public lands and acquisition of land for public purpose by the central or provincial government. These include 'Colonisation of Government Lands Act 1912', 'Government Grants Act', 'Central Government Lands and Buildings (Recovery of Possession) Ordinance, 1965', 'Cantonment Property Rules 1925', etc. The extensive discussion of all of these is beyond the scope of this study, but in one manner or the other, all of these have been used in courts and relied upon by them to administer verdicts in terms of declaring a certain government acquisition legal or illegal. For e-g, Cantonment property rules confer authority upon Cantt executives/management to acquire land in the name of the central government.

¹⁹Chapter IX, 'Local Government Property', The Khyber Pakhtunkhwa Local Government Act 2013.

²⁰'Making spatial change in Pakistani cities growth enhancing', p.15.

Box 6. Cantonment Land Use

Under the ‘Cantonment Land Rules of 1937’, the three branches of the armed forces were permitted to use land allotted to them for departmental purposes, barring use for any commercial purpose. Over time, though, the land in question was leased out or sold for commercial ventures. In 2008, in order to give finality to the matter, the department of Defense moved a summary titled ‘Use of A-1 land for commercial and welfare activities by the three armed services and Canteen Stores Department’, which was signed into effect by the then care-taker President. Accordingly, the disputed issue of sell-off or commercial use of land before promulgation of the Ordinance was deemed *‘fait accompli’*, meaning it could not be challenged in any court of law and was now a settled matter. The land in question was bifurcated in 3 categories, namely A, B and C. A and B were marked for commercial activities like shopping malls, cinemas, parks, recreational spots, stadiums, etc., while category ‘C’ was reserved for agricultural activities only. The rent payable to the government, from commercial activities in category A, was fixed at 25 percent of the total, with the rest to be at the disposal of military authorities in accordance with rules/laws approved by their department.

However, it’s not always that the forces pay a certain percentage to the government for use of land falling within Cantonment jurisdiction. In many cases, not a single penny is deposited in the government account. In 2011, for e-g, auditors declared a 2,592 kanal golf course built on government land by the Army as ‘illegal’. All earnings from it go to the ‘regimental account’ rather than federal Govt. treasury.

The main issue that has risen over time in context of application of this Act is the interpretation of ‘public purpose’ for which the land is acquired. This aspect assumed added importance in context of the law/act permitting government to buy land on behalf of a private company (‘Company’ in the Act) since this leaves the door ajar for misusing government discretion to dole out favour to a specific person or party. Innumerable number of cases accusing government of such favours has landed in courts. In general, the Supreme Court (SC) has ruled that ‘public interest’ means acquisition that in the end benefits a large segment of the population rather than a few.

The data regarding public lands, their utilisation, occupancy and ownership by various public departments, etc., remains a closely guarded secret. There is no information, for e-g, available upon how much land has been acquired over the years under ‘public interest’, to whom has it been allotted, for what purpose (commercial, residential) or the income generated from these lands. Some departments/ land development agencies, though, have laws that clearly state provision of public land to public functionaries (at subsidised rates). For e-g, Karachi Development Authority or KDA (Disposal of Land Rules 1971) clearly state provision of public land to Sindh government employees, Central government employees, public and defense personnel as one of its core function. At best, one has to rely upon various sources (court judgments, audit and research reports, newspaper features) and using proxies in order to gauge numbers in terms of publically owned lands. For e-g, there is no public information available upon the extent of state owned land in Sindh and its utilisation. However, one

does get an idea that its custodian, the BOR Sindh, makes an expenditure on lands under its ambit under ‘Capital Grants’ head for maintaining its ‘Long-term Assets’ (primarily land). The expense stood at Rs 90 million, 665 thousand in 2013-14 and 2014-15.²¹ Such numbers can be used as a proxy for research purposes.

WHAT EXPLAINS GOVERNMENT’S EVER EXPANDING FOOTPRINT IN LAND MATTERS?

