



MINISTRY OF WATER DEVELOPMENT AND IRRIGATION

**SHIRE RIVER BASIN MANAGEMENT PROGRAMME (PHASE I)
PROJECT**

FINAL RESETTLEMENT POLICY FRAMEWORK REPORT

November, 2012



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TABLE OF CONTENTS

<u>LIST OF TABLES.....</u>	<u>IV</u>
<u>ACRONYMS AND ABBREVIATIONS.....</u>	<u>V</u>
<u>ACKNOWLEDGEMENT.....</u>	<u>VII</u>
<u>EXECUTIVE SUMMARY.....</u>	<u>VIII</u>
<u>DEFINITION OF TERMS USED IN THE REPORT.....</u>	<u>XI</u>
<u>1.0 INTRODUCTION.....</u>	<u>1</u>
1.1 PROJECT DESCRIPTION.....	1
1.2 PROJECT COMPONENTS AND ACTIVITIES.....	1
1.3 OBJECTIVES OF THIS RESETTLEMENT POLICY FRAMEWORK.....	4
1.4 SCOPE OF THE RPF.....	4
<u>2.0 IMPACTS, LAND ACQUISITION AND RESETTLEMENT.....</u>	<u>6</u>
2.1 COMPONENT ACTIVITIES THAT ARE LIKELY TO CAUSE IMPACTS.....	6
2.2 IMPACTS OF LAND ACQUISITION AND RESETTLEMENT.....	7
<u>3.0 PRINCIPLES AND OBJECTIVES GOVERNING RESETTLEMENT PREPARATION AND IMPLEMENTATION.....</u>	<u>9</u>
3.1 CURRENT LAND ACQUISITION MECHANISMS.....	9
3.2 BASIC PRINCIPLES AND VISION OF THE RESETTLEMENT PROGRAMME.....	9
3.3 RESETTLEMENT PREPARATION AND IMPLEMENTATION.....	10
<u>4.0 RAP PREPARATION, REVIEW AND APPROVAL.....</u>	<u>12</u>
4.1 STEPS LEADING TO THE PREPARATION AND APPROVAL OF RAPs.....	12
4.2 PUBLIC CONSULTATION AND PARTICIPATION.....	13
4.3 TEMPLATE FOR THE DESIGN OF SUB-PROJECT RAPs.....	14
4.4 APPROVAL AND PUBLIC DISCLOSURE OF THE RAPs.....	14
<u>5.0 ESTIMATED POPULATION DISPLACEMENT AND LIKELY CATEGORIES OF AFFECTED PERSONS.....</u>	<u>15</u>
5.1 ESTIMATION OF PROJECT AFFECTED PERSONS.....	15
5.2 LIKELY CATEGORIES OF PROJECT AFFECTED PERSONS.....	15
<u>6.0 ELIGIBILITY CRITERIA FOR VARIOUS CATEGORIES OF PAPS.....</u>	<u>18</u>

6.1	CUT-OFF DATE FOR ELIGIBILITY	18
6.2	RECOMMENDED BENEFICIARIES ELIGIBILITY CRITERIA	18
7.0	<u>LEGAL FRAMEWORK FOR LAND ACQUISITION AND RESETTLEMENT.....</u>	20
7.1	CATEGORIES OF LAND IN MALAWI	20
7.2	RELEVANT MALAWI LEGISLATION	20
7.2.1	THE MALAWI NATIONAL LAND POLICY.....	20
7.2.2	THE CONSTITUTION OF THE REPUBLIC OF MALAWI	21
7.2.3	TOWN AND COUNTRY PLANNING ACT, CAP. 23:01-	21
7.2.4	LAND ACT, CAP. 57:01.....	22
7.2.5	PUBLIC ROADS ACT, CAP. 69:02	22
7.2.6	LANDS ACQUISITION ACT, CAP. 58:04.....	22
7.2.7	OTHER ACTS	23
7.3	OBSERVATIONS AND DISCREPANCIES ON MALAWI'S LEGAL FRAMEWORK	23
7.4	RELEVANT WORLD BANK OPERATIONAL POLICIES	23
7.5	GAPS BETWEEN MALAWI LEGISLATION AND WORLD BANK O.P.4.12.....	24
7.6	BRIDGING THE GAPS.....	25
8.0	<u>ASSET VALUATION METHODS AND ENTITLEMENT</u>	26
8.1	CURRENT ASSET VALUATION METHODS.....	26
8.1.1	INTRODUCTION	26
8.1.2	VALUATION OF PHYSICAL ASSETS	26
8.1.3	VALUATION OF FIELD CROPS AND FRUIT TREES/PLANTATIONS.....	26
8.1.4	VALUATION OF FOREST TREES (INDIGENOUS AND EXOTIC SPECIES)	27
8.2	PROBLEMS RELATED TO CURRENT VALUATION.....	27
8.3	RECOMMENDED COMPENSATION AND VALUATION METHODS.....	27
8.3.1	GENERAL CONSIDERATIONS	27
8.3.2	THE UNITS OF COMPENSATION.....	28
8.3.3	COMPENSATION FOR LAND	28
8.3.4	LAND MEASUREMENT.....	29
8.3.5	VALUATION OF LAND USED BY THE PUBLIC	29
8.3.6	VALUATION OF PHYSICAL ASSETS	29
8.3.7	VALUATION OF CULTURAL PROPERTY AND SACRED SITES	29
8.3.8	VALUATION OF FIELD CROPS	30
8.3.9	VALUATION FOR LABOUR FOR PREPARATION OF AGRICULTURAL LAND.....	30
8.3.10	VALUATION OF VEGETABLES AND BEEHIVES	30
8.3.11	VALUATION OF FRUIT/PLANTATION TREES	30
8.3.12	VALUATION OF FOREST TREES.....	31
8.4	VALIDITY OF CALCULATED VALUES	31
9.0	<u>LAND ACQUISITION AND RESETTLEMENT IMPLEMENTATION.....</u>	32
9.1	STAGES OF LAND ACQUISITION AND RESETTLEMENT PROCESS.....	32
9.2	LINKING RESETTLEMENT IMPLEMENTATION TO CIVIL WORKS.....	32
9.3	TIME FRAMES.....	33
9.4	DISCLOSURE OF INFORMATION.....	33
10.0	<u>DELIVERY OF ENTITLEMENTS AND RESPONSIBILITIES</u>	34

10.1	INTRODUCTION	34
10.2	NOTIFICATION OF ASSET HOLDERS.....	34
10.3	MAINTENANCE OF DATABASE OF AFFECTED HOLDINGS AND ASSETS	34
10.4	CONSULTATION AND PUBLIC PARTICIPATION	34
10.5	AGREEMENT ON COMPENSATION AND PREPARATION OF CONTRACTS	34
10.6	DELIVERY OF ENTITLEMENTS FOR COMPENSATION	35
10.7	RESETTLEMENT ASSISTANCE	36
10.8	COMMUNITY COMPENSATION PAYMENTS.....	36
10.9	ROLES AND RESPONSIBILITIES	36
11.0	<u>PUBLIC CONSULTATION AND PARTICIPATION.....</u>	39
11.1	NOTIFICATION PROCEDURE.....	39
11.2	PUBLIC CONSULTATION AND PARTICIPATION MECHANISMS.....	39
12.0	<u>GRIEVANCE REDRESS MECHANISMS</u>	40
12.1	OBJECTIONS	40
12.2	CONSENSUS, NEGOTIATIONS AND CONFLICT RESOLUTION	41
13.0	<u>MONITORING AND EVALUATION.....</u>	43
13.1	CONTENTS OF THE MONITORING AND EVALUATION PLAN.....	43
13.2	THE PROPOSED MONITORING AND EVALUATION PLAN	43
13.3	BUDGET FOR THE PROPOSED MONITORING AND EVALUATION PLAN.....	44
14.0	<u>BUDGETARY IMPLICATIONS AND FUNDING.....</u>	46
14.1	EXPENSES FOR RESETTLEMENT AND REHABILITATION	46
14.2	EXPENSES FOR CAPACITY BUILDING AND TRAINING.....	46
14.3	EXPENSES FOR MONITORING AND EVALUATION	46
14.4	TOTAL BUDGET FOR IMPLEMENTATION OF THE RPF	46
	<u>REFERENCES.....</u>	48
	<u>APPENDICES</u>	50
APPENDIX 4.1	SOCIOECONOMIC CHARACTERISTICS OF FAMILIES AND BUSINESSES	50
APPENDIX 4.2	TEMPLATE FOR THE DESIGN OF RAPS	51
APPENDIX 6.1	FORMAT FOR ENTITLEMENT MATRIX FOR VARIOUS CATEGORIES OF PAPs ..	54
APPENDIX 7.1	WORLD BANK OP 4.12 AND ANNEX A.....	56
APPENDIX 7.2	MALAWIAN LAW AND WORLD BANK OP 4.12 REGARDING COMPENSATION ..	70
APPENDIX 8.1	SCHEDULE FOR DETERMINING MONETARY COMPENSATION FOR LAND USE	71
APPENDIX 8.2	SAMPLE SCHEDULE FOR CALCULATION OF COMPENSATION FOR BUILDINGS	72
APPENDIX 8.3	EXAMPLE FOR CALCULATING COMPENSATION FOR FRUIT TREES	73
APPENDIX 9.1	LAND ACQUISITION AND RESETTLEMENT IMPLEMENTATION SCHEDULE	75
APPENDIX 13.1:	LAND ACQUISITION AND RESETTLEMENT PROCESS MONITORING PLAN....	77
APPENDIX 14.1	CONTENTS OF A COMPREHENSIVE COMPENSATION BUDGET.....	78

LIST OF TABLES

Table 10.1	Proposed Roles and Responsibilities for implementation of the RAP	37
Table 13.1	Monitoring and Evaluation Budget for RPF for One Year	45
Table 14.1	Estimated Resettlement and Rehabilitation Expenses	46
Table 14.2	Estimated total costs for implementation of the RPF	47

ACRONYMS AND ABBREVIATIONS

AEC	Area Executive Committee
AIDS	Acquired Immuno Deficiency Syndrome
ARAP	Abbreviated Resettlement Action Plan
CBO	Community Based Organization
CC	City Council
CIG	Common Interest Group
CSC	Construction Supervision Consultant
DC	District Council
DDC	District Development Committee
DNRDM	Department of Natural Relief and Disaster Management
DEAP	District Environmental Action Plan
DEC	District Executive Committee
DPD	Director of Planning and Development
EAD	Environmental Affairs Department
EDO	Environmental District Officer
ESA	Environmental and Social Assessment
ESIA	Environmental and Social Impacts Assessment
EMA	Environment Management Act
ESMP	Environmental and Social Management Plan
ESA	Environmental and Social Assessment
ESCOM	Electricity Supply Corporation of Malawi
ESMF	Environmental and Social Management Framework
FI	Financial Intermediary
GDP	Gross Domestic Product
GFDRR	Global Facility for Disaster Reduction and Recovery
GoM	Government of Malawi
GSM	Global System Mobile
HIV	Human Immuno Deficiency Syndrome Virus
IDA	International Development Association
IDF	Institutional Development Funds
M&E	Monitoring and Evaluation
MGDS	Malawi Growth and Development Strategy
MLGRD	Ministry of Local Government and Rural Development
MWDI	Ministry of Water Development and Irrigation
NAC	National Aids Commission
NCE	National Council on the Environment
NEAP	National Environmental Action Plan
NEP	National Environmental Policy
NGO	Non-Governmental Organization
NLP	National Land Policy
NWDP	National Water Development Programme
OP	Operational Policy
OVI	Objectively Verifiable Indicator
PAP	Project Affected Persons
PF	Process Framework

PIM	Project Implementation Manual
PPA	Project Preparation Advance
PPF	Project Preparation Facility
PRA	Participatory Rural Appraisal
PSC	Project Steering Committee
RAP	Resettlement Action Plan
R&R	Rehabilitation and Resettlement
RPF	Resettlement Policy Framework
SESA	Strategic Environmental and Social Assessment
SOER	State of the Environment Report
SRB	Shire River Basin
SRBMP	Shire River Basin Management Programme (Phase I) Project
TA	Traditional Authority
TCE	Technical Committee on the Environment
USD	United States Dollar
TCPC	Town and Country Planning Committee
VDC	Village Development Committee
WWEC	Water, Waste and Environment Consultants

ACKNOWLEDGEMENT

This Resettlement Policy Framework has been prepared with the support and consultation of many people to whom Water, Waste and Environment Consultants are very grateful.

The people consulted included workers and communities in the Shire River Basin where the proposed project activities will be implemented. The areas include districts, cities and towns of Ntcheu, Mangochi, Machinga, Balaka, Liwonde, Zomba, Blantyre, Mwanza, Thyolo, Chikhwawa and Nsanje.

District officials including District Commissioners, members of District Executive Committees and Town and Country Planning Committees, Environmental District Officers, Chiefs and the general public provided valuable input to this study.

In addition, a number of senior officers in the Ministry of Water Development and Irrigation, Environmental Affairs Department, Energy Department, Forestry Department and key line ministries including the Ministry of Local Government and Rural Development and the Ministry of Transport and Public Works provided considerable administrative and logistical support during the assignment.

EXECUTIVE SUMMARY

Introduction

The Government of the Republic of Malawi has received a Project Preparation Advance (PPA) on the proceeds of a credit from the International Development Association (IDA) of the World Bank, to finance the preparation of the Shire River Basin Management Project (SRBMP). The World Bank is assisting the Government of Malawi in this Project as part of a longer term Program. The SRBMP is being implemented by the Government of Malawi, through the Ministry of Water Development and Irrigation (MWDI)

The overall Project Development Objective is to make significant progress in achieving socially, environmentally and economically sustainable development in the Shire River Basin. The project development objective is to prepare a strategic planning and development framework for the entire Shire River Basin (defined from outflow of Lake Malawi to the border at Nsanje); and support targeted investments to improve land and water resources management and livelihoods in the Basin.

