

ANNEX 3 – GOVERNANCE

A. Introduction

1. International experience, most recently acquired from reconstruction and recovery efforts in response to the Gujarat earthquake and the 2004 tsunami, demonstrates that while rescue and relief operations can be relatively quick to mobilize, the process of converting financial commitments to recovery into effective action is marked by unanticipated delays, unrealized expectations and denial of rights. Recovery operations perform better when they articulate with local governing arrangements and avoid relying too heavily on special purpose, executive arrangements that operate outside mainstream governance institutions. Legally mandated and functioning local authorities should not be ignored; experience elsewhere shows that they can be the determining factor in ensuring speedy and appropriate responses.

2. This annex provides a preliminary assessment of the impact of the earthquake on civil administration¹⁵ (including judiciary and police) responsible at the District level in AJK and the five NWFP Districts (Mansehra, Abbottabad, Shangla, Batagram and Kohistan) affected, and recommends ways in which the governance impact can be mitigated at the same time as defining features of implementation arrangements for the responses proposed by other clusters of the overall mission.¹⁶

Governance Arrangements in Summary

3. Governance arrangements in AJK and NWFP affected areas are significantly different. The *Azad Government of Jammu and Kashmir* operates under the Interim Constitution Act, 1974, with a Parliamentary government and a 48 member Legislative Assembly. Some subjects are administered by the AJK Council, which has 14 members, 6 representing the Government of Pakistan. By convention, the heads of Administration, Police, Accounts, Development and Finance are appointed by the Government of Pakistan in consultation with the Government of AJK. Administration is headed by a Chief Secretary, responsible for 14 departments. AJK is divided into two divisions¹⁷, headed by a Divisional Commissioner, to who report Deputy Commissioners responsible for coordination of administrative departments at district level, and for general law enforcement. Municipal services are provided by a system of local governments which are differently arranged in urban and rural areas. Policing is administered by an Inspector General Police. A Supreme Court and High Court is present, both with extensive appellate and limited original jurisdiction. District judges perform both civil and criminal work. Tribunals of Judges and Qazis try criminal cases involving Islamic law. Jurisdiction for most regulatory laws rests with the District and Sub-divisional Magistrates, that is, the District Commissioner's offices. AJK also has an Ombudsman.

4. The structure, functions and powers of *NWFP government* is as provided for in the Constitution 1973. Since 2001, the Local Government Ordinance led to the establishment of elected councils at District, Tehsil and Union levels, headed by an elected Nazim. Although elections for District and Tehsil Nazims were held on 6 October, two days before the earthquake, the winners had not yet taken the oath of office. Elections for Tehsil and District Naib Nazims, who are conveners of respective councils, had not

¹⁵ Civil administration here includes the core administrative offices of a) AJK government, b) divisional/district/sub-district authority as applicable in AJK and NWFP, responsible for coordination, finance/planning, revenue, accounts and audit, c) police and prisons, and d) judiciary including in AJK Supreme and district courts, and in NWFP the subordinate offices of the District and Sessions Judge.

¹⁶ ERP institutional, implementation arrangements are not detailed here, but included in the main report.

¹⁷ Muzaffarabad Division comprises districts of Muzaffarabad, Neelam, Rawalakot, Bagh and Sudhnoti. Mirpur Division comprises districts of Mirpur, Kotli and Bhimber.

occurred. This situation causes some confusion about the role of elected leaders in the immediate aftermath of the earthquake. As provided under the Police Order 2002 (Amended), policing is headed by a District Police Officer who has an accountability relationship with the district nazim, a District Public Safety Commission and the Province Police Officer. NWFP has no office of Ombudsman.

5. NGOs and other civil society organizations are active in all affected districts. They comprise: a) international and national relief/development organizations, for which the Pakistan NGO Forum is the apex body, currently operating through the NGO Joint Action Committee, a coalition of more than 100 national and local NGOs; b) the Rural Support Program's network, working through the Sarhad RSP in NWFP, and the National RSP in AJK; and c) in AJK, several religious organizations working independently of the larger NGO community. No formal coordination mechanisms exist in the affected districts, although some international NGOs report good coordination with military authorities and in the aftermath of the earthquake, new, sporadic coordinative arrangements have been created at district, tehsil and union council levels.