Subsidised housing schemes where plots are distributed to government officers have a long (albeit controversial) history. They have been criticised for perpetuating rent-seeking and corrupt practices, like the acquisition of multiple plots by a single officer. Similarly, retired army officers are awarded hundreds or thousands of acres of agricultural land upon their retirement. But it’s not a recent phenomenon; the outsized role of Pakistani state in perpetuating this culture has a history going back to the very beginning of the country.

Box 7. The Pitfalls of Developing Islamabad under ‘Public Interest’

Islamabad’s original master plan envisioned removal of majority of the villagers from their land, except for a few villages like Said Pur and Noor Pur Shaha in order to preserve the ‘tokens of traditional life’. That meant removing majority of 54,000 villagers from their area to develop various sectors of the capital. Officials acknowledged that such forced removals are not pretty, but will have to be done in ‘larger public interest’ (‘Government of paper’, Matthew Hull, p.170). They were to be compensated as per the average market rates. However, till this day, the issue of evictions to develop sectors has led to a plethora of issues that have resulted in either prolonged legal challenges and recurring physical altercations between settlers and CDA. The challenges range from dispute over the amount of compensation to the legality of official documents pertaining to ownership of a particular land (*khasra*), which have been tampered with frequently (along with other related documents) over time to make matters even more complex.

The terms of land acquisition have given rise to grave issues. Besides reserving plots in developed sectors for settlers from whom the land is acquired, CDA is obligated to reserve a specific quota of jobs for them. Accordingly, a considerable number of people working for government departments in Islamabad have been hired based on this specific quota. But the residents who don’t get hired can create issues for the management. For e-g, 90 percent of the fires erupting in Margalla are started by the villagers who fail to get recruited on temporary basis in summer to patrol the forest.

In 1947, as millions of migrants came to settle in Pakistan, it was the already established forty-six ‘Housing Cooperatives’ to whom the government turned for addressing housing shortages and leased them state land for that purpose. For e-g, 1,200 acres for public land was leased to Karachi Cooperative Housing Society Union.

²¹ Audit Report on the Accounts of Government of Sindh, 2015-16, p.13.

Successive government leased thousands of acres of state land at easy instalments to cooperatives for building houses in order to overcome the housing shortages. The settlements where the migrants settled without any government authorisation were later regularised in the 1960s.²²

Some observers view this subsidised plots and perks phenomenon as pre-partition behaviour that was further consolidated after Pakistan's founding. For example, Qadeer (1996) traces the over-whelming government footprint in provision of housing and related necessities (water, electricity, sewerage, etc.) to the absence of private sector and the need to settle refugees. Initially, some satellite, peri-urban settlements (Paposhnagar, Korangi and Orangi in Karachi, and Sodiwal quarters in Lahore) were developed in various cities under 5-year plans, through which public housing became an institution with the likes of KDA, LDA, CDA and NESPAK type organisations undertaking this initiative at city and national level. KDA, for e-g, evolved out of Karachi Investment Trust (KIT), set up as a body post-independence under the guidance of a Swedish firm (Merz Randall Vetten or MRV), who developed the city's first 'Master Plan', primarily to settle refugees. The initial forays later led to consolidation of public sector's role in developing housing societies and government buildings as the over-all public footprint in economic activities increased. Developing a new capital in Islamabad, for example, required large-scale construction of government buildings and residential quarters/colonies to house the bureaucracy.

By the end of 60's, there was an implicit recognition that government mandated housing and land policies were not desirable since many goals remained unachieved. For example, at the end of Third Five-year Plan, Planning Commission (1971) acknowledged that "the physical planning and housing policies pursued so far need a thorough reexamination and reorientation". In other words, they suggested revisiting public sector's mammoth footprint in provision of housing and land related issues. But the increasing influence of aid/donor agencies and populist politics further perpetuated public footprint in matters related to land utilisation. Under the Z. A Bhutto government (1971-77), the scheme for subsidised housing was extended to poor households in the form of 3 marla (675 sq.ft) plots in urban areas and 5 marla (1,125 sq.ft) free plots in rural areas for landless peasants, a scheme that continued during 1980s under General Zia's regime, which came up with its own plan in the form of 5 marla and 7 marla plot schemes.