The first Project of the overall program of 15 years is expected to involve a World Bank investment of about USD 145 million and to be implemented over five and half years to support:

- Strategic planning and implementation of large-scale infrastructure investments.
- Adoption of sustainable land, forest and water management practices (to reduce land degradation in production landscapes).
- Improvement of productivity and incomes of smallholder farmers in priority catchments.
- Improvement of flood management in the Lower Shire.

The project proposes to implement catchment management and income generating interventions that are likely to have impacts on land holdings, sources of income and livelihoods in various communities and areas where the project activities will be implemented. To mitigate the potential negative impacts and (to) enhance the positive attributes of the project, it is necessary to prepare this Resettlement Policy Framework (RPF), which is accompanied by a Process Framework (PF) document as an addendum, to address issues related to restriction of access to legally designated national parks or protected areas.

The RPF will be used during the planning and design stage and throughout the project implementation period; and it will be included in the Program Implementation Manual (PIM). It identifies potential negative impacts (on assets or on sources of livelihood) resulting from the project activities; and it presents a clear and systematic framework to compensate or relocate the persons thus affected, when necessary. However, as prescribed in the OP/BP 4.12 (World Bank operational safeguards policy) once the physical locations of project intervention areas are known, either a general Resettlement Action Plan (RAP) for the overall SRBMP or micro-project specific Abbreviated RAPs would be prepared by the borrower to comply with the basic requirements of the policy.

Where new land has to be acquired, or where there is an impact on assets or livelihoods from the SRBMP activities, there will be need for preparation of procedures and principles for land acquisition, resettlement and compensation. This entails providing sufficient investment resources to meet the needs of the Project Affected Persons (PAPs) who may be physically displaced from their current habitat, resources or source of livelihoods. It also requires adequate collaborative consultation and agreement with the PAPs, to ensure that they maintain or improve their livelihoods and standards of living to at least equal to, or better than the previous life style in the new environment. This RPF is prepared to ensure effective preparation and implementation of the asset acquisition, resettlement and compensation process for SRBMP.

The SRBMP is a social and environmental category “A” project. This RPF therefore, has adopted applicable principles outlined in the World Bank’s Operational Policy (OP 4.12) into local experiences and legislation, which are not comprehensive enough to accord fair compensation and resettlement arrangements. OP 4.12 is the relevant instrument relating to all components of the SRBMP that could lead to or effect involuntary resettlement, irrespective of where the sources of the project funds originate. The policy also applies to other activities that, in the view of the Bank, trigger involuntary resettlement

and are: (a) Directly and significantly related to the Bank-assisted project; (b) Necessary to achieve its objectives as set forth in the project documents; and (c) Carried out, or planned to be carried out in support of the project.

The policy focuses on direct economic and social impacts that both result from Bank-assisted investment projects and are caused by:

- (a) The involuntary taking of land resulting in:
 - (i) Relocation or loss of shelter by PAPs;
 - (ii) Loss of assets or access to assets; or
 - (iii) Loss of income sources or means of livelihood, whether or not the affected persons must move to another location; or

- (b) The involuntary restriction of access to legally designated areas including protected areas; resulting in adverse impacts on the livelihoods of the displaced persons. In this case, the borrower and in this regard, the Government of the Republic of Malawi has prepared a Process Framework (PF) acceptable to the Bank, detailing the participatory process on the basis of which:
 - (a) Specific components of the project will be prepared and implemented;
 - (b) The criteria for eligibility of displaced persons will be determined;
 - (c) Measures to assist the displaced persons in their efforts to improve their livelihoods, or at least to restore them, while maintaining the sustainability of the project areas will be designed and implemented; and
 - (d) Potential conflicts involving displaced persons will be resolved.

The process framework also includes a description of the arrangements for implementing and monitoring the process until the displaced persons become fully settled.

Preparation of this RPF is based on the field investigations and public consultations as well as participation in the proposed project areas; and consultations with other institutions including Government Ministries. The RPF draws its strength from the legal instruments that exist in Malawi; specifically the Land Act, the National Land Policy, and the Lands Acquisition Act. These and other legislative instruments including the Environment Management Act and the World Bank Operational Policies provide the basis and the legal platform for the conduct of fair land acquisition, compensation and resettlement; and they have been used to prepare this RPF.

The field investigations, public consultations and participation have revealed that there are some land acquisition and resettlement activities managed mostly by the ministry responsible for lands. A number of inconsistencies have been identified in the way these activities are managed, particularly with respect to resettlement and compensation. It was noted during the stakeholder consultations that cash compensations have been preferred in return for houses, buildings and structures. The consultations and participation also revealed that the prices used in the determination of compensation values have, in some cases not been regularly updated and that payments to PAPs have been delayed on a number of occasions. This has resulted in PAPs receiving inadequate compensation for them to maintain their livelihoods to the same levels or to improve their livelihoods in comparison with pre-project conditions.

Using the information obtained through stakeholder consultations and participation, the existing laws and regulations and the World Bank Operational Policies, this RPF has developed the screening process, methods for valuing assets and procedures for delivery of compensation. The RPF establishes parameters for the conduct of land acquisition, compensation, including for preparation of RAPs in case of physical resettlement of PAPs who may be affected during implementation of the SRBMP. The RPF has made recommendations for appropriate local and national structures to facilitate smooth and effective implementation and monitoring of resettlement and compensation for the SRBMP.

The RPF has been prepared in anticipation that the project activities under the SRBMP will require additional land, especially customary land to be alienated from local people. The RPF therefore, provides safeguards against adverse impacts of development activities of the SRBMP, through minimizing the

number of PAPs in the first place. It provides procedures and means for the preparation of RAPs for adequately compensating for losses the PAPs may incur, in the case that resettlement cannot be avoided.

The RPF is intended to assist all proponents implementing World Bank funded (Category A) projects on the SRBMP. The overall responsibility for the implementation of this RPF shall reside with the SRBMP, to be assisted by the Ministry of Local Government and Rural Development (MLGRD), Ministry of Water Development and Irrigation, and the Ministry of Lands, Housing and Urban Development.

The SRBMP will ensure that the Framework is publicly disseminated and that project staff has requisite skills and knowledge and where necessary, they have received appropriate training to implement it.

The District Councils shall take responsibility for implementation of the RPF at respective local authorities, with assistance from the SRBMP and the offices of the above mentioned Government Ministries. For Municipalities, the Municipal Councils shall be responsible for the implementation, with assistance from the SRBMP and local representatives of the relevant Government Ministries.

It is recommended that implementation of the RPF should be systematically organized to follow a number of steps including:

- Full understanding of the project components, particularly those requiring land acquisition;
- Public consultation and participation;
- Determination of land ownership;
- Screening of the project sites, resettlement sites and project activities;
- Property and asset valuation;
- Procedures for preparation, approval and implementation of resettlement plans;
- Effective redress of complaints and grievances; and
- Monitoring of the RAPs and the Abbreviated Resettlement Action Plans as may be appropriate

These steps will ensure that future SRBMP micro-projects are satisfactorily and efficiently implemented, to effectively address any adverse social, economic and environmental impacts; so that PAPs are fairly treated on land acquisition, resettlement, loss of assets and impact on their livelihood.

DEFINITION OF TERMS USED IN THE REPORT

Unless the context dictates otherwise, the following terms shall have the following meanings: -

1. **“Census”** means a field survey carried out to identify and determine the number of Project Affected Persons (PAP) and their assets; in accordance with the procedures, satisfactory to the (SRBMP), and the World Bank Safeguard Policies. The meaning of the word shall also embrace the criteria for eligibility for compensation, resettlement and other measures, emanating from consultations with affected communities and the Local Leader
2. **Environmental and Social Management Framework (ESMF)** is a safeguard instrument (document) which establishes a mechanism to determine and assess future potential environmental and social impacts of the project funded activities in the SRBMP construction program. The framework sets out mitigation, monitoring and institutional measures to be taken during design, implementation and operation of the project activities to eliminate adverse environmental and social impacts, offset them, or reduce them to acceptable levels. This instrument has been prepared as a separate and stand-alone document to be used in conjunction with this RPF.
3. **“Compensation”** means the payment in kind, cash or other assets given in exchange for the taking of land including fixed assets thereon, in part or whole.
4. **“Cut-off date”** is the date of commencement of the census of PAPs within the project area boundaries. This is the date on and beyond which any person whose land is occupied for project use, will not be eligible for compensation.
5. **“Project affected persons” (PAPs)** means persons who, for reasons of the involuntary taking or voluntary contribution of their land and other assets under the project, result in direct economic and or social adverse impacts, regardless of whether or not the said Project affected persons physically relocate. These people will have their:
 - (a) Standard of living adversely affected, whether or not the Project Affected Person must move to another location ;
 - (b) Right, title, interest in any house, land (including premises, agricultural and grazing land) or any other fixed or movable asset acquired or possessed, temporarily or permanently, adversely affected;
 - (c) Access to productive assets adversely affected, temporarily or permanently; or
 - (d) Business, occupation, work or place of residence or habitat adversely affected.
6. **“Involuntary Displacement”** means the involuntary taking of land resulting in direct or indirect economic and social impacts caused by:
 - (a) Loss of benefits from use of such land;
 - (b) Relocation or loss of shelter;
 - (c) Loss of assets or access to assets; or
 - (d) Loss of income sources or means of livelihood, whether or not the project affected person has moved to another location.
7. **“Involuntary Land Acquisition”** is the taking of land by government or other government agencies, for the purposes of a public project against the will of the landowner. The landowner may be left with the right to negotiate the amount of compensation proposed. This includes land or assets for which the owner enjoys uncontested customary rights.

8. **“Land”** refers to agricultural and/or non-agricultural land and any structures thereon whether temporary or permanent and which may be required for the Project.
9. **“Land acquisition”** means the taking of or alienation of land, buildings or other assets thereon for purposes of the Project.
10. **“Rehabilitation Assistance”** means the provision of development assistance in addition to compensation such as land preparation, credit facilities, training, or job opportunities, needed to enable project affected persons to improve their living standards, income earning capacity and production levels; or at least maintain them at pre-project levels.
11. **“Resettlement and Compensation Plan”, also known as a “Resettlement Action Plan (RAP)” or “Resettlement Plan”** - is a resettlement instrument (document) to be prepared when project activity locations are identified. In such cases, land acquisition leads to physical displacement of persons, and/or loss of shelter, and /or loss of livelihoods and/or loss, denial or restriction of access to economic resources. RAPs are prepared by the party (in this case SRBMP) impacting on the people and their livelihoods. RAPs contain specific and legally binding requirements to be abided by SRBMP to resettle and compensate the affected party before implementation of the project activities causing adverse impacts.
12. **“Replacement cost”** means replacement of assets with an amount sufficient to cover full replacement cost of lost assets and related transaction costs. The cost is to be based on **Market rate (commercial rate)** according to the Malawi law for sale of land or property. In terms of land, this may be categorized as follows;
 - (a) “Replacement cost for agricultural land” means the pre-project or pre-displacement, whichever is higher, market value of land of equal productive potential or use located in the vicinity of the affected land, plus the costs of:
 - (b) Preparing the land to levels similar to those of the affected land; and
 - (c) Any registration, transfer taxes and other associated fees;
13. **“Replacement cost for houses and other structures”** means the prevailing cost of replacing affected structures of the quality similar to or better than that of the affected structures, in an area and. Such costs shall include:
 - (a) Transporting building materials to the construction site;
 - (b) Any labour and contractors’ fees; and
 - (c) Any registration costs.
16. **“Resettlement Assistance”** means the measures to ensure that project affected persons who may require to be physically relocated are provided with assistance such as moving allowances, residential housing or rentals whichever is feasible and as required, for ease of resettlement during relocation,
17. **“The Resettlement Policy Framework (RPF)”** means this document, which has been prepared to guide on preparation of Resettlement Action Plans throughout the SRBMP implementation. The RPF will be disclosed to set out the resettlement and compensation policy, organizational arrangements and design criteria to be applied to meet the needs of the people who may be affected by the program. The **Resettlement Action Plans (“RAPs”)** for the SRBMP will be prepared consistent with the provisions of this RPF.
18. **“Voluntary Land Contribution”** refers to a process by which an individual or communal

owner agrees to provide land or property for project-related activities. Voluntary contribution is an act of informed consent, made with prior knowledge of other options available and their consequences, including the right not to contribute or transfer the land. It must be obtained without undue coercion or duress.

Voluntary Land Contribution may be of two types:

- a) Voluntary Land Contribution for Compensation, or
- b) Voluntary Land Contribution without Compensation

19. **“Vulnerable Groups”** refers to:

- a) Low capacity households - widows, the disabled, marginalized groups, low income households and informal sector operators;
- a) Incapacitated households – those no one fit to work and;
- b) Child-headed and street children. This group is among other things, characterised by low nutrition levels, low or no education, lack of employment or revenues, old age, ethnic minority and/or gender bias.

1.0 INTRODUCTION

1.1 *Project Description*

The Government of Malawi has received a Project Preparation Advance (PPA) on the proceeds of a credit from the International Development Association (IDA) of the World Bank to finance the preparation of the Shire River Basin Management Project (P117617). The World Bank is assisting the Government of Malawi in the preparation of the Shire River Basin Management Project, as part of a longer term Program.

The overall Program Development Objective is to make significant progress in achieving socially, environmentally and economically sustainable development in the Shire River Basin (SRB). The project development objective of the Shire River Basin Management Project (SRBMP) is to develop a strategic planning and development framework for the entire Shire River Basin (defined from outflow of Lake Malawi to the border at Nsanje); and support targeted investments to improve land and water resources management and livelihoods in the Basin.