Methodology

6. The ten-member damage assessment team comprised two sub-teams, which visited AJK and NWFP respectively. These teams, comprising 7 people, assessed damage in terms of assets and infrastructure as well as functions, products and services. Visits were made to all four affected districts in AJK and four of the five districts in NWFP (excluding Shangla district). A third, 3-person sub-team focused on institutional arrangements for governing the response. Consultations were held with province/state, district and sub-district elected and administrative officials and civil society.

B. Damage Overview and Recovery Needs

7. Overall, given the scale of damage to buildings, equipment and logistics, and the trauma associated with loss of life and injury, civil administration, public safety and justice institutions have responded well to the crisis. Initially, civil administration in AJK districts, Muzaffarabad, Neelum, Rawalakot and Bagh, was severely disrupted by the destruction of administrative complexes and sub-divisional office buildings in Hattian, Haveli, Dhirkot, Abbasspur, Hajira and Neelum. Fifty-five provincial office buildings¹⁸ and 9 (90%) district and 249 provincial officers' residences were destroyed and the offices of the Civil Secretariat were damaged. Moreover, although a large number (134) of vehicles and communication equipment were destroyed, or are missing, and office equipment was lost in all destroyed buildings, temporary accommodation and interim arrangements, including deployment of executive officers from Punjab, appear to have enabled state and district administrations to function, albeit preoccupied with the relief and rescue efforts.

8. AJK's Supreme Court and High Court buildings are damaged, but partially operational. District judicial complexes have been completely lost in Muzaffarabad, Rawalakot and Bagh. Sub divisional office buildings and residences of judiciary at Hattian, Haveli, Dhirkot, Abbasspur, Hajira and Neelum were destroyed. However, interim arrangements were quickly made, and although the judiciary was on call, court work is at a stand-still. District police complexes and jails were completely destroyed in Muzaffarabad, Rawalakot and Bagh (15 of 20 stations), as were sub-divisional office buildings in Hattian, Haveli, Dhirkot, Abbasspur, Hajira and Neelum. Policing was severely affected by the loss of communications equipment, and although there were reports of violence and looting in the immediate aftermath, order was quickly restored. In general, police efficiency is not likely to be impaired in any major way in the near future, although providing protection services for incoming relief workers is drawing resources away from public safety work, and special efforts will be needed to protect the rights of women, orphans, disabled and missing persons.

¹⁸ Including Central Police Offices.

9. Important in this respect will be efforts to recover public records. In affected municipalities, 85% of municipal records appear to have been lost, including births and deaths records, and 25% of revenue records. The latter, although lost, may be substantially reconstructed from records of the Settlements Commissioner.¹⁹ A small number of Supreme and High Court judicial records have been destroyed and 30% of judicial records in 20 affected district courts have been destroyed or badly damaged. There is evidence of arson of court records on the day of the earthquake at Bagh. The Ombudsman’s office was destroyed along with most records. Records were completely lost in all destroyed police stations. Officials have quickly acted to recover records where possible, and in most cases they may be reconstructed from records held at higher levels.

10. In NWFP districts, Mansehra, Batagram and Abbottabad, around 65% of district and tehsil buildings have been either destroyed or badly damaged, with the extreme being Balakot, where all buildings were destroyed. 60 district police offices and judicial complexes were destroyed or badly damaged. The functioning of civil administration was quickly restored in Mansehra and Abbottabad, and by the time of the assessment, also in Batagram, both through local effort and deployment of additional staff by the provincial government. Although elected councilors were active in localized relief efforts, local councils as such, have ceased to function and civil administrations are largely operating under executive orders, a situation constrained by the fact that relevant elected officials had not been sworn into office. With the exception of Balakot, judicial officers, often in temporary accommodation, are available for work, but as with AJK, court work is at a stand-still. NWFP government dispatched 2000 additional police officers to affected districts, although, as with AJK, police report very little crime against property or persons. They are largely engaged with policing the relief effort, including VIP protection. Concern to recover, protect and reconstruct records was also evident in all affected districts. While records have been buried under collapsed buildings in almost all Batagram district and tehsil offices and in all Balakot tehsil offices, these are being retrieved. Special effort must be made to recover and reconstruct records in Balakot.