Other than the political angle, aid agencies and donors came up with their own plans or developing housing and cities. United Nations Development Program (UNDP) was the first to make a foray into this aspect of economic planning, funding land utilisation on project-wise basis. The first of the concise plans for area development, the 'Master Plan' for Islamabad, was developed by Greek architect Doxiades in a time when economic policy was under the influence of Harvard Advisory Group (HAG). This was followed by the Master Plan for Karachi (1968) and Lahore's Urban Development study (1976, a form of the Master Plan funded by the World Bank). Till this day, donor agencies have had a notable presence in government planning when it comes public policies regarding land utilisation.

²²About Pakistan.

Box 8. Potential vs. Realised Income—Punjab and Islamabad

The total public land held by the Punjab government is estimated to be 39 lakh acres. But this is not a confirmed estimate! The provincial government still lacks updated land cadastral that could clearly demarcate state land. Also, there are issues related to encroachments and illegal cultivation, etc. Not surprisingly, these give rise to inefficiencies, reflected in difference between expected and potential income from this asset. The total expected income from these lands was expected to be Rs 1.25 billion in 2019-20. However, the actual earning was even less: Rs 44 crore only.

A recent exercise carried out by the FBR in Islamabad led, to devaluation of property prices as per the DC rate determining methodology. The market rate, of course, was substantially higher. Among other things, this meant a potential loss of Rs 30 billion to the exchequer in the form of lesser taxes (like Capital Gains Tax or CGT). Comparison of DC and market rates is presented in the following table.

Location	Jahengi	Tarnol
DC rate	Rs 1.5 million per Marla	Rs 1.2 million per Marla
Market Rate	Rs 5 million per Marla	Rs 5 million per Marla

Source: ‘State Land: A negligent area’, M. Akram Bhatti and ‘Property valuation: Revision in DC rates to cost public kitty Rs 30 billion’, Mehtab Haider.

In short, the plot and perks culture is intrinsically linked with government’s overwhelming role as a supplier of housing in the housing market. Over time, the plans to develop houses have morphed into a culture of providing subsidised housing to the most influential groups within the country (bureaucrats, armed forces and judiciary). Plots are doled out at one-sixth or one-eighth of the market price, under the guise of specific schemes or exemptions (like ‘DC rates’). This phenomenon, by now, is an entrenched behaviour that has been in practice since the late 60s at least, causing considerable loss to the exchequer. A government inquiry (1991), for example, found that in the Punjab, provincial departments and local development authorities doled out 318,952 plots over a forty-year period, earning revenue of Rs 6.9 billion at DC rates, which at market rate were worth Rs 63.9 billion, implying a subsidy equivalent to 9/10th of the market price.²³ The total subsidy amount (Rs 57 billion) was equivalent to Federal government’s total income that year.

THE AVENUES/METHODS OF PUBLIC LAND MISUSE

The Framework for Economic Growth (FEG, 2011) notes that “There is no urban planning, only ‘project-based’ development”. Moreover, “weak and fragmented city administration has resulted in incoherent, non-professional and non-consultative city planning”. This fragmented structure, with unclear rules and plethora of agencies each vying for a bigger size of the pie, has resulted in decades of questionable practices and tremendous waste in terms of how this valuable asset is being doled out.

²³p.7

Box 9: Karachi Port Trust (KPT): The Fiscal Impact of 99-year Leases

KPT represents a pertinent example of the negative fiscal impact of 99 year leases, plus rent-seeking in the garb of developing land. Three such instances clearly reflect the large-scale practice and abuse of such schemes.

In 1996, it leased 130 acres of state land to its own KPT Cooperative Housing Society at only 10 paisa per square yard, all of it meant for allotting plots to its own employees. In 2007, KPT reached an agreement with Defense Housing Authority (DHA) to officially lease 881 acres of its prime land for 99 years at throwaway prices. The rate was set at a premium of Rs2.5 per square meter and an annual rent of 18 paisa per square meter. The DHA agreed to pay Rs8.913 million as premium and Rs 641, 758 as ground rent. Previously, KPT had accused DHA of encroaching upon this land since 1975-76. In return for the deal, DHA granted KPT 3 percent share in the total area, with KPT having the right to sell the plots aside from its select group of employees getting management membership status. The estimated market price of the 881 acres was Rs 60 billion at that time.