The Program investments will be designed to support the GoM's economic growth and sustainable development plans for the basin. The Program will address the interlinked challenges of poverty and a deteriorating natural resource base in the Shire River Basin, to halt the process of environmental degradation and improve the productive potential of natural resources. The Program will promote integrated climate resilient investment planning in the basin, including institutional capacity building, to plan and monitor changes in land use patterns at a basin level. This first component of the program will focus on setting the stage for an integrated approach in investment planning where both the public and private sector including local communities get involved in defining the overall goals and identifying the approaches towards a more coherent management of the Shire River Basin. The programme first component of the program will support strategic planning and implementation of large-scale infrastructure investments; adoption of sustainable land, forest and water management practices to reduce land degradation in production landscapes and improve the productivity and incomes of smallholder farmers in priority catchments; and improved flood management in the Lower Shire. The first project is expected to involve an investment of about USD145 million and will be implemented over five and a half years.

SRBMP is being implemented by the Government of Malawi through the Ministry of Water Development and Irrigation. The Ministry has engaged the services of Water, Waste and Environment Consultants (WWEC) to prepare an Environmental and Social Assessment (ESA), Environmental Social Management Framework (ESMF) and Resettlement Policy Framework (RPF) for the SRBMP.

1.2 *Project Components and Activities*

The Project is organized in three components (of approximately equal costs) as follows:

- Component A: Shire Basin Planning
- Component B: Catchment Management
- Component C: Water Related Infrastructure.

COMPONENT A: SHIRE BASIN PLANNING

Component A would be a foundation for more integrated investment planning and system operations for the Shire Basin. This will attract financing for development of a modern integrated Shire Basin knowledge base and analytical tools, as well as well-planned structured stakeholder consultation processes, in order to facilitate investment and systems operation planning. This component would promote a more coordinated and holistic approach based on a shared (but evolving) vision for the development and management of the Shire Basin. It will support institutional coordination mechanisms for basin planning and management for the basin's socio-economic development and environmental sustainability. It is organized in four sub-components:

Sub-component A.1: Develop a Shire Basin Plan: This would be done through:

- (i) Preparing an inter-sectoral Shire River Basin Plan, including basin planning and decision support systems, acquiring datasets (satellite imagery etc.), and training for water resources planning and management; and
- (ii) Strengthening an inter-sectoral Shire Basin coordination and management institution.

Sub-component A.2: Build institutional capacity for coordinated basin management: This sub-component aims at strengthening the different line agencies involved in Shire Basin management to more effectively play their different roles; in particular:

- (i) Ministry of Water Development and Irrigation (in particular, the Department of Water Resources, Department of Irrigation, and the Water Resources Board).
- (ii) Ministry of Water Development and Irrigation (Department of Land Resources Conservation).
- (iii) Ministry of Environment and Climate Change Management (Department of Forestry, Department of Climate Change and Meteorological Services).
- (iv) Ministry of Lands, Housing and Urban Development (particularly Department of Surveys and the National Spatial Data Centre); and
- (v) Department of Natural Relief and Disaster Management (DNRDM).

Sub-component A.3: Improve water resources information systems: This sub-component will focus on creating:

- (vi) Water resources information systems to monitor water flows and discharges; water quality and sediment loads as well as groundwater, using real time low-cost modern communications such as Global System Mobile communications (GSM) telemetry; complete with operational control systems; and
- (vii) Flood Early Warning Systems, which will provide information to be used to refine and update the Integrated Flood Risk Management Plan being prepared by DNRDM with Bank/Global Facility for Disaster Reduction Recovery (GFDRR) support for the Shire Basin.

Sub-component A.4: Program management, monitoring and evaluation: This component will include establishment of a project team to coordinate the project and ensure efficient and timely delivery of project resources in accordance with the project's objectives.

COMPONENT B: CATCHMENT MANAGEMENT

The purpose of this component is to rehabilitate degraded catchments for sustainable natural resource management and livelihoods through an integrated, participatory approach. Development of community-based natural resource management systems is a long-term process that requires sufficient time to build the necessary capacity and ownership and is suitable for the programmatic approach proposed for the project. There would be three stages at the local micro-catchment level: (i) building conditions for micro-catchment rehabilitation and alternative livelihood development, including community sensitization, social mobilization and capacity building to ensure ownership and a strong foundation for subsequent interventions; (ii) implementation of micro-catchment development plans and alternative rural livelihoods; (iii) continuing financial and technical support for catchment rehabilitation and livelihood activities and longer-term community support.

Sub-component B.1: Build institutional capacity for sub-catchment planning and monitoring: This sub-component will include the following sets of activities:

- (i) Strategic planning and facilitation (including development of a comprehensive Monitoring & Evaluation System, guidance documents/field manuals, etc.).

- (ii) Participatory micro-catchment planning at the Group Village level to develop integrated plans covering approximately 3,000 hectares each; and
- (iii) Implementation support to provide technical service to government and communities at the national and field level.

Sub-component B.2: Rehabilitate targeted sub-catchments,

This component would finance interventions identified in micro-catchment plans prepared under sub-component B.1, including:

- (i) Soil and water conservation for more sustainable and productive agriculture.
- (ii) Forestry and rural energy interventions to restore forest cover and reduce firewood consumption within the sub-catchments.
- (iii) Water regulation control to support community infrastructure.
- (iv) Small-scale/mini irrigation facilities to assist farmers in drawing water from small storage structures to support agriculture/agri-business; and
- (v) Appropriate rural infrastructure in each sub-catchment based on initial strategic assessments.

Sub-component B.3: Support alternative rural livelihoods

The component would support demand and market driven income-generating activities, with special targeting of women, youth and landless groups, to gradually decrease dependence on forest products as sources of income. This includes:

- (i) Development and start-up of alternative livelihoods to support identification, mobilization, sensitization, and initial capacity building of common interest groups (CIG) for commercially oriented income-generating activities.
- (ii) Capacity building and mentoring to build organizational, technical, financial and business capacities, and linkages with the private sector; and
- (iii) Improving access to rural finance through community small-grants and linkages with existing credit schemes.

Sub-component B.4: Sustainable management of Shire Forests

This component would strengthen management of remaining natural habitat blocks in the middle and lower Shire to protect and enhance the delivery of environmental services (such as watershed protection, flood attenuation, biodiversity conservation, carbon storage and as a basis for generating revenues from tourism). This will include:

- (i) Investments to strengthen management of protected areas and address people-park conflicts in and around Lengwe and Liwonde National Parks – including improved planning, development of sustainable financing mechanisms, development of essential infrastructure to boost revenues from tourism and to improve conservation management, creation of water points, provision of training and essential equipment and cross-support to other protected areas in the middle and lower Shire; and
- (ii) Establishment of community forest management in the Mangochi-Namizimu Forest Reserve adjacent to Liwonde National Park using a methodological approach endorsed and field-tested by the Department of Forestry. These activities will complement the IDA-funded SLWM investments in predominantly agricultural lands under B2 to form part of an integrated landscape management approach,
- (iii) Improve relationships between local communities and Park authorities by providing small grant support to local CBOs and natural resources associations around Liwonde and Lengwe National Parks.

COMPONENT C: WATER RELATED INFRASTRUCTURE

Component C intends to mitigate risks posed by droughts and floods and to prepare priority water investments. The component would build on the basin planning carried out under Component A, and also on on-going strategic water resources planning by the MWDI. The component is organized in three sub-components:

Sub-component C.1: Kamuzu Barrage

This sub-component would support the construction and construction supervision of the Kamuzu Barrage upgrade at Liwonde (to improve control of Lake Malawi water level and regulate the flow of the Shire River), coupled with optimization and implementation of a new operational regime for the barrage. This central piece of water resources infrastructure for Malawi is currently being finalized with a detailed design and independent Environmental and Social Impact Assessment under the Second National Water Development Project II implemented by MWDI.

Sub-component C.2: Flood Management

This component aims at managing floods in the Lower Shire in collaboration with other initiatives, to support the implementation of the Integrated Flood Risk Management Plan for the Lower Shire (see Component A):

- (i) Community level adaptation support to the design and construction of adaptation measures, such as flood demarcation, elevated platforms, shelters and safe havens; communication and transport equipment for Civil Protection Committees, and connectivity to the Flood Early Warning Systems; and
- (ii) Priority flood mitigation interventions, such as river bank stabilization, dykes, culverts, flood diversion structures etc.

Sub-component C.3: Preparation of New Water Investments

This component will involve preparation of new investments within the Shire basin would include feasibility and design studies for additional water related infrastructure works. There is ample scope and need to further develop the Basin's resources for different economic sectors, such as: agriculture in general and irrigation agriculture in particular, aquaculture, urban and rural water supply, and hydropower, transport and disaster resilience. Special attention could be given to the design of a set of measures for flood mitigation in the Ruo River, the notoriously forceful flooding tributary to the Lower Shire.

1.3 Objectives of this Resettlement Policy Framework

Among other things, the project proposes implementation of catchment management infrastructure and income generating interventions that are likely to have impacts on land holdings, sources of income and livelihoods in various target areas and communities. To mitigate against the potential negative impacts and to enhance the positive attributes and benefits of the project to the potentially affected persons, it is necessary to prepare this Resettlement Policy Framework (RPF). The latter will be accompanied with a Process Framework as a standalone document but appended to the RPF and meant to address issues related to the restriction of access to legally designated national parks and protected areas.

The RPF will be used during the planning and design stage and throughout the project implementation period; and it will be included in the Program Implementation Manual (PIM). The RPF will identify areas of potential negative impacts (on assets or on sources of livelihood) resulting from the project activities; and it will develop a clear and systematic framework to facilitate compensation, or relocation (when necessary) of the persons thus affected.

1.4 Scope of the RPF

This Resettlement Policy Framework, for the SRBMP, provides an assessment of the social impacts of the project and develops appropriate mitigation plans. The mitigation plans comply with the appropriate national and local laws and guidelines, and with the World Bank's policy directives related to OP4.12/BP4.12 - Involuntary Resettlement. These policy directives require that in cases of involuntary resettlement, satisfactory relocation must be completed before the civil works for the project are undertaken. Appropriate action must also be taken to restore incomes and other resources lost by the Project Affected Persons (PAPs). The RPF complements the Environmental and Social Management Framework (ESMF) for the SRBMP.

This RPF, prepared to assist in determining compensation and rehabilitation assistance to PAPs, is based on the overall principle that people shall not suffer net losses as a result of the project activities of SRBMP. It contains categories of PAPs and their corresponding entitlements. The RPF clarifies resettlement and rehabilitation principles, in line with OP4.12 (paragraphs 26 – 28), to be applied to SRBMP sub projects during project implementation. This RPF requires that subproject Resettlement Action Plans (RAPs), consistent with this RPF be prepared and submitted to the Bank for approval, after specific planning information becomes available, as required by OP 4.12, paragraph 29.

The RPF is organised into the following sections:

- Section 1 gives the project description, project components and activities; objectives and scope of the RPF for the SRBMP;
- Section 2 presents the component activities that are likely to cause impacts of land acquisition and resettlement;
- Section 3 presents the current land acquisition mechanisms; basic principles and vision of the resettlement programme and highlights aspects of resettlement preparation and implementation;
- Section 4 gives an overview of the steps that lead to the preparation of RAPs, highlighting the need for public consultation and participation. The section also gives the requirements for approval of RAPs;
- Section 5 defines the procedure for estimation of PAPs and the categories of PAPs. These categories include the disadvantaged persons and those that are powerless in society;
- Section 6 gives the eligibility criteria for PAPs, narrating the importance of the cut-off date. The section also gives the recommended eligibility criteria;
- Section 7 cites the relevant legal framework for land acquisition and resettlement in Malawi. The section also presents the discrepancies that are among the various legislations. The relevant World Bank Operational Policies are also cited and the gaps between these and the Malawi legislation are highlighted. The section concludes by giving recommendations for bridging the gap and recommends the use of the more stringent of the two (Malawi or World Bank Policies) to ensure that PAPs are adequately and fairly compensated;
- Section 8 gives the current asset valuation methods and highlights the problems with this method. The section also gives the recommended valuation methods, which will ensure that the PAPs are adequately and fairly compensated;
- Section 9 deals with the land acquisition and resettlement implementation process. Stages of the land acquisition and resettlement process are given; linking the resettlement process to the implementation of the civil works. Important time frames to be observed are also given;
- Section 10 highlights the process for delivery of entitlements and compensation, which includes notification of asset holders, maintenance of a database and public consultation and participation. The section highlights the need for having proper compensation agreements through signing of contracts/documentation;
- Section 11 highlights the importance of Public Consultation and Participation in the entire process of the project to ensure successful implementation;
- Section 12 highlights mechanisms for grievance redress emphasizing consensus and negotiations as the best mechanisms for conflict resolution;
- Monitoring and evaluation requirements and recommendations are given in section 13. The areas to be monitored, the indicators and the institutions to carry out the monitoring are also given in this section and;
- Finally, Section 14 gives the budgetary implications and funding mechanisms. This section highlights the fact that it is not possible at this time to present the final budget for resettlement and rehabilitation since the specific details of project sites and designs are not available at the moment.

2.0 IMPACTS, LAND ACQUISITION AND RESETTLEMENT

2.1 *Component Activities that are Likely to Cause Impacts*

Components B and C of the SRBMP may trigger land acquisition and resettlement safeguard policies. Project activities in these components might require the removal of both temporary and permanent structures such as buildings, roads and bridges, rural water supply pipes and taps, cultural heritage sites and others, particularly those within the project areas. The activities may also require temporary or permanent acquisition of land currently used for farming or other purposes in these areas.