Table 1: Governance Sector Damage in AJK and NWFP

Governance Sector	NWFP			AJK		
	Buildings	Logistics	Total	Buildings	Logistics	Total
Civil Administration	148.7	18.1	166.8	721.2	332.4	1,053.6
Judiciary	313.8	19.9	333.7	373.1	147.2	520.3
Police	397.3	43.2	440.5	403.6	52.7	456.3
Total	859.8	81.2	941.0	1,497.9	532.3	2,030.2
Grand Total	Rs. 2,971.2 million (US\$50 million)					

Note: The average age of the public buildings in the affected areas is assumed to be 15 years.

¹⁹ However, verifying authenticity of mutations that have occurred in the last 6 years will be problematic.

Table 2: Governance Sector Replacement Costs in AJK and NWFP

Governance Sector	NWFP			AJK		
	Buildings	Logistics	Total	Buildings	Logistics	Total
Civil Administration	229.6	18.1	247.7	1,113.6	332.4	1,446.0
Judiciary	484.6	19.9	504.4	576.1	147.2	723.3
Police	613.5	43.2	656.7	623.2	52.7	675.9
Total	1,327.7	81.2	1,408.8	2,313.0	532.3	2,845.3
Grand Total	Rs. 4,254.1 million (US\$71.6 million)					

Note: The average age of the public buildings in the affected areas is assumed to be 15 years.

C. Reconstruction and Recovery Strategy

11. **Approach.** Effective and timely post-disaster rehabilitation and recovery has occurred where the following governance and institutional principles have been observed: (i) offer people-centered solutions; ii) build on the principle of subsidiarity, by ensuring that reconstruction activity is designed and implemented by the lowest level of mandated and competent authority; (iii) provide durable arrangements which assign clear responsibilities for central and localized strategic coordination; (iv) assess needs and define sectoral technical responses in ways that avoid unmanageable demands; (v) create innovative institutional arrangements through which specialized expertise can be mobilized and held accountable; and (vi) stipulate validation, audit, accountability and judicial arrangements which enhance the predictability of outcomes for the common citizen.

Critical Issues and Actions

1. People-centered solutions

- ***Favor in situ responses and citizen choices for primary needs where possible.*** In the immediate relief phase, affected people are best placed to assess their own needs, and with flexible external support, make arrangements for their shelter/housing and security, and restore their livelihoods with due regard for the environment.
- ***Secure identities and entitlements.*** To minimize opportunities for their misdirection, and to secure the rights of affected people, centrally coordinated, but decentralized systems for securing lost records on revenue, property, death, birth, banking, police, judiciary, state and community land is a priority. In this regard, Government may impose a ban on land transfers in areas where records have been lost, until reconstructed, and extend the period of limitation by six months to make provision for time for relief and rehabilitation. Likewise, Government may wish to issue identity documents to all people in earthquake affected areas, including children (through regular NIC and temporary cards).
- ***Special purpose actions to ensure justice for vulnerable populations.*** It is advisable to establish special institutional and legal arrangements for protection of property of orphaned children, women and missing persons and increase vigilance of abduction and trafficking.
- ***Anticipate that delay and dispute will deny justice.*** In the absence of special purpose, short-cut administrative arrangements, securing civil rights is more protracted and unpredictable in post-disaster situations. Government may wish to suspend all fees associated with court appearances, registration, mutation, issuance of certifications for 18 months, strengthen and simplify evidential

and procedural rules for compensation in tort cases, simplify police procedures, and establish contracted public information, legal aid and facilitation and advisory services at district level, with focus on vulnerable populations.