In 2011, KPT leased out prime land measuring 380 acres for duration of 99 years to two housing societies (Khayaban-e-Roomi and KPT Cooperative Housing Society). The total agreed rent was Rs 540 million, when the land's market worth at that time stood at Rs 25.84 billion.

The vast land holdings by the federal and provincial government departments all across Pakistan are badly managed, with little to offer in terms of financial returns to finance development. Instances concerning underutilisation of land and facilities (like buildings), illegal allotments, protracted legal battles, corrupt practices and encroachments on state land are common. Such instances also feed into many economic and social phenomenons. For example, one outcome of poor regulations and patchy data is the widespread inequality in land use. In Karachi, only 36 percent of the population lives in formal settlements that consume 77 percent of the total residential land²⁴. Similarly, of the total area in Islamabad (906.50 sq. km), around 52 percent (466.20 sq.km) is designated as 'rural area' by the CDA,²⁵ which leads to serious official undervaluation of assets like land. This also implies that these areas pay lower taxes than the one designated as urban. This kind of evaluation and characterisation is common in all major cities of Pakistan, mostly using the 'book value' (tied to historic costs) rather than market value according to International Financial Reporting Standards (IFRS).

This undervaluation of assets, both public and private, was clearly reflected in a recent exercise undertaken by the Federal Board of Revenue (FBR) in twenty major cities of the country. Pakistan's major commercial and financial hub, Karachi, was divided into 196 areas for valuation, with some areas getting an upward revision by almost a 100 percent while others getting an upward revision by 15 percent only.²⁶ Besides Karachi, nineteen other cities were also evaluated for the value of their commercial and residential properties. Despite the revised exercise, FBR admitted that the revised rates had only brought the properties to only 60 percent of their market value.²⁷

²⁴'The six biggest challenges facing Pakistan's urban future'.

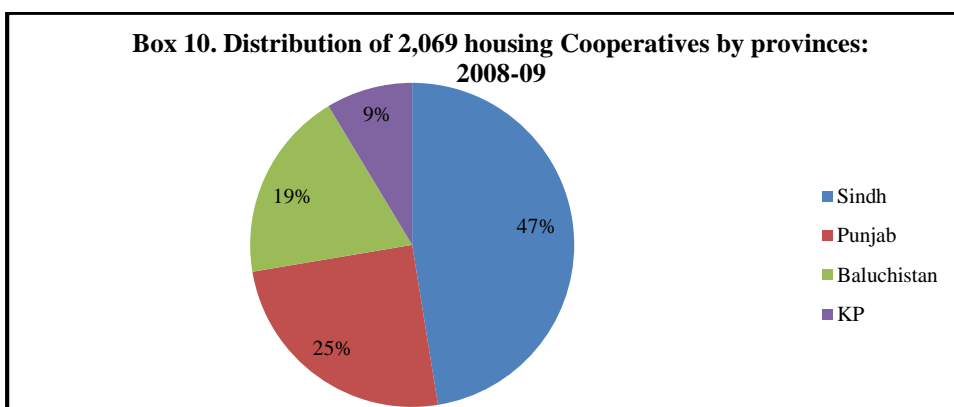
²⁵Source: CDA.

²⁶S.R.O.120(I)/2019.

²⁷FBR revises land valuation upwards for 20 major cities.

Misuse of these lands, in terms of financial gains through the differential between subsidised rates and market rates, is quiet common. There are several tools at disposal of government officials to optimise on that differential, namely ‘DC rates’, ‘Book Value’ of an asset and the ‘99-year lease’ rule (see Box 9). It can also take the form of subsidised plot provision under a welfare enhancing scheme (as in case of martyrs of armed forces). In short, Government departments, over time, have come up with innovative methods in terms of optimising upon existing or bought public land for gaining financial rewards. These instances may involve a single government department that has government land under tutelage, and then reaches an understanding with a private developer in return for some favour.