In some cases, the actual removal of structures or crops may not take place. However, restriction of access to services or restrictions to movement may result particularly during construction which may require compensation especially when PAPs fail to effectively use their property.

Specifically, the following components and sub-components may trigger land acquisition, resettlement safeguards and may restrict access to services or movement:

Component B: Catchment Management

The purpose of this component is to rehabilitate degraded catchments for sustainable natural resource management and livelihoods, through an integrated and participatory approach. For this component, activities that may trigger land acquisition, resettlement safeguards and restriction to movement are related to:

Sub-component B.2: Rehabilitate targeted sub-catchments:

- (i) *Soil and water conservation for more sustainable and productive agriculture*; where water conservation structures may take up people's land.
- (ii) *Forestry and rural energy interventions to restore forest cover and reduce firewood consumption within the sub-catchments*; where people may currently be cultivating the land.
- (iii) *Water regulation control to support community infrastructure*; in areas that may currently be occupied or used for other purposes
- (iv) *Small-scale/mini irrigation facilities to assist farmers in drawing water from small storage structures to support agriculture/agri-business*; where people may currently be cultivating and
- (v) *Appropriate rural infrastructure in each sub-catchment based on initial strategic assessments*; where the infrastructure may take up people's land

Sub-component B.3: Support alternative rural livelihoods

The sub-component would support demand and market driven income-generating activities, with special targeting of women, youth and landless groups, to gradually decrease dependence on forest products as sources of income. The income generating activities may require land acquisition for communal use, where community projects are involved.

Sub-component B.4: Sustainable management of Shire Forests

This sub-component would strengthen management of remaining natural habitat blocks in the middle and lower Shire River Basin to protect and enhance the delivery of environmental services (such as watershed protection, flood attenuation, biodiversity conservation, carbon storage and as a basis for generating revenues from tourism). This will include investments for development of essential infrastructure to boost revenues from tourism and to improve conservation management; creation of water points; establishment of community forest management in the Mangochi-Namizimu Forest Reserve adjacent to Liwonde National Park; and providing small grant support to local CBOs and natural resources associations around Liwonde and Lengwe National Parks. These activities may require land acquisition.

Component C: Water Related Infrastructure

Component C is intended to mitigate risks posed by droughts and floods and to prepare priority water investments. Construction activities under this component may lead to land acquisition as follows:

Sub-component C.1: Kamuzu Barrage

Construction of the Kamuzu Barrage upgrade at Liwonde (to improve control of Lake Malawi water level and regulate the flow of the Shire River), may require land acquisition. However, the construction activities will be carried on very small land area and the extent of land acquisition will be small.

Sub-component C.2: Flood Management

Managing floods in the Lower Shire, in collaboration with other initiatives, to support the implementation of the Integrated Flood Risk Management Plan for the Lower Shire:

- (i) *Community level adaptation support to the design and construction of adaptation measures, such as flood demarcation, elevated platforms, shelters and safe havens; communication and transport equipment for Civil Protection Committees, and connectivity to the Flood Early Warning Systems* may require land for the infrastructure to be constructed.
- (ii) *Priority flood mitigation interventions, such as river bank stabilization, dykes, culverts, flood diversion structures etc.* may require land which is currently used for cultivation and settlement.

Sub-component C.3: Preparation of New Water Investments

Feasibility studies and design for additional water related infrastructure works, to further develop the Basin's resources for different economic sectors such as: agriculture in general and irrigation agriculture in particular, aquaculture, urban and rural water supply, hydropower, transport and disaster resilience; and the design of a set of measures for flood mitigation in the Ruo River, would lead to land acquisition.

Given the nature and size of the project and the nature of the project sub-components, it is likely that acquisition of land types of different uses, including illegally occupied land and farmland, will take place, primarily for safeguarding the environment through catchment protection measures, or for development of income generating activities.

Where the investment sub-projects involve civil and construction works, new or additional land may be required for:

- Construction of access and service roads;
- Construction of different types of service buildings and operation structures;
- Construction of the different types of drainage structures for roads;
- Water drained from access roads may flow into people's gardens and onto land used for different purposes thereby creating gullies;
- Borrow pits and works camps construction may require additional land for operation of the borrow pits and for transportation routes for construction materials.

It is important therefore (at this stage of planning, identification and preparation of investment sub-projects) to ensure that the taking of land currently used or earmarked for other activities is minimised.

2.2 Impacts of Land Acquisition and Resettlement

Unmitigated involuntary land acquisition and resettlement, arising from development projects, often leads to severe economic and socio-economic impacts where:

- Production and income generating systems including natural resources are disrupted;
- PAPs face impoverishment as their productive assets or income sources are lost;
- PAPs skills are rendered inapplicable in new environments;
- PAPs are relocated to environments where their access to community institutions and facilities is lost and where social networks are weakened;
- Kin groups of PAPs are dispersed; and cultural identity, traditional authority, social status and the potential for mutual help are diminished or lost; and
- PAPs face increased competition for resources in newly settled areas.

In most cases, resettlement to pave way for development projects is done because the project activities demand land acquisition. Little attention, if any, is given to the welfare of the people who may be affected because of loss of agricultural land; loss of buildings; loss of access or proximity to water; health and social amenities.

Certain conditions in the project and sub-projects may present special problems or opportunities to resettlement. Some of these special problems may result from:

- (a) Illegal settlements;
- (b) Ineligible opportunists taking advantage of compensation offers;
- (c) Disadvantaged affected persons being sidelined;
- (d) Lack of awareness (by the PAPs) of their rights;
- (e) Problems of integration with host communities and;
- (f) Compensation amounts that do not match the lost assets.

Opportunities may include:

- (i) Better facilities (transport and communication as a result of the improved road infrastructure conditions) provided along with the resettlement programme;
- (ii) Better and new employment opportunities or income generating capacity provided by the project and;
- (iii) Improved transport and communication as a result of the improved road and infrastructure conditions.

The diversity of these problems, some of which will be project and site specific, requires extensive consultation and public awareness for the Project Affected Persons to appreciate the benefits of the development project to them and to the country as a whole.

3.0 PRINCIPLES AND OBJECTIVES GOVERNING RESETTLEMENT PREPARATION AND IMPLEMENTATION

3.1 *Current Land Acquisition Mechanisms*

Generally in the past when Government wanted to build schools, health centres and other development projects in the rural areas, the beneficiary community, coordinated by the traditional leaders, would provide the land and the affected persons would be allocated alternative land as compensation.

Where the development involves road construction or such other development which is beyond the rural community, the procedures laid down in the Public Roads Act or the Land Acquisition Act would be followed. However, in some areas, project developers have acquired land for development without consulting the local communities and their leaders. This approach would have negative repercussions to beneficiary communities if applied on the Shire River Basin Management Project.

A new trend is now growing where, for any development taking place including in rural areas, the project-affected persons expect compensation from the executing agencies of the development project, including from Government.

3.2 *Basic Principles and Vision of the Resettlement Programme.*

This RPF for the SRBMP advocates for all measures to ensure that none or as few people as possible are moved or deprived from resources. Hence, the principles of minimising harm, avoiding or minimizing resettlement are to be followed in all sub-projects of the SRBMP.

In reality, increasing pressure on land resources (due to high population growth) has led to scarcity of natural resources such as land for agricultural and for other development project activities. Consequently, acquisition of land or resources may be necessary, and resettlement may not be avoided in all cases of implementing the sub-project activities under this project. Where physical and economic displacement of people, loss of assets, or impact on people's livelihoods cannot be avoided, involuntary acquisition of land for the SRBMP shall, as a matter of principle:

- (a) Initially endeavour to utilize available freehold or public land;
- (b) Utilize land voluntarily donated by individual/communal owners. The individual or communal owners must freely agree to provide the land or property for the project-related activities. The contribution must be an act of informed consent, made with prior knowledge of other options available (including the right not to contribute or transfer the land) and their consequences. The land, sufficient for the purposes of the project must be donated without undue coercion or duress. In this context, voluntary donation shall mean that the people are not coerced to part with their land and that the donation does not deny them receiving compensation for the losses;
- (c) Demonstrate the commitment to ensure that the PAPs are meaningfully consulted; and timely, fully and fairly compensated for their losses, if any, before land acquisition. The SRBMP shall demonstrate the commitment to restore the PAPs livelihoods to at least their original condition; and that the PAPs shall be assisted in their efforts to improve their livelihoods and standards of living by the SRBMP;
- (d) Consult PAPs and any available willing sellers of land in order to acquire land for the PAPs;
- (e) Ensure that there shall be no distinction between compensation for private and customary land.
- (f) Negotiate for land for implementation of the project activities, using agreed compensation plans and the provisions of this RPF and;
- (g) As a last resort only, acquire land through involuntary means following the procedure outlined below:
 - Where suitable land for a specific project has been identified by the SRBMP or a competent authority, the project or the competent authority shall initiate negotiations with the affected persons including the traditional/community leaders of the area, the owner or occupier of the land and the District Council or its recognized representatives;
 - There shall be close coordination and cooperation, among public institutions and other relevant stakeholders in order to benefit from the various expertise and experiences in the

- implementation of resettlement for the SRBMP activities;
- The implementing agency, in consultation with the developer, shall prepare Resettlement Action Plans (RAPs) that comply with the provisions of this RPF, for implementation of land acquisition, resettlement and compensation.

Where resettlement, asset acquisition, or impact on livelihood has to take place, this RPF shall be the reference document to guide the process for preparation of the RAPs, which are necessary for land acquisition, compensation and resettlement to be done in a fair manner.

A RAP is a detailed and specific plan that contains information prepared for well-defined specific project activities. It contains detailed census information with the numbers and names of persons that are to be displaced or persons that are affected in some way or another including loss of shelter, loss of access to services and loss of means of livelihood. A RAP will contain information on property values, the basis and conduct for compensation. It will also contain specific work plans including dates when the PAPs are going to be compensated and relocated. RAPs contain specific and legally binding requirements to be followed by the project developer; and how to resettle and compensate the affected persons before implementation of the project activities likely to cause the adverse impacts.

3.3 Resettlement Preparation and Implementation

This RPF covers projects that will be clearly defined in the future. Under the SRBMP, RAPs must be presented for those project activities likely to trigger resettlement. In this regard, no construction work may begin on such components of the SRBMP until the RAPs have been developed and approved for these components.

The Project Implementation Unit or consultants for the SRBMP will prepare the RAP and the project will pay for the costs of resettlement. With this approach, the SRBMP and officials shall not delegate responsibility for conducting the census of the affected population, the inventory of assets to be taken, valuation of those assets, negotiation of compensation amounts, or mode of payment of the compensation. The SRBMP shall further ensure that it supports this approach and provides the necessary financial and administrative resources. The objectives of resettlement preparation and implementation are to:

- ✓ Provide an effective, systematic and efficient procedure and mechanisms for the implementation of compensation, resettlement and rehabilitation;
- ✓ Determine the necessary and appropriate detailed list of activities including the time frames for all the stages of compensation, resettlement and post resettlement obligations;
- ✓ Plan for the necessary resources including financial, equipment and human resources (persons and institutions) required for effectively implementing resettlement and compensating the people to be displaced as determined by the census;
- ✓ Ensure that the development that follows in both the vacated and resettled land takes place in an orderly, efficient and environmentally and socially friendly manner;
- ✓ Plan for the systematic implementation of appropriate mitigation measures to avoid adverse consequences of social, cultural, economic and environmental integration with host communities and;
- ✓ Ensure that the needs of the displaced and affected households are timely, smoothly and conveniently provided during the period of transition.

Where land acquisition is inevitable for the SRBMP activities, the following procedure shall be adhered to:

- The Government of Malawi or the implementing agency shall serve notice on the PAPS, clearly explaining the intention and purpose of land acquisition, the area of land required and the owner's or occupier's rights to compensation in accordance with the existing legislation, policies and this RPF;
- In the case of customary land, the competent authority shall ascertain from the traditional

leaders, the persons who have rights over the affected land for accurate identification and fair compensation to affected persons;

- In the case of private land, the competent authority shall ascertain the correct registered owner of the land from the Lands Registry.

The SRBMP shall engage a competent authority to survey the land to be acquired and thereafter a RAP shall be prepared and certified to accurately show:

- (i) The land to be acquired;
- (ii) Names of owners or occupiers of the land, as far as they can be officially ascertained; and the name of the person who is the holder of the right over the land as ascertained by the traditional leaders and other bona fide local residents;
- (iii) Names of the traditional and community leaders or representatives to assist in the process of land acquisition and resettlement;
- (iv) The estimated magnitude of impacts relative to the need for resettlement or compensation and valuation of assets for the compensation;
- (v) Financial records (to permit calculation of the final cost of resettlement and compensation per person or household, to be maintained by a competent authority)

Each person or household receiving compensation will have a dossier containing:

- a) The person's detailed identification information, including name, date and place of birth, next of kin, marital status etc;
- b) Number of persons she or he claims as household or homestead dependants;
- c) The amount of land available to the person or household when the dossier is opened;
- d) Assets – including structures, resources, crops, etc
- e) Photos of the recipient of compensation; and
- f) Socio-economic status.

Each time land is used or acquired by the competent authority, there is need to update the dossier in order to determine if the person or household/homestead is being affected to the point of economic non-viability and eligibility for compensation or resettlement or its alternatives. The dossiers will provide the foundation for monitoring and evaluation, as well as documentation of compensation agreed to, received and signed for.