- **Engage civil society for interest articulation.** Opportunities to positively engage CSOs in recovery operations are needed to facilitate needs assessments, articulate demand, facilitate access to information, promote third party verification and provide legal facilitation and aid to affected populations.
- **Facilitate private sector recovery for livelihood and service delivery.** It is important to make explicit the private sector impact in service delivery sectors. Private sector recovery will be helped if compensatory actions that distort market response are minimized.
- **Restore functional mandates of local elected representatives.** A clear strategy is needed for the transition from relief/rescue to recovery phases. This will be eased if milestones are agreed for: i) transition from military to civilian control; and ii) transition from expedient, short term executive controls to legally sanctioned local elected leadership.

2. Subsidiarity and restoration of responsibility to legally mandated institutions is important for speed, relevance and accountability of recovery operations.

- **Restore authority and resource legally mandated institutions.** Centralize strategic planning of the recovery strategy, but return responsibility for all other executive functions to the lowest level of mandated and competent authority together with support to meet capacity gaps. This will enable recovery operations to exploit local knowledge while also building local capacity for the restoration of government capacity. Government will need to announce policy commitments to return responsibility for recovery operations to mandated local authorities and prepare and agree protocols for responsibility and reporting of district, tehsil authorities, relief commission, army and civil society in recovery operations. Likewise there will be a need to assist province/state and local authorities in reviewing existing donor assisted project agreements for recovery operations and establishing arrangements for NGO input.
- **Exploit existing arrangements.** To a greater (NWFP) and lesser (AJK) extent, local elected leaders are responsible to direct executive decisions. For most sectors affected, coordinative and regulatory arrangements exist and should be restored as soon as possible. In addition, in most sectors, opportunities exist to exploit existing arrangements for planning, execution and accountability of recovery operations.

3. Prioritize district and central strategic coordination and accountability

- **Prioritize district coordination strategies.** While restoring accountability of the local administration to elected representatives, special purpose district arrangements are needed to facilitate coordination between army and civilian agencies and civil society.
- **Central and Provincial strategic accountability.** Clear assignment of responsibilities for the following functions is required, at national and province/state levels: i) cross sectoral policy coordination; ii) multi-agency coordination; iii) information clearing house on responses, iv) documenting government and donor commitments, v) monitoring compliance with agreements; and vi) advising on inventive revenue raising options.
- **Avoid new, multi-function, inter-governmental, single structure, institutional arrangements.** International post-disaster and national experience is that such arrangements should be avoided where: i) control over execution/operations is at stake; ii) the legal status of the agency is likely to be contested; iii) political contests amongst levels of government are likely to be exacerbated; and iv) where transaction-intensive responses are required.

- **Tailor donor alignments according to sector features, scale of damage, and comparative advantage.** Some sectoral responses are amenable to engagement by many donors, whereas this may disable other, networked sectors with fewer responsible agencies. Similarly, donors have comparative advantages, due to long engagement and familiarity with sectors/agencies, and should be constrained from entering new engagements/sectors. Donors should agree and publicize commitments, coordinative arrangements and accountability at national, province/state and local levels, reflecting comparative advantage and capacity to respond. Donors will have a key role to play in assisting province/state and local authorities to define clear arrangements for coordination of recovery planning, budgeting, implementation, monitoring and public access to information; assisting affected local authorities to establish multi-agency coordination arrangements; and assisting districts and tehsils to prepare detailed surveys to ascertain damage to assets and infrastructure of civil, judicial, police and prisons