Within the government departments, the trend of employees forming ‘housing societies’ is pretty common, who usually end up getting plots at subsidised rates (see box 9 regarding KPT land use). Yet another method of utilising the benefits offered by subsidised land is the coming together of two government departments for developing a new housing society. An example in this regard is the ‘Islamabad New City Scheme’ that was the joint venture of CDA and National Highway Authority (NHA), which was later scrutinised for corrupt practices that involved some members of Parliament besides officials of the two departments.



Cooperative Housing Societies have existed since 1860 with the application of Cooperatives Act, with the aim of ‘improving’ the societies formed on the basis of charitable acts, diffusion of knowledge, literature and arts.²⁸ With the passage of time, the ambit of its activities grew to include diverse areas such as loans and housing/construction. The Cooperatives Societies Act 1925, a modification of the 1860 Act, for e-g, allows the societies to act as ‘Financing Bank’ and to ‘promote economic interests of its members’. The land and housing activities of cooperatives are based on this this particular aim of promoting economic interests of its members. These have tended to serve as another conduit for public land being used for personal gain rather than larger interest of the populace.²⁹ Several such societies have by now morphed into

²⁸‘Societies Registration Act 1860’.

²⁹For an excellent analysis of historical rise of cooperatives in the sub-continent, see ‘About Pakistan’, by Co-Operative Housing International.

commercial land-dealing entities that make use of a particular government scheme. For e-g, DHA evolved out of Pakistan Defense Officers' Cooperative Housing Society (PDOCHS). The modus operandi is the same: getting state land on lease from provincial or federal government at concessionary rates, which are then sub-leased to members. By 2008-09, housing cooperatives had built 2 million, 274 thousand housing units all across Pakistan.

However, gains from such concessionary leases are not evenly distributed. There are innumerable examples in this regard. Cooperatives were banned in 1960s given complaints of corrupt practices. The Punjab government put a ban upon Cooperatives in the 1997 after a massive scandal involving embezzlement of millions of rupees surfaced. One famous case was the early 2000's 'Cooperative Society Scandal' in KP (then NWFP), which revolved around illegalities in allotment of plots at Hayatabad (Peshawar). The main beneficiaries were a former Chief Minister and DG Peshawar Development Authority (PDA), who managed to eke out several plots under the names of their relatives and servants.

A recent SC document regarding case against housing cooperatives suggests that at present, the number of housing cooperatives have declined to 667. The apex court has ordered investigations into the dealings of 279 of these societies.³⁰ In 2017, seven cooperative housing societies were banned in Islamabad for being involved in fraudulent practices.

'Land swap' is a comparatively unknown, lesser heard method of land acquisition for 'public purpose'. This could be done to facilitate a private concern, or used as bait when the issue of displacing people to develop a housing scheme/sector is at hand. It has been in practice since at least late 1950s and continues on till this day. There is, however, no data regarding the swapped lands! In 1962, for example, CDA offered plots in the I-9 and I-10 to villagers as a swap for their land to develop these sectors. For those who wanted to remain tied to agriculture for livelihood, a swap of 0.5 acre in Islamabad for 12.5 fertile acres in South Punjab was offered. Complementing these swaps was the initiation of a policy to recruit lower level staff from the displaced persons (a policy that continues till this day), as an acknowledgment of their 'cooperation' with CDA.³¹

CDA is a prime example of how this loot sale in the name of provision of subsidised housing has turned out to be an adverse venture in terms of inequality and lopsided gains for elites. The process of land acquisition that began in 1961 has so far resulted in acquisition of 305 sq-km land through 527 awards for land acquisition, upon which innumerable subsidised housing schemes have been built. In a recent judgment regarding claim of compensation against CDA by affected villagers of Islamabad, whose lands were acquired by CDA for developing subsidised housing societies, the IHC found that there had been wide-scale misuse of powers as plots in the acquired land was provided at throwaway prices to elites (mainly CDA personnel) while about 11,000 villagers had been kept bereft of agreed upon compensation (much lower than the market rates) for decades. Within this land grab, those occupying higher positions (CDA Chairman and Members of CDA Board, etc.) were able to get allotment for more than

³⁰Probe needed into 279 housing societies' affairs'.