Additional information will be required for individual's eligibility for resettlement or compensation. This information will include:

- Level of income and production;
- Inventory of material assets and any improvements made on the land; and debts if any;
- Proposed compensation offers and draft agreements to be signed by the affected persons and the developer;
- Details of alternative land (if applicable) inclusive of ancillary support services such as transport for physical resettlement, provision of housing, provision of nominal starter pack amounts for small scale business and agricultural activities and food support or any other relevant assistance that may be required;
- Details of resettlement after-care and assistance, where appropriate;
- Available employment opportunities for the PAPs to participate in the project activities or to be eligible for opportunities in establishing income generating activities under Sub-Components B3 & 4 on Sub-catchment Rehabilitation, Alternative Livelihoods and Ecological Management; and
- Mechanisms for monitoring and evaluation

The RAP will be prepared in close consultation with PAPs to ensure their needs and concerns are appropriately addressed. A copy of the plan will have to be cleared by the World Bank and to be deposited with the District Council; and with the Traditional Leaders of the area affected.

4.0 RAP PREPARATION, REVIEW AND APPROVAL

4.1 Steps Leading to the Preparation and Approval of RAPs

The extent and detail of screening for project sites and for planning and information needs will depend on the severity of impact. In general, screening for project sites shall include, among other things, a baseline study and a census to determine the level of impact to PAPs, and their assets; and establishment of the cut-off date.

The SRBMP will coordinate the project activities with the District Councils, other relevant stakeholders and the Local Leaders in the project areas. As far as possible the local community development structures already existing at the district level shall be used. The Project, through the respective District Commissioners, will pay the compensations.

Screening for land acquisition is a very important component of several activities that contribute to the preparation of the RAP. In preparing the RAPs for the activities that will require resettlement, the following steps will provide guidance:

Step 1 Preparation of Project Activities

The SRBMP will prepare the project activities to be undertaken in the proposed sites, for the proposed construction, rehabilitation and maintenance works.

Step 2 Establishment of the Cut-off-Date

Using participatory methods, SRBMP and the stakeholder District Development Committees, for the project area, will establish the cut off date.

Step 3 Socioeconomic Surveys and Census

The SRBMP will carry out a socio economic survey and a baseline census; and collect any relevant additional information on the PAPs, land and the assets to be affected. The census will identify the PAPs (focusing on the individual household and vulnerable groups) and; assess their incomes and assets, for preparation of the RAP. Socioeconomic characteristics of families and businesses will be compiled as demonstrated in Appendix 4.1 (Table 1 – Property Affected; Table 2 – Socioeconomic Characteristics of Families; and Table 3 – Socioeconomic Characteristics of Business). PAPs will be consulted to ensure that they are properly informed, as well as to elicit contributions and address concerns in the preparation of the RAP.

Step 4 Valuation of Assets and Determination of Compensation

On completion of the socio-economic survey and the baseline census, SRBMP or their consultant will request the Ministry responsible for land matters, to assign qualified staff to value the affected assets and determine levels of compensation. The comprehensive assessment of affected assets and property will provide the required compensation amounts to be included in the RAPs.

Step 5 Identification of Land for Resettlement

For the SRBMP it is not envisaged that mass resettlement to new areas will be necessary. Therefore for shifting of a few households within their current residential areas, the local leaders, assisted by the District Commissioners, will identify suitable replacement land for constructing houses or for replacement gardens within the neighbourhood of the displaced families. Since land is scarce and extremely sensitive to acquire, the SRBMP will purchase land from those willing to sell it with their full participation in the determination of the price and location.

Step 6 Preparation of the RAP

A RAP shall be prepared and shall include details of the socioeconomic survey and the census of affected persons and property, in line with this RPF. The prepared RAP shall also include an implementation plan.

Step 7 Scrutiny of RAPs

The SRBMP shall forward the RAP, together with any modified designs, to the respective line institutions and relevant stakeholders who together with the District Commissioners and their teams at the district level, shall scrutinise them to ensure compliance with the applicable by-laws and sectoral requirements.

Step 8 Checking and Approval of RAPs

After scrutiny at the district level, the RAPs shall be submitted by the District Commissioner to the Commissioner for Lands, to check and approve them, focusing on PAPs details, property assessment and compensation packages.

Step 9 Endorsement of RAPs by the Ministry of Finance

The Commissioner for Lands, after approving the RAPs, will send them to the Ministry of Finance for endorsement. The Ministry of Finance will then allocation part of the Program's resources under an appropriate budget line, for payment of the compensation as detailed in the RAPs. After allocating the budget line, The Ministry of Finance will disburse funds for approved RAPs to the appropriate District Commissioners for payment of compensations to the eligible PAPs.

General Considerations

All construction activities that trigger OP 4.12 and therefore require resettlement action plans will be subjected to final approval of the World Bank, to ensure compliance with the Bank's safeguards. The Bank will ascertain that land is actually acquired or access to resource is lost, denied, or restricted; and that the individual resettlement action plans are consistent with this RPF.

For construction activities that do not trigger OP4.12 and do not have any resettlement issues, the provisions of this RPF will not apply and therefore SRBMP shall refer to the ESMF or the relevant environmental management laws and legislation. Approved compensation costs that do not entail resettlement would therefore be effected at this time.

For construction activities that require resettlement, screening for resettlement sites shall be conducted. The World Bank OP 4.12 article 25 and Annex A provides the basic requirements and contents of the RAP (see Appendix 4.2). Where any element of the Appendices is not relevant to the SRBMP circumstances, it shall be noted in the RAP.

The RAPs will be shared with the PAPs in order to ensure that their needs and concerns have been incorporated into the overall project preparation documents.

The World Bank shall provide final clearance and approval of the RAPs, which shall be in accordance with the applicable by-laws, sectoral requirements as well as the World Bank Policy requirements.

4.2 Public Consultation and Participation

Projects involving the community owe their success to community participation from the planning stage to implementation. In this regard public consultations, through participatory rural appraisal, will be mandatory for all projects requiring land acquisition, compensation and resettlement for the SRBMP activities.

During screening there must be adequate consultation and involvement of the local communities and the affected persons. Specifically, the affected persons must be informed about the intentions to use the earmarked sites for the project activities, facilities and structures. The affected persons must be made aware of:

- (a) Their options and rights pertaining to resettlement and compensation;
- (b) The precise technically and economically feasible options and alternatives for resettlement sites;
- (c) The process and proposed dates for resettlement and compensation;
- (d) Effective compensation rates, at full replacement cost, for loss of assets and services; and
- (e) The proposed measures and costs to maintain or improve their livelihoods and living standards.

Public consultations at the screening stage will aim at:

- (i) Disseminating concepts for proposed project activities with a view to provoking project interest amongst the communities;

- (ii) Promoting sense of ownership for the project and resettlement activities;
- (iii) Inviting contributions and participation on the selection of project sites and resettlement sites;
- (iv) Determining communities' willingness to contribute in kind towards the implementation of the project; and
- (v) Determining community willingness to contribute towards long term maintenance of the project facilities.

Extensive public consultations and participation must be conducted for determination of sites for relocation of PAPs. PAPs must be given the opportunity to raise their concerns or to comment on the new resettlement sites, their locations and the services to be provided in the new areas for resettlement.

During public consultation, there is need to negotiate compensation and resolve conflicts. Grievance redress is very important to the success of implementation of RAPs. Grievance redress is covered in more detail in Section 12 of this RPF.

4.3 *Template for the Design of Sub-Project RAPs*

A RAP must contain a complete inventory of all assets to be acquired, for which a full census shall be undertaken to register and document the status of the potentially affected population within the project impact area, their assets, their tenure status, and their sources of livelihood. All forms of land occupancy (including informal title) should be inventoried. The asset inventory and census should determine the cut-off date for entitlement to relocation assistance or other benefits from the project. In accordance with provisions of the RPF and the specific RAPs, all people moving into the project area after the cut-off date will not be entitled to any support.

A RAP will also contain a time-bound schedule of implementation. Compensation and assistance are to be based on the overall principle that people shall not suffer net losses as a result of the project. If indigenous peoples are affected by the project, specific measures must be taken to ensure that they are not adversely affected.

The RAP for the SRBMP shall give detailed guidance on how to implement the provisions in the RPF, including institutional arrangements and budgets, based on the numbers of PAPs with entitlements under the RPF. Participation and involvement of stakeholders, particularly women, the poor and most vulnerable groups throughout the project, both during the period of planning and implementation, shall be incorporated in the process.

The RAP will follow the usual outline (OP 4.12, Annex A), and the template given in Appendix 4.2, appropriately modified in order to take into account those matters dealt with in the RPF. The scope and level of detail of the RAP will vary with the magnitude and complexity of resettlement. The RAP is based on up-to-date and reliable information about land acquisition (including land for borrow pits, construction camps and other allied works), the proposed resettlement and its impacts on the PAPs and other adversely affected groups.

4.4 *Approval and Public Disclosure of the RAPs*

Once the RAP has been prepared, it must be forwarded to the respective line institutions such as the Ministry of Finance, Ministry of Lands, Housing and Urban Development, Ministry of Local Government and Rural Development, Ministry of Water Development and Irrigation, Ministry of Energy and Mining, Environment and Climate Change Management and relevant stakeholders, who will together with the District Council, scrutinise and recommend them for approval. Once satisfied with the RAP, these line institutions and relevant stakeholders as well as the District Council will forward them, together with their recommendations, to the ministry responsible for lands, physical planning and surveys for their approval and endorsement. The World Bank will also endorse the RAP to ensure compliance with the Bank's Operating Procedures. Once approved, like the other safeguards documents, the RAP will also be disclosed publicly both in-country and at the Info Shop

5.0 ESTIMATED POPULATION DISPLACEMENT AND LIKELY CATEGORIES OF AFFECTED PERSONS

PAPS may be characterised as those people who depend on a certain level of access and use of a given resource, within the affected project, area to maintain their standard of living. They include all families and their dependants living within or near the area affected by the SRBMP; and relying on the resources found therein throughout their lives. This group could include hunters, fishers, agriculturists, pastoralists, women collecting firewood, timber loggers, small-scale horticulturalists, traders and others. PAPS also include people who practice seasonal occupation or second profession activities such as supplying essential basics to local communities, cut out from the rest of society, in return for rare goods needed elsewhere. This group, though not necessarily resident in the project area, is also likely to be affected by the project activities and by extension, the displacement of the resident community.

Notwithstanding the above, restrictions to resource access and use by communities living outside the SRBMP will not be directly compensated by the project as this is not considered involuntary action. However, opportunities for participation in project activities will be available and made known to all PAPS. With respect to the likely persons to be affected by project activities, effort will be made in raising awareness about the project through their respective Traditional Authorities (TAs) as well as their District Commissioners.

5.1 Estimation of Project affected Persons

For compensation and resettlement, it is important that the correct numbers of PAPS are established. This will ensure that all the affected persons are compensated for and therefore the number of complaints will be minimal. At the same time paying compensation to opportunists will be avoided. Below are the steps that need to be followed in order to determine actual numbers of PAPS:

- a) In close liaison with the line ministries District Council authorities and local leaders, determine the extent of project development in question, taking every precaution to avoiding human settlements as much as possible;
- b) Estimate the total area of land the particular project activity will occupy and demarcate the project area of influence; and
- c) Carry out a physical count of all the persons and assets falling within the demarcated area to be occupied by the planned infrastructure. This exercise must lead to the actual numbers of affected persons and assets, on which calculations of compensation amounts will be based. The data on affected persons should be disaggregated into the likely categories of PAPS as described in Section 5.3. This disaggregation assists in the identification of special needs of the different categories of the PAPS including the physically-challenged and disabled.

An estimate may be required for purposes of preparing budgets, and where carrying out the actual head counts of the PAPS might not be practically feasible. In such cases the population densities obtained from the National Statistical Office may be used to estimate the potential number of PAPS. This will give a fair estimate of the total population to be displaced from an area demarcated for the project activities under the SRBMP.

5.2 Vulnerable Groups

During the process of compensating and resettling the PAPS, there is need to ensure fairness and equity among all the beneficiaries with diversified needs. This entails making sure that in addition to all PAPS, regardless of their afflictions or characteristics, the vulnerable and the voiceless, including the host communities (if any) are not left out. Therefore, for the purposes of this RPF, the categories of persons likely to be affected include but are not limited to:

5.2.1 Female-Headed Households

Female-headed households may depend on sons, brothers, any member of the family or property/business that might be displaced by this project. These may also depend on subsistence farming and assistance from family members for their daily needs. When displaced, these persons may find it difficult to open up new farms and to regain their means of livelihood. Resettlement and compensation considerations for the SRBMP should take into consideration of the special needs of this group of persons.

5.2.2 The Elderly

Elderly persons usually depend on subsistence farming, often benefiting from assistance from family members as well as cultivating their farms for their daily needs. Resettlement of this group of people implies that they will have to till new land and construct new homes and this has a bearing on their spent energies. In addition, this is the most emotional group that will leave behind cultural sites valued highly among various households and kin members. This group of people should therefore be adequately compensated to include mechanisms that minimise their work and effort during resettlement; to ensure that their means of livelihood is promoted and/or maintained.

5.2.3 HIV and AIDS-Infected and Affected; and Chronically ill Persons

In Malawi, high percentages of mostly poor people are either living with the HIV virus or are terminally ill with AIDS. Some of these people are beneficiaries of assistance from various health programmes. Resettlement may isolate these people from those that are taking care of them and from the health programmes that they are now able to access. In the assessment of PAPs for compensation and resettlement, under the SRBMP, the needs of this group of people should be given special attention.

5.2.4 Orphans and Child-headed Households

The AIDS pandemic has created a large number of children without parents. These children may be divided into three categories which include:

- (a) Children that are too young to go to school;
- (b) Children that are able to go to school; and
- (c) Children who, for some reason or another, cannot go to school but take care of their younger siblings.

The first two categories often depend on family members or relatives. All the three categories need some assistance that will enable them earn a living. Some of the orphans depend on government health programmes and others engage in small business activities including begging. Resettlement and compensation should adequately provide for these various groups of children in the form of paying for their rehabilitation. Where necessary this should include training them in various useful vocational skills or placing the orphans in children's care homes. Charities could also be one way of fairly compensating them.