4. Manage demands through technical and policy choices. This will improve the speed of recovery responses.

- **Replacement vs. extension.** In replacing lost facilities and services, their extension should be limited to cases where the cost is marginal and efficiency gains are obvious. On the other hand, for equity reasons, the design principle should be adequate coverage of all affected people, rather than replacement of facilities known to be under-serving or inadequate prior to the disaster. Government, in many cases, will need to provide guidelines to local authorities on investments eligible for inclusion in financing and earthquake recovery operations
- **Replacement vs. reform.** Recovery operations present opportunities to reform service delivery. However, reforms that are likely to be contested should be limited. Reforms should focus on situations where replacement of lost infrastructure is unlikely to impact on service access or quality. District/tehsil authorities will likely need assistance to adequately review detailed needs assessments prepared by external agencies, and participate in their reconciliation with local priorities.
- **Reduce demand by technical solutions.** Where possible, sector responses should favor gender sensitive and environmentally sound repair and rehabilitation over wholesale reconstruction with due regard to local knowledge and materials. Standard unit designs for common facilities assist larger contracting options, and reduce load on supervisory and adjudicative agencies.

5. Enhance operational capacity to respond by known institutional solutions

- **Seek umbrella approvals for multiple standard works and responses.** Umbrella approvals can facilitate larger scale contracting and common protocols for key steps. Modifications should maintain the integrity of government budget, planning and approval mechanisms.
- **Inventive solutions for short term augmenting of local capacity.** Anticipating and making explicit the expected increase in responsibilities of local authorities can make options for augmenting capacity more transparent. Government may need to assist affected province/state, districts/tehsils (NWFP) to review annual development plans, to cull schemes made unviable by the earthquake and prepare protocols for appraisal of investment schemes in affected communities.
- **Multiple solutions, not single, privileged institutional arrangements.** Exploiting existing assignments will encourage multiple institutional arrangements through which works and services are currently delivered. Authorities will need to prepare development scheme approval procedures to respond to recovery needs

- **Selective government direction of private sector, but only in strategically important cases.** Whereas most private sectors impacted by the quake are deregulated, and market responses should be facilitated, where market response fails and this may cause humanitarian crises, government direction of the market may be justified.
- **Provide specific technical capacities.** ERRA will need to develop inventive arrangements to augment local capacity to meet responsibilities for planning, budgeting, implementation and quality assurance of recovery operations. Donors or Government will need to Provide AJK government with procurement/contracting specialists, on short term assignment, for transparency on relief operations, and prepare systems for recovery operations. Likewise, local authorities will need assistance to establish credible pre-qualification lists or local contractors, for recovery operations. ERRA and province/state authorities may need to negotiate arrangements to draw on tertiary institutions and other civil service agencies to augment local capacity for recovery operations

6. Accountability and enforcement of standards and norms require administrative dispute systems and full extension of supreme audit institutions, but these must be backed by functioning judiciary and legal institutions.

- **Reinforce arrangements which enhance predictability.** The performance of agencies responsible for recovery operations and the security of citizen rights require functioning administrative dispute resolution systems, campaigns to ensure citizens have access to information, and a legal infrastructure to support the credibility of these arrangements. In this regard, ERRA may facilitate establishment of systems to ensure public access to information regarding all recovery operations and which government services are operational. There is also a need to enhance management capacity of AJK Home Department for response monitoring and evaluation.
- **Audit, validation, interdiction.** A common donor, government, civil society commitment to zero tolerance for corruption must be backed by full extension of the Auditor General of Pakistan jurisdiction to all agencies involved in recovery operations, third party verification of contracts, and use of Pakistan’s existing arrangements for community based social audit. The AGP should undertake audits of all expenditure of ERP funds by any agency, and resource AGP offices in affected districts to fulfill responsibilities
- **Enhance formal justice institutions.** Court annexed alternate dispute resolution, for private disputes and grievances against officials can reduce the load on an already over-burdened judiciary. Reinforcing the capacity of Ombudsman’s offices can likewise assist and capacity of newly established office of the Director General Audit, AJK will need to be enhanced. The High Courts need to identify priority areas for lower judiciary—custody, guardianship, property disputes, succession, tort and compensation, and criminal matters—and measures to expedite dispensation of justice. The High Court Member Inspection Teams need to be engaged to assist lower judiciary to prioritize and rationalize pendency lists, and monitor performance, and AJK Office of the Ombudsman needs to become functional.