³¹Chapter 4 (The expropriation of land and misappropriation of lists) in 'Government of paper: The materiality of bureaucracy in urban Pakistan'.

one plot. Of the total of 30,971 subsidised plots that were doled out at hardly 10 percent of the market value, 23,844 (77 percent) were allotted to CDA officials, board members and employees.

Box 11. Islamabad—The Heavy Cost of Subsidising the Elite through Public Land

Spread over a vast 352 acre (2,816 kanals), Islamabad Club is located at one the most prime locations in the federal capital. For a land whose value at present runs into billions of Rupees, and that could potentially earn millions of rupees in rent per month, its per month rent being collected by the government at present is an unbelievable Rs 3 per acre!

The case of Islamabad club is a vivid reflection of the public land's misuse that is prevalent across the length and breadth of the country. In 1968, land measuring 224 acres was leased out for a fixed amount of Rs 1 per acre for 50 years. The amount of lease was to be revised every 10 years, an obligation that has rarely been carried out. The total area grew further in 1996 after acquisitions totaling 108 acre. A gold club was added courtesy of Islamabad's Master Plan. At present, the club is paying an annual rent of Rs 14,700 rupees (Rs 1,225 per month) for area excluding the golf course, while for the golf course, the payment to CDA is Rs 12,300 (Rs 1,025 per month).

There are around 7,000 members at present. Private membership fee stood at Rs 500 in 1968, reaching Rs 300,000 in 2004, and now costs Rs 1.5 million. But government officials are entitled to get membership for Rs 300,000 only. It's regulated under the Islamabad Club Ordinance of 1978, with the President being its patron-in-chief, while Secretary Cabinet acts as its administrator.

Recently, the auditors pointed out several anomalies/irregularities in its functioning. Aside from hiring the same architects for renovation and building an illegal hall for a sum of Rs 13.5 million , audit also pointed out that the club's administration is in illegal possession of car parking area (built on a green belt) measuring 32 acres. The estimated market price of the land stands at around Rs 150 billion.

Islamabad Club is not the only example of public land doled out at trifling rents to benefit a few. In 2007, the then President approved leasing out 1,200 kanals of prime public land to Pakistan Golf Federation (PGF) at only Rs 2.41 per sq. yard. All golf courses in Islamabad were gifted out at no or little rent to entertain a select group of elite, all. A similar allocation of 72 acres of most valuable land was made to Pakistan Guns Club at no rent, something that Supreme Court later took up as a Suo Moto case. Incidentally, the apex court's own judges have been availing this subsidised bounty to the full. Recently, it was revealed that some SC judges have availed three government plots in Islamabad's various sectors at spectacularly low prices. Plots valued at Rs 50 million in the market were doled out to few judges at Rs 1.7 million.

Aside from these freebies at throwaway prices, a considerable amount of public land in Islamabad either remains unutilised or occupied illegally, estimated at Rs 400 billion rupees. Additionally, 1,000 acres of forest land that has been encroached upon.

Another method revolves around acquiring land and built-up properties separately,³² without any logic of why that is the case?³³ Besides the 527 awards for land acquisitions, 158 awards have been announced for built-up properties. The probable reason for this, as per court's observation, was to delay compensation. Moreover, CDA also did not implement the agreed upon mechanism of allotting a specific portion of plots in the housing societies to individuals from whom land is bought. The CDA acknowledged the right of the affectees to 10,739 plots.³⁴