5.2.5 Small-Scale Farmers

The movement of small-scale farmers from places where they have been farming for several years and have invested substantially may make it difficult for them to open up new and viable farms in an area that has thick vegetation, or has low soil fertility. These farmers should be assisted with the cost of labour for opening up new farms through the RAP. Prior to opening up of new farms, the requirements of the ESMF must be satisfied.

5.2.6 People with Disabilities

People with disabilities may be attached to a particular service centre. Other people with disabilities may be too incapacitated to build a new home and start earning a living on their own. Their special needs should be adequately provided for by, for instance, placing them in nursing homes. Local leaders and District Council officials will verify eligibility and special needs of PAPs and assume responsibility of vacated lands.

The categories given above may not cover all types of PAPs. In addition, the categories are not mutually exclusive. It is important therefore, that the SRBMP activities should have well prepared and comprehensive RAPs that compensate all the categories of PAPs in a fair manner, through the following and other actions as may be appropriate:

- (a) Quick decisions and rapid action on the resettlement process to timely assist the PAPs;
- (b) Both individual and collective consultation;
- (c) The PAPs should be given the first opportunity to participate or to work in the project activities;
- (d) Alternative subsistence farming plots should be identified and surveyed, following procedures and standards set forth by the authorities responsible for land, surveys and environment. The alternative subsistence farming plots should be developed and made available to those losing subsistence farming land;
- (e) Compensation for loss of crops and trees should be determined at the time of re-location or construction and should be paid as soon as possible thereafter;
- (f) Transitional support, during construction and re-establishment, where appropriate, should be given to those moved from their land;
- (g) Resettlement should be aimed at improving the livelihoods of PAPs;
- (h) Monitoring of the resettlement process should ensure that the resettlement and compensation is benefiting all the PAPs to improve their livelihoods, in comparison with the pre-resettlement conditions and;
- (i) Technical and financial assistance is made available to PAPs should they wish to open up income-generating activities or to use the grievance mechanism described in Chapter 12.

6.0 ELIGIBILITY CRITERIA FOR VARIOUS CATEGORIES OF PAPs

6.1 *Cut-off Date for Eligibility*

The screening process for land for the development of various project components under the SRBMP shall include, among other things, a baseline study and census to determine the level of impact to PAPs and their assets; and to establish the cut-off date. The cut off date will be determined and set at the beginning of the census through a consultative process.

PAPs, Community Leaders and their subjects shall be widely consulted and be well informed of the cut-off date after which any new settlements within the project impact area will not be tolerated and compensated for. Compensation will be paid only to those with assets determined and recorded during the census.

When setting the cut-off date, all measures shall be taken to avoid a “rush” into the area or other areas that may come into the list of subprojects at a later date. Opportunistic invasions of possible subproject sites constitutes a major risk to the project, especially where subprojects may be chosen from a very limited set of alternatives that become publicly known before setting the cut off date.

In addition, the various projects and sub-projects under the SRBMP are likely to trigger migration of people from other districts or far places within the selected districts in search of new opportunities. Therefore, depending on the number, sequence, and magnitude of subprojects, one or several rolling cut-off dates may be advisable. This may be accomplished, with minimum risk to the project, by extensive public consultation to create mutual awareness of the existing PAPs and assets in the proposed subprojects areas as well as setting limitations on the extent of immigration. The Area Executive Committees and the Local Leaders shall assist in disseminating the information about the dangers, consequences and legal implications of opportunistic invasion.

6.2 *Recommended Beneficiaries Eligibility Criteria*

The SRBMP consists of project activities where physical relocation is likely to arise in some towns, market centres, and rural areas. The types of losses PAPs may suffer will include temporary loss of access to land, income, housing, water sources, proximity to work, transport networks, utilities and social amenities. Some of the PAPs may incur losses to a combination of the above.

The identification of persons eligible for compensation and resettlement in a particular sub project area under the SRBMP will be based on the following criteria, in line with the World Bank OP 4.12 (Involuntary Resettlement):

- (a) Persons losing land with or without legal title
- (b) Persons losing temporary or permanent access or rights to services
- (c) Persons losing business or residential property
- (d) Person with homes, farmland, structures or other assets within the proposed sub-project activities or within the way leave of any infrastructure proposed for construction or rehabilitation
- (e) Vulnerable individuals who may be too old or ill to fend for themselves. These PAPs shall receive additional assistance, a premium to cover additional costs for contracting labor to construct a new home or to pack, move and uncrate the belongings because they are unable to do so)
- (f) Persons dependent on displaced families, which may include any member of the household whether men, women, children, dependent relatives, friends and tenants
- (g) Members of the household who may not eat together but provide house keeping or reproductive services, critical to the family's maintenance
- (h) Persons that incur losses whether partial or total in nature and whether they have their own land, or rent land, including those that rent or occupy buildings individually or as a group for business or as households.

Appendix 6.1 presents an example of the format of an entitlement matrix for losses incurred by PAPs.

Where there are clearly no identified owners or users of land or assets, the respective District Council will notify the Community Leaders or their representatives to help identify and locate the land users. Neighbourhood or village committees including outside experts knowledgeable of the people and assets in the affected area may assist to identify property owners by clearly identifying themselves to the Community Leaders or by taking an oath.

Cognisance ought to be made that the SRB has continuously been the recipient of immigrants from other districts of the country particularly the southern region. In addition, there will also be others who, upon being made aware that there is an impending project within the SRB will want to migrate and seek compensation upon being “evicted”. To this extent therefore, any person migrating to the project areas within the SRB after the PAP identification and eligibility determination exercises have been concluded will not be eligible for consideration as PAP

The Local Leaders and representatives will be charged with the responsibility of notifying their members about the established cut-off date and its significance. The land user(s) will be informed through both formal notification in writing and by verbal notification delivered in the presence of the Local Leaders or their representatives.

7.0 LEGAL FRAMEWORK FOR LAND ACQUISITION AND RESETTLEMENT

The principles and objectives guiding land acquisition, loss of assets or impact on livelihood and resettlement in Malawi are provided for in the relevant policies and legislation. The guiding principles among others include the following:

- There should be compensation upon land acquisition, resettlement, loss of assets and impact on livelihood and;
- There should be no distinction between compensation for private and customary land;

These and other principles are articulated in this Section which highlights the relevant policies and legislation.

7.1 *Categories of Land in Malawi*

The Land Act classifies land into three categories, which include:

Public Land (Cap. 58:01 Registered Land Act) is defined as “all land which is occupied, used or acquired by the Government and any other land not being customary or private land and includes:

- a) any land held by the Government consequent upon a reversion thereof of the Government on the termination, surrender or failing-in of any freehold or leasehold estate therein pursuant to any covenant or by operation of law; and
- b) Notwithstanding the revocation of the existing orders, any land which was immediately before the coming into operations of this Act not Public land within the meaning of the existing orders.”

The Malawi National Land Policy (2000) however stipulates that public land will be held in trust and managed by Government or Traditional Authorities and will be openly used by or accessible to the public at large.

Under Section 8, the Act states that all public land shall be vested in perpetuity in the President, while Section 207 of the Constitution of the Republic of Malawi states that all land is vested in the Republic.

Private Land is defined as “all land which is owned held or occupied under a freehold title or a leasehold title or a Certificate of Claim or which is registered as private land under the Registered Land Act.”

Customary Land is defined as “all land which is held, occupied or used under customary law but does not include public land.”

The Malawi National Land Policy defines customary land as “all land falling within the jurisdiction of a recognized Traditional Authority and which has been granted to a person or a group of persons and is used under customary law.”

7.2 *Relevant Malawi Legislation*

7.2.1 **The Malawi National Land Policy (2002)**

Malawi does not have a standalone written policy which guides land acquisition, resettlement, loss of assets and impact on livelihood. However the Malawi National Land Policy has a few sections which briefly make reference to matters relating to land acquisition.

The Malawi National Land Policy specifies the necessity of having provisions in the land law that would give the Government the opportunity to acquire any piece of land required for public services following guidelines such as –

- a) Clearly spelling out or specifying the purposes for which Government may require land in order to prevent possible abuse of the power of eminent domain;
- b) Payment of compensation in the event of the repossession of a leasehold interest on Government land to be limited to the negotiated value of improvements made by the leaseholder and permanently attached to the land; and
- c) No compensation to be paid for the land when the private user rights granted as a result of the lease is terminated.

The Land Policy recognizes Government's duty to protect the free enjoyment of legally acquired property rights on land and for that reason a landholder's entitlement to fair and adequate compensation where the Government acquires the owner's property for public use.

It further emphatically dispels the popular notion that customary land has no value and stipulates that compensation valuation for customary land, at the time of acquisition by the Government, be based on the open market value of the land and all improvements carried out on the land.

The Policy notes that the inadequacy of compensation is always a direct result of excluding certain items or qualities from the factors considered when determining value; and delays in payment of compensation. According to Section 4.11 the Policy ensures that security of land tenure can be guaranteed on an equitable basis to all citizens in accordance with the following:

- Any citizen or group of citizens of Malawi can have access to land in any part of Malawi provided that:
 - Land is available where it is being sought;
 - The person agrees with the land owner and the laws governing disposal of land and;
 - The proposed land use is compatible with land use plans, environmental regulations and community land management duties and obligations
 - Land values shall be determined by open market procedures for customary lands acquired through compulsory acquisition by the government.

The Ministry responsible for land matters has an ad-hoc resettlement policy which is usually used to help in emergencies. Usually the Ministry deals with matters of resettlement in relation to land redistribution.

7.2.2 The Constitution of the Republic of Malawi (1994)

There are several pieces of legislation that deal with matters relating to land acquisition. The Constitution of the Republic of Malawi sets a benchmark on this issue as provided in:

- Section 28(2) that "No person shall be arbitrarily deprived of property."; and
- Section 44(4) that "Expropriation of property shall be permissible only when done for public utility and only when there has been adequate notification and appropriate compensation, provided that there shall always be a right to appeal to a court of law."

The other pieces of legislation, which deal with matters relating to land acquisition, are summarized as follows.

7.2.3 Town and Country Planning Act, (1998) Cap. 23:01

This Act under Part VIII – Acquisition of Land and Compensation provides as follows:

- (a) In section 61, that no general right to compensation shall accrue in respect of any action, decision or plan taken or made under the Act that does not involve or amount to a taking or deprivation of property.
- (b) Section 63: that the Minister has power to acquire land on his own motion or on request from a responsible authority.

- (c) Section 65, that compensation shall be assessed by the Minister in accordance with the Second Schedule to the Act. Further under subsection (6) of the section it is provided that an assessment of compensation by the Minister shall be final and shall not be subject to any appeal or review by any court. This subsection (6) is unconstitutional.

7.2.4 Land Act, Cap. 57:01 (1965) Cap 57:01

Section 20 provides that “in the event that the lessee surrenders the lease, such lessee shall be entitled to compensation in respect of the improvements effected upon the premises and such compensation is determined by the Minister”.

Further, under Section 27 the Minister is given power to convert customary land into public land by a declaration in the Gazette where the land is needed for public purpose. However if the customary land is required for temporary public purposes, then the Minister may authorize such use provided the period does not exceed 7 years. During this period the land shall remain customary land.

Section 28 provides that any person who suffers any disturbance of, or loss or damage to any interest which he had shall be paid compensation for such disturbance, loss or damage as is reasonable;

7.2.5 Public Roads Act, (1962) Cap. 69:02

This Act under Part II – Compensation, contains an elaborate compensation scheme. Section 44 provides for the assessment of compensation, payable under the Act, regarding the land or surface rights of an owner or occupier. However sub- Section (2) provides a difference in treatment and less value if such land is customary land.

Section 45 provides for the compensation for which land becomes public and specifically states that in the case of customary land compensation shall be in respect of disturbance.

Section 46 outlines matters to be taken into consideration and matters to be disregarded in assessing compensation.

Section 47 outlines the procedure to be followed when pursuing claims for compensation and section 48 provides for procedure before compensation boards.

Sections 49 and 50 are on the appeal to the High Court and that there shall be no further appeal from the High Court.

7.2.6 Lands Acquisition Act, (1971) Cap. 58:04

This Act deals generally with matters relating to acquisition of land. The Act gives the Minister wide powers to acquire land. The acquisition may either be compulsorily or by mutual agreement.

The Act also makes provision for preliminary investigation and the procedure to be followed where the Minister is satisfied that the land should be acquired and includes serving notice to the owners or persons who have an interest in the land.

Under section 6, there is provision that the notice given may include a directive to yield up possession of the land within a specified period which should not be less than two months from date of service of the notice, however if there is urgency, such a period may be shorter.

Sections 9 and 10 are on payment of compensation and assessment of compensation; while section 11 addresses matters relating to the effect of payment of compensation.

Sections 12 to 14 deal with matters relating to transfer of land after notice of acquisition;

7.2.7 Other Acts

The Electricity Act, No. 22 of 2004 and other Acts relating to utility providers permit services and utility providers of water, electricity, communication, etc. to have access over land, with the consent of owners, whether individuals or authorities, and after adequate compensation. In case of dispute, whether compensation is adequate or whether repair to broken paths, etc. is made good; the matter is supposed to be referred to the Magistrate with jurisdiction in the area.

7.3 Observations and Discrepancies on Malawi's Legal Framework

Section 7.2 above provides the legal basis for determining eligibility for compensation in accordance with the Laws of Malawi. It also provides other legal instruments and their provisions and the current practices by some government institutions. In general, the legislation recommends cash compensations to be paid based upon market value of the assets. In the case of customary land, land is given for lost land and cash compensation is paid for assets and disturbances. The PAPs are, in some cases, entitled to new housing on authorized land under government housing programmes.