Aside from the department's own employees forming a 'housing society' and indulging in extracting subsidised plots, influential private developers can utilise government announced concessional schemes to their advantage in connivance with government departments. Case in point is the granting of thousands of acres of land in Malir to DHA under the *Shuhda* (martyr) scheme. Malir is largest of Karachi's six districts. Land falling under its jurisdiction, administered by MDA, measures 521,000 acres, divided into 43 *dehs* (a *deh* is a revenue unit). In 2005, the Sindh BOR allotted 11,640 acres in Malir to DHA at a concessional rate of Rs 100,000 per acre. Later, in 2011, request for an additional 8,000 acres at the same rate was forwarded. It was accepted, and the leases of farmers that worked in the *deh*'s falling in this allotted land were cancelled.³⁵ In 2017, an additional 8,500 acres of land was allotted under this scheme in district Jamshoro at concessional rates of Rs 15,000 per acre.³⁶ The total amount of land in these cases far exceeds the requirements of settling families of martyrs.

Interestingly, in the course of a recent case concerning acquisition of land by FGEHF in sector F-14 and F-15 for provision of plots to its employees (heard at Islamabad High Court and Supreme Court), at least two judges declared the provision of subsidised lands and plots to members of armed forces, judiciary, bureaucracy as illegal. Both Justice Athar Minallah (CJ IHC) and Justice Qazi Faez Isa (SC Judge) termed such provisions illegal and ultra vires to the constitutional provisions. However, their view could not muster support of the majority in the Apex Court.

In November 2020, the Special Assistant to PM on Accountability, Mr. Shahzad Akbar, informed the IHC that the Government aims to put a ban upon government departments running housing societies in their names, reflecting an implicit recognition that public sector's involvement in land affairs has been nothing short of a disaster. This would be done through altering Cooperative Society Act of 1925, which constitutes an important basis of public sector land development. However, till date, the recommendation/proposal remains un-implemented.

CONCLUSION AND RECOMMENDATIONS

The paper argues that achieving good returns from public lands does not require any large-scale or complex legislation, but merely clarifying and limiting the role of plethora of agencies dealing with land management, transfer and title transfers, and doing away with concepts like 99-year leases and valuing properties at prevalent market rates.

³²Built-up area is the gross area of a property. It's basically 10-15 percent more than the covered area of a house/building.

³³Usually these are announced together.

³⁴Owners of land acquired by CDA to get compensation under present market value'.

³⁵They were allotted 30-year leases under the Sindh Land Allotment Rules 1984.

³⁶'The DHA city juggernaut rolls on in the name of development'.