7.4 Relevant World Bank Operational Policies

According to OP 4.12 of the World Bank, the criteria for determining eligibility for compensation, resettlement and rehabilitation assistance measures for PAPs, shall be based on the following:

- (a) Persons that have formal legal rights to land, including customary and traditional; and religious rights recognized under the laws of Malawi. This class of people includes those holding leasehold land, freehold land and land held within the family or passed on through generations.
- (a) Persons who do not have formal legal rights to land or assets at the time the census begins; but have a recognized claim to such land or assets through the national and customary laws of Malawi. This class of people includes those that come from outside the country and have been given land by the local chief to settle, and/or to occupy in matrimonial society; and
- (c) Persons who have no recognizable legal right or claim to the land they are occupying, using or getting their livelihood from. This class of people includes those that settle at a place on semi-permanent basis, or those settling at a place without any formal grant or authority.

PAPs classified under paragraph (a) and (b) shall be provided compensation, resettlement and rehabilitation assistance for the land, building or fixed assets on the land and buildings taken by the SRBMP. The compensation shall be in accordance with the provisions of this RPF and if PAPs occupied the project area prior to the cut-off date (date of commencement of the Census).

Persons covered under sub-paragraph (c) above are to be provided with resettlement assistance in lieu of compensation for the land they occupy. In addition, they have to be given the necessary assistance to satisfy the provisions set out in this RPF, if they occupy the project area prior to the established cut-off date.

All persons in the three sub-paragraphs above are to be provided with compensation for loss of assets over and above the land. Consequently, this RPF advocates for some kind of assistance to all PAPs, including squatters or other persons living on land earmarked for the SRBMP, irrespective of whether they have formal titles, legal rights or not. However, all persons who encroach on the project area after the cut-off date will not be entitled to any compensation or any assistance.

Communities including districts, towns, wards and villages permanently losing land, resources and/or access to assets shall be eligible for compensation. Compensation to communities will include public toilets, market places, schools, water points, access roads and health posts or other appropriate compensation chosen by the community. Compensation measures shall ensure that pre-resettlement socio-economic status of the communities are restored or improved.

The World Bank's Safeguard Policy OP 4.12 applies to all components of the programme and to all economically and /or physically affected persons, regardless of the number of people affected, the severity of impact and the legality of land holding. The Safeguard Policy further requires particular attention to be given to the needs of vulnerable groups especially those below the poverty line, the landless, the elderly, women and children, indigenous groups, ethnic minorities and other disadvantaged persons, notwithstanding the consideration of host communities, especially in case of physical relocation.

Specifically the policy requires that:

- (a) Involuntary resettlement should be avoided where feasible, or at least minimized, through the exploration of all possible alternative project designs;
- (b) Where it is not feasible to avoid resettlement, resettlement activities should be conceived and executed as sustainable development programs, providing sufficient investment resources to enable the persons displaced by the project to share in project benefits. Displaced persons should be meaningfully consulted and should have opportunities to participate in planning and implementing resettlement programs.
- (c) Displaced persons should be assisted in their efforts to improve their livelihoods and standards of living or at least to restore them, in real terms, to pre-displacement levels or to levels prevailing prior to the beginning of project implementation, whichever is higher.

The World Bank's Policy requires that a RAP shall be prepared and cleared by the Bank prior to implementing resettlement activities. The Bank also requires that the provision of compensation and other assistance to PAPs (to restore livelihoods when these are affected appreciably) shall be done prior to their displacement. In particular, the policy requires that possession of land for project activities may take place only after compensation has been paid. Resettlement sites, new homes and related infrastructure, public services and moving allowances must be provided to the PAPs in accordance with the provisions of the RAP.

7.5 Gaps between Malawi Legislation and World Bank O.P.4.12

The provisions of the existing national legislation cited above support fair land acquisition, compensation and resettlement procedures to be developed and implemented. These legislations provide adequate legal foundation for the preparation of the RPF. The legislative provisions however, are spread out in the different Acts as outlined above and are fragmented. This does not provide a coherent framework which can easily and adequately support compensation and resettlement problems.

The following are the gaps that exist between the Malawi legislation/law and the World Bank O.P.4.12:

- (a) The World Bank advocates payment of compensation for "illegal occupants" of land (e.g. for those persons who develop in road reserves, etc.). The Malawi legislation does not.
- (b) The World Bank O.P.4.12 (Appendix 7.1) makes no distinction on the categories of land when considering compensation after land acquisition. In the case of Malawi legislation the current value of customary land, is regarded as arbitrarily lower than private land. However this discrepancy has already been recognized as pointed out in the Malawi National Land Policy;
- (c) The World Bank prefers land for land compensation, especially for PAPs whose livelihood depends mainly on agriculture; whilst in the Malawi legislation this does not clearly come out although customary law practices prefer this.
- (d) The Bank insists on ensuring that the PAPs are not adversely affected during the transition period and that they are compensated for impacts during transition. The national legislation is silent on this.
- (e) The Bank requires that PAPs that belong to the disadvantaged groups such as orphans, the elderly, the sick, female headed households and others shall be given special attention to meet their needs so that they do not lose the proximity and access to the socioeconomic services that satisfy their particular needs. The Malawi Legislation does not categorise PAPs according to their special needs.
- (f) The World Bank OP 4.12 requires that grievance mechanisms should take into account the

availability of judicial recourse as a last resort and community and traditional dispute settlement mechanisms. In case of the Malawi Legislation it provides that an assessment of compensation by the Minister shall be final and shall not be subject to any appeal or review by any court.

Appendix 7.2 gives some of the gaps between the national legislation and the World Bank Operational Policy, OP 4.12.

7.6 Bridging the Gaps

The underlying principle in this Framework is that compensation should be made following the Constitutional provisions and where these provisions are not adequate; the World Bank's Operational Policies should be applied. Compensation should be fair and equitable and the PAPs should not, in any way, be placed in a worse position socially and economically, than their position before their land was acquired for the SRBMP activities. Shortfalls on resettlement and compensation, in the Malawian Legislation can be addressed by adopting the relevant provisions in the Malawi National Land Policy, and the internationally acceptable standards, including the World Bank Policies, on resettlement and compensation.

To bridge the gaps between the Malawi Legislation and the World Bank's Operational Policies, it is therefore recommended, for this framework, that:

- (a) Compensation for customary land, at the time of acquisition by Government, should be based on the open market value of the land and all permanent improvements on the land as it is provided for in the Malawi National Land Policy;
- (b) Assistance should be paid to all categories of PAPs, excluding illegal occupants who may squatter and only want to benefit from potential compensation when made aware that there will be a project planned for the area; and
- (c) Compensation in the form of land for land, for those that have been displaced, should be a preferred option. Compensation for all other loss and property should be paid as well in line with the provisions of this Framework.

This RPF recommends that where there is remarkable difference between the Malawian Legislation and the World Bank Operating Policies, the better of the two shall be used since the lesser standard is met ipso facto. It is to be noted, however that more comprehensive details should be provided in the RAPs. In view of the foregoing, all land acquisitions by the SRBMP should be done in line with this RPF and should be consistent with the Laws of Malawi and the Bank's OP4.12.

8.0 ASSET VALUATION METHODS AND ENTITLEMENT

8.1 *Current Asset Valuation Methods*

8.1.1 Introduction

Project developers have been carrying out asset valuation, compensation, resettlement and rehabilitation related activities in cooperation with other government agencies, such as, the Ministry responsible for Lands and Physical Planning, the Ministry responsible for Agriculture, the Forestry Department and the District Councils. The role of the District Councils is sensitisation of communities for planned development projects and land acquisition requirements, disbursement of compensations and addressing grievances. The other institutions have been involved in the assessments and valuations. Resettlement Action Plans are only prepared where the project financing agency requires them. Therefore there is very little and limited monitoring of the welfare of the PAPs.

Preparation of RAPs is an emerging issue in Malawi and while the present organisational structures continue to facilitate and implement resettlement matters, it is necessary to enhance their capacities.

The existing methods of valuation for compensation are based on the Malawi Legislation. The Public Roads Act Cap 69: 12 is the most comprehensive of all the acts that deal with compensation for assets such as physical buildings, bare land, crops, vegetables, fruit/plantation, trees and forest trees.

The Ministry responsible for Lands, Physical Planning and Surveys, uses compensation matrix to determine values for loss of assets due to implementation of projects for construction of roads, dams, hospitals, electricity and other infrastructure. Currently there are three types of compensation matrix, based on type of assets affected. These schedules are used to determine compensation for:

- a) Physical assets (buildings, bare land and other structures);
- b) Crops, fruit/plantation crops;
- c) Indigenous and exotic forest trees;
- d) Income earning activities.

Each compensation matrix has its own method for valuation as follows:

8.1.2 Valuation of Physical Assets

The Ministry responsible for Lands, Physical Planning and Surveys is responsible for carrying out or vetting the valuation of physical assets. The asset owner is identified with the help of the Traditional Authority or Village Headman; or title documents are used as evidence or proof of ownership for leased physical assets.

Values for affected buildings and bare lands are determined by taking into account the construction materials used, floor /surface area covered, age and location of building or property. The open market value of a similar building, in the same location is used to calculate the compensation amounts. For land compensations Local Leaders assist PAPs to locate alternative land for resettlement (in cases of customary land) in consultation with District commissioners; and the Department of Lands assists PAPs to locate land for resettlement in case of public land.

8.1.3 Valuation of Field Crops and Fruit Trees/Plantations

The procedure for valuing affected crops is based on pre-determined unit prices. The setting of a pre-determined unit price takes into account the type of crop, the yield level (high, medium or low yield variety), the expected yield and the produce unit price. The total compensation value is arrived at, by multiplying the yield (e.g. Kg/Ha) with the pre-determined produce unit price (Kwacha/Kg.) and the area of land (Ha). The unit price compensation matrix currently in use was compiled in December 2010.

8.1.4 Valuation of Forest Trees (Indigenous and Exotic Species)

Compensation values for trees (fruit, indigenous and exotic) are based on the type (species) of tree, measured diameter at breast-height (1.3 m) and “market price” in Kwacha per cubic metre. The compensation matrix currently in use was compiled in December 2010. The schedules are compiled with the assistance from the Ministry of Agriculture and Food Security (for field crops and fruit/plantation trees) and the Department of Forestry (for forest trees, indigenous and planted tree species).

8.2 Problems Related to Current Valuation

The current valuation methods have several problems, and as a result PAPs are unfairly compensated for loss of their assets. The major problems include:

- (a) Loss of socio-economic benefits such as income generating opportunities is not included in the valuation;
- (b) The market prices used for field crops & fruit/plantation trees as well as forest trees were updated in 2010 prices Therefore the PAPs may be unfairly compensated;
- (c) The valuation of field crops & fruit/plantation trees as well as the forest trees does not take into account the costs of developing new land to reach the same productive potential as the old piece of land;
- (d) Valuation for physical assets does not take into account the amount of money that would be required to put up similar physical structures. This results into the PAPs being unable to build structures that are equal to or better than the old ones;
- (e) Valuation methods do not provide for any assistance, for the transition period, to the PAPs;
- (f) the system has no consideration for vulnerable groups such as the disadvantaged groups, widows, disabled persons, aged and school children etc.;
- (g) The valuation does not take into account the costs of developing the new places where the PAPs may resettle;
- (h) The system does not consider the social and cultural problems PAPs may face in the new places with respect to integrating with the host communities.
- (i) Calculation of compensation value of affected assets is done without the involvement of the PAPs and;
- (j) Key stakeholders and experts from other Ministries responsible for Agriculture, Forestry, Commerce and Industry are involved to contribute their expertise at the initial development of the pricing schedules. However, it takes a long time for the respective ministries to update the price schedules.
- (k) The District Commissioners do not always consult the Ministries or PAPs when determining compensation values.
- (l) Cash lump sum payments have some disadvantages in that the recipient may use the funds for purposes other than for resettlement.

8.3 Recommended Compensation and Valuation Methods

The valuation methods being recommended for the SRBMP are an improvement of the current methods. Following below is a summary of the recommended methods.

8.3.1 General Considerations

Individual and household compensation will be made in kind and/or in cash. Although the type of compensation may be an individual’s choice, compensation in kind will be preferred, if the loss amounts to more than 10% of the total loss of assets.

Cash payments are more acceptable when losses constitute a very small fraction of incomes. This may not apply to cases where income sources (or property) are so affected that the entire holding or structure should be replaced.

Cash payments will be calculated in Malawi Kwacha and must allow for inflationary adjustments of compensation values. Security, for people who will be receiving cash compensation payments will need to be addressed by the District Councils.

For payment of compensation in-kind, the time and new location will have to be decided and agreed upon with each PAP, in consultation with the SRBMP and the respective District Councils. Items such as

land, houses, and other structures, building materials, seedlings, agricultural inputs and financial credits for equipment should be included. Assistance should include allowances for transfer, transportation and labour

In the assessment and valuation of land, property, structures and consequential loss, the services of appropriately qualified experts should be sought to ensure fair and equitable compensation.

For all the sub-project activities (urban, peri-urban and rural) land and assets will be valued and compensated for according to the following guidelines and as appropriate for each subproject:

- SRBMP will compensate for assets and investments (including labour, crops, buildings, and other improvements) according to the provisions of the RPF/ RAP and based on market prices for cash crops, determined by the Ministry responsible for Agriculture as current market price.
- Eligibility for compensation will not be valid for new persons occupying/using the project sites after the cut-off date, in accordance with this RPF.
- Compensation cost values will be based on replacement costs, as of the date that the replacement is to be provided or at the date of project identification, whichever is higher.
- PAPs that lose farmland allotted by the village under customary tenure will be provided an equivalent plot and appropriate assistance to prepare it and make it ready for the current/next rainy season. However, since the World Bank Policy OP4.12 on resettlement makes no distinction between statute and customary rights, a customary land owner or a user of state owned land will be compensated for land, assets and investments including loss of access, at replacement costs.