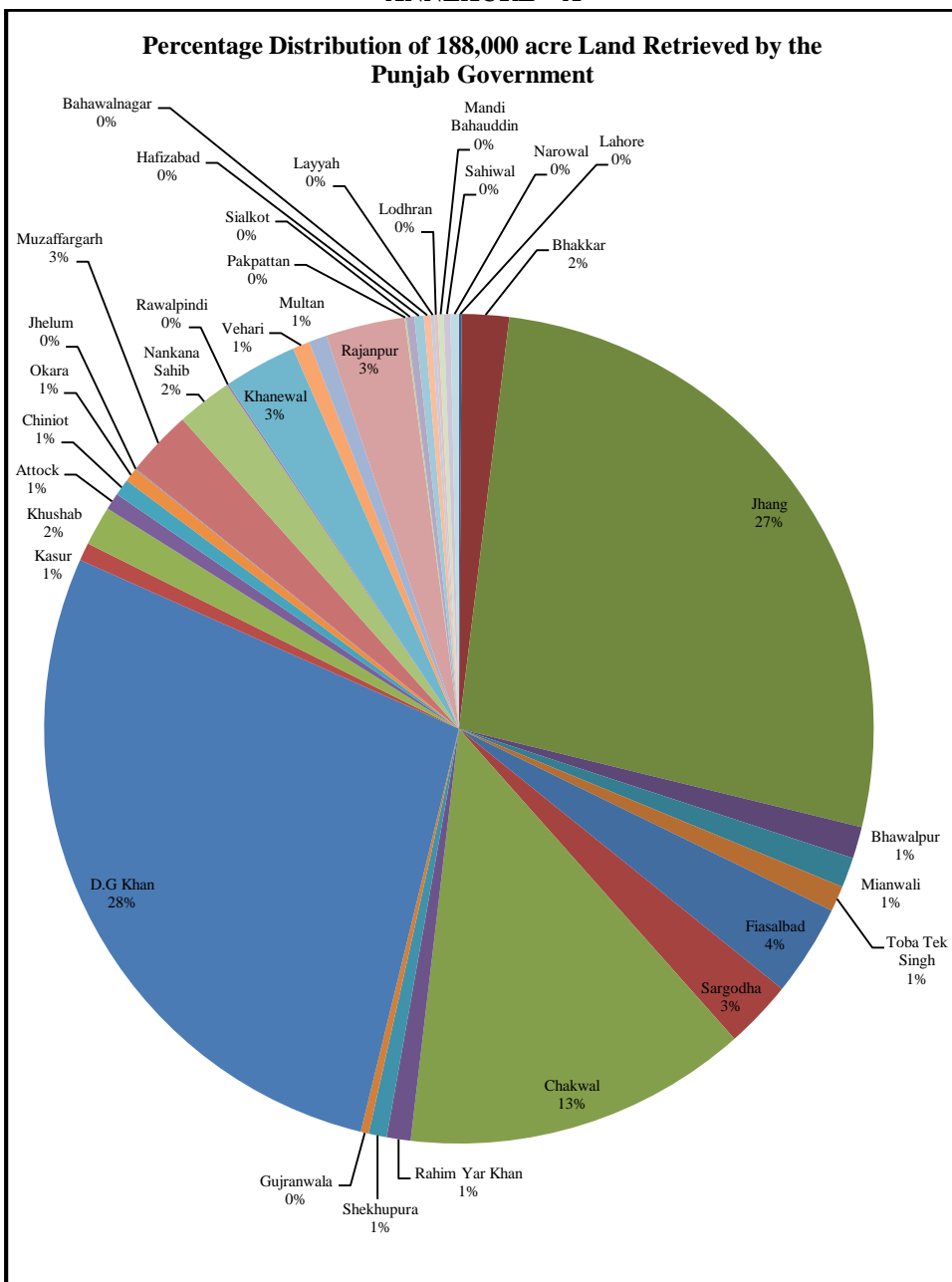
Moreover, this paper emphasises that if we draw up their balance sheets carefully and utilise this wealth professionally, there is excellent possibility of good returns in the future. With simple rezoning or moving assets to better uses, modern methods to utilising assets, large returns can be realised to increase overall economic growth, finance city development and boost employment.

But in Pakistan, this prized asset (public land) has been so badly managed that it has only given rise to adverse rent-seeking and corrupt practices rather than acting as a substantial source of income for national kitty. Subsidised giveaways of land at throwaway prizes have been a norm in Pakistan, rarely challenged and its negative repercussions rarely studied. The inflicted loss through such practices, although unaccounted for, is immense. And all of this boils down to government's overarching, overbearing regulatory control that, as usual, has resulted in significant mismanagement of a very prized asset.

There is no doubt that management of public wealth in Pakistan requires a complete change of course to what we have witnessed historically. Otherwise, these assets would never yield anything near their potential. In this regard, the following general proposals are suggested.

- Put a complete ban on government departments forming housing societies under various legal umbrella's (especially different Cooperatives Acts)
- Immediately discontinue using various methods to extract subsidised land, like DC rates, 99-year leases, etc.
- Establish a central repository of information regarding the total amount of public land and (commercial, residential or unutilised), departmental use, earnings from them, etc.
- The central repository should contain a complete list of relevant laws in terms of various forms of land acquisition and utilisation.
- Every city should establish its holding company which should be given the management powers over public wealth like land, putting an end to federal and provincial level bureaucratic interference in its management.
- The holding companies of respective cities should come with regeneration plans for cities so that maximum financial benefits could accrue to the public kitty, to help finance city's development goals.
- Government's job with regards to public land, land and housing should be limited to clearing hurdles in the way of faster transactions in the land market, so that an efficient land market could function well. For example, government could improve the legislative and administrative procedure which makes it difficult to conclude a transaction.

ANNEXURE – A



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