It is worth noting that it may not be possible to compensate for some impacts, or some impacts may be compensated with generic payments e.g. minor strips of land of a meter or two along pipeline trench. Such cases have to be formerly agreed upon with the PAPs and have to be properly recorded in case of complaints or disputes.

8.3.2 The Units of Compensation

In the assessment and determination of compensation for loss under the SRBMP, the units of analysis for PAPs will include number of households or individuals; families, community as a whole, and associations such as religious or farmers' groups. Units of analysis for lost assets will include square metres of property, land or fields; number of trees; kilograms of fruit and any other units that may be appropriate to the particular situation.

It is recommended that uniform approaches and units for assessment and determination of compensation for the SRBMP should be used across all subprojects to avoid confusion and misunderstanding.

Comprehensive assessment records for the dates, places, PAPs and their properties assessed shall be kept by the District Council, and the SRBMP.

8.3.3 Compensation for Land

Compensation for land is aimed at providing for loss of crop and the labour used to cultivate the crop. The term "Land" refers to an area or homestead in cultivation, being prepared for cultivation, or cultivated during the last agricultural season. This definition recognizes that the biggest investment a farmer makes in producing a crop is his or her labour. As a result, compensation relating to land will cover the market price of rates for labour invested, as well as the replacement cost of the crop lost. The rate used for land compensation is to be updated to reflect values at the time compensation is paid.

In certain cases, assistance may have to be provided to land users, in addition to compensation payments. For example, if a farmer is notified that his/her land is needed after the agriculturally critical date (critical date, may be different in parts of Malawi and across climate zones) when s/he will no longer have enough time to prepare another piece of land, assistance will be provided in form of labour intensive village hire,

or mechanized clearing so that replacement land will be ready by the sowing dates. The farmer will still continue to receive his/her cash compensation so that s/he can pay for sowing, weeding and harvesting.

8.3.4 Land Measurement

The unit of measurement for land will be that, which is used and understood by the PAPs. Therefore if a traditional unit of measurement exists in the rural areas, that unit shall be used. If a traditional unit of measurement does not exist, it is recommended that land should be measured in meters or any other internationally accepted unit of measurement. In such cases, the unit that is-being used must be explained to the affected farmers/users.

The unit of measurement must be easily related to recognizable land features that the communities are familiar with, such as relative location of trees, stumps and other fixed features on the sites. Understanding the unit of measurement ensures that the affected person is able to verify his/her own size of land that is being lost. This maintains transparency in the process and avoids subsequent accusations for wrong measurements or miscalculation of land areas.

8.3.5 Valuation of Land Used by the Public

For cases where the land is being used by the public (for instance for grazing, settling or otherwise), the SRBMP will, in consultation with the Ministry responsible for Lands, identify suitable replacement land for use by the public and be expected to pay compensation to the community.

8.3.6 Valuation of Physical Assets

The Ministry responsible for Lands, Physical Planning and Surveys or a qualified private valuer will value all affected buildings, bare land and other structures based on current market prices. Compensation for the affected physical assets will be paid by replacing huts, houses, farm outbuildings, latrines, fences, or any other impacted assets. Any homes lost will be rebuilt on the acquired replacement land. However, cash compensation should be available as a preferred option for structures such as extra buildings lost, that were not the main house or a house in which someone is not living. The applicable replacement costs for construction materials will be used to calculate the values. Alternatively, compensation will be paid in-kind for the replacement cost without depreciation of the structure. The SRBMP should survey and update construction material prices on an ongoing basis. Appendix 8.2 provides a typical schedule for calculation of compensation for buildings and structures.

Compensation will be made for structures that are abandoned because of: relocation, resettlement of an individual or household and structures that are damaged directly by construction activities.

Replacement values will be based on:

- (a) Approved and “as built drawings of individual's house and all its related structures and support services;
- (b) Average replacement costs of different types of household buildings and structures based on information on the quantity and type of materials used for construction (e.g. bricks, rafters, bundles of straw, doors etc);
- (c) Prices of the building materials collected from different local markets;
- (d) Costs for transportation and delivery of the building materials to the acquired/replacement land or building site and;
- (e) Costs of construction of new buildings including current market labour costs as required.

An example to demonstrate the calculation of compensation for buildings is given in Appendix 8.2.

8.3.7 Valuation of Cultural Property and Sacred Sites

This RPF does not provide for compensation for the use of land defined as cultural property or sacred sites. Sacred sites include but are not restricted to altars, initiation centres, ritual sites, tombs and cemeteries. Sacred sites include such sites or places/features that are accepted by local laws including customary practice, tradition and culture as sacred.

To avoid any possible conflicts between individuals and/or communities, homesteads and government, the use of sacred sites for any project activities is not permitted under the SRBMP.

8.3.8 Valuation of Field Crops

Project developers are encouraged to start implementation of their activities after people have harvested their crops. However, in some cases, project activities may start before people have harvested, therefore it is expected that valuation of the field crops be done. The Ministry responsible for Agriculture and Food Security shall take the lead in the valuation of field crops, vegetable gardens, and fruit/plantation trees affected by the project. For the same type of crop, there will be no differentiation in unit price whether the crop is grown for food or cash. The unit price (Kwacha per Kilogram) of the crop shall be taken as the highest market unit price over the past 3 years. This unit price of the commodity, multiplied by the yield (Kg/Ha), and multiplied by the total area (Ha) will give the compensation value for the crop. The yield (Kg/Ha) shall be the high yield for that particular crop variety as determined by the Ministry responsible for Agriculture and Food Security

Both cash and consumption crops are valued at the market price mid-way between harvest peaks. Prevailing prices for cash crops will have to be determined with the assistance from the Ministry responsible for Agriculture. The Ministry responsible for Agriculture rate schedules must be verified for currency. Each type of crop is to be compensated for, using the same rate. Calculating compensation using one rate guarantees uniformity of compensation values.

8.3.9 Valuation for Labour for Preparation of Agricultural Land

The value of labour invested in preparing agricultural land will be compensated for using Government wages for the same period of time. The labour cost for preparing replacement land will be calculated on what it would cost a farmer to create a replacement farmland to the state of the replaced land. This value will be determined by adding together the average costs of clearing, ploughing, sowing, weeding twice, and harvesting the crop.

In certain cases, assistance may be provided to land users, in addition to compensation payments. For instance, if a farmer is notified that his/her land is needed after the agriculturally critical date (critical date, may be different in different parts of the project sites) when he/she will no longer have enough time to prepare another piece of land, assistance will be provided in form of labour intensive hire, or mechanized clearing so that replacement land will be ready by the sowing dates. An example of a schedule for calculation of labour costs is given in Appendix 8.1

8.3.10 Valuation of Vegetables and Beehives

Vegetables are planted for daily use. Until a replacement garden can be harvested, the family displaced (economically or physically) as a result of the project will have to purchase these items on the market. The replacement costs therefore, will be the average amount an average town dweller spends on buying these items for one year, from the local market.

Some individuals that specialize in honey gathering place beehives in various locations. If such beehives are disturbed by the project activities, or access to them is denied, beekeepers may have to move them. The bees will eventually adapt to the new locations. Beekeepers will be compensated for the value of one season's income from honey, for each beehive that is moved and for any reasonable costs associated with moving the hive.

8.3.11 Valuation of Fruit/Plantation Trees

Trees are primarily important as a source of:

- Subsistence food for families;
- Cash that contributes to the local and export economy;
- Petty market income in some areas and;
- Shade (in the case of fruit trees such as mango trees) and;
- Traditional medicinal value

The valuation of fruit/plantation trees shall be based on the current compensation matrix that takes into account factors such as; type of fruit/plantation tree species, estimated average yield of a mature tree and unit price (MK/Kg). The unit price should be based on the current market price of the type of fruit/plantation tree grown and should be calculated according to the schedule given in Appendix 8.3.

Given their significance to the local subsistence economy, fruit trees will be compensated on a combined replacement value. Fruit trees such as mangoes and orange trees commonly used for commercial purposes will be compensated at replacement value based on historical production statistics. If households are resettled, they will be compensated for the labour invested in the trees they leave behind. This assumes that they will continue to own the trees left behind under customary rights. It is common for individuals to own trees in other villages in which they formally lived and to continue to harvest fruit from those trees for subsistence purposes and/or sale to traders. If a household/individual chooses to transfer ownership of the trees, transfer costs will be paid in addition to labour costs. The compensation rate will be based on information obtained from the socio-economic surveys. Based on this information, a compensation matrix for guava, mango and other trees can be developed, incorporating the following criteria:

- (a) Replace fruit (e.g. guava or mango) based on production yields.
- (b) Provide farmers with tree seedlings to replace lost trees
- (c) Provide farmers with the opportunity to derive alternative income from trees bearing more valuable fruits.
- (d) Provide cash payments to farmers to replace pre-project income derived from the sale of fruit production, until replacement trees produce the equivalent (or more) in projected cash income.

No compensation will be paid for minor pruning of trees. Compensation for removal of branches will be determined on the basis of the diameter of the branch, type of the tree and the cost of the tree as determined by the Department of Forestry.

The compensation matrix in Appendix 6.1 is based on providing a combination of new grafted and local trees to farmers, as well as cash payments to offset lost yearly income.

8.3.12 Valuation of Forest Trees

The Forestry Department shall take the lead in the valuation of affected forest trees. The valuation shall take into account factors such as: type of tree (indigenous or exotic), tree species name (botanical and vernacular names), measured diameter at breast height (1.3 m) and current market price (MK/m³) as determined by the Forestry Department.

8.4 Validity of Calculated Values

Due to the continued fluctuation of the Malawi Kwacha, the calculated values of assets should be implemented as soon as possible. The recommended period for compensating PAPs should not exceed six months from date of valuation.

9.0 LAND ACQUISITION AND RESETTLEMENT IMPLEMENTATION

9.1 *Stages of Land Acquisition and Resettlement Process*

Implementation of the land acquisition and resettlement activities follows a process that needs to be carefully planned, implemented and monitored. The steps that have to be followed include:

Planning Stage

The planning stage is where an effective administrative and reporting system has to be set up. This stage will include:

- Desk studies of the SRBMP concept and objectives by all relevant stakeholders;
- Alerting of all PAPs and Local Authorities on the necessity of land acquisition and resettlement;
- Discussing the RPF to understand its implications and;
- Formation of the relevant implementing committees as well as briefing them on the planned activities such as meetings with the PAPs and the process of alternative land identification.

Land Acquisition Stage

This stage requires community involvement and participation, the screening of project sites, demarcation of sites and preparation of maps and drawings including setting up of the cut-off date.

Socio-Economic Surveys

Socio-economic surveys are to be done with community involvement and participation. The surveys include identification PAPs, estimation of impacts and their magnitude, carrying out the valuation and creating the database of the details of the census.

Paying Out Compensation and Implementing the Resettlement Activities

This includes signing agreements and paying out compensation, provision of starter packs as well as updating the database.

After Resettlement Activities

These activities include after-care-assistance and carrying out monitoring and evaluation activities

Appendix 9.1 gives an example of a land acquisition and resettlement implementation plan.

9.2 *Linking Resettlement Implementation to Civil Works*

PAPs will need to be compensated, in accordance with this RPF, before any project activity could start to be implemented (i.e. prior to any beginning of civil works activity).

For activities involving land acquisition or loss, denial and restriction to access of resources, it is required that provisions be made for compensation and for other assistance required for relocation. The assistance, which should be available to PAPs prior to displacement, includes provision and preparation of resettlement sites with adequate facilities.

In particular, land and related assets may be taken away only after compensation has been paid and resettlement sites and moving allowances have been provided to PAPs. For project activities requiring physical relocation or resulting in loss of shelter, the RPF further requires that measures to assist the PAPs are implemented in accordance with the individual Resettlement Action Plans (RAPs).

In the Implementation Schedule/Plan of each RAP (Section 17, Appendix 4.2 of the OP 4.12) precise details on resettlement and compensation must be provided. Similarly, the Abbreviated Resettlement Action Plan (ARAP) section on Arrangements for Monitoring and Implementation (Section 5, Appendix 4.3 of OP4.12) must provide a schedule for details on resettlement and compensation. In both of these sections, the schedule for the implementation of activities, as agreed between the SRBMP and PAPs must include:

- Target dates for start and completion of civil works,
- Timetables for transfers of completed civil works to PAPs,
- Dates of possession of land that PAPs are using (these dates must be after the date of transfer for completed civil works to PAPs and after payments of all compensation) and,
- How these activities are linked to the implementation of the overall sub project.

When approving recommendations for resettlement during screening, the District Councils must confirm that the resettlement plans contain acceptable measures that link resettlement activity to civil works, in compliance with this RPF. Proper timing and coordination of the civil works should ensure that no PAP would be displaced (economically or physically) due to civil works activity, before compensation is paid and before resettlement sites with adequate facilities are prepared and made available to the PAPs.

Once the resettlement plan is approved by SRBMP, it should be sent to the appropriate District Council for final review and verification, and then to the World Bank for final clearance.

9.3 Time Frames

The following key timeframes shall apply unless otherwise agreed between the SRBMP and the District Councils on behalf of recipient; provided however, that no agreement to waive the timeframes shall adversely affect the rights or interests of PAPs:

- The inventory shall be completed at most four months prior to the commencement of civil works;
- The RAP shall be submitted to SRBMP for approval immediately after completion of inventory;
- Compensation, resettlement and rehabilitation activities shall only commence after the SRBMP and the PAPs have accepted the RAP; and the RAP has been cleared by the World Bank.
- Civil works will not begin until all resettlement payments are complete (i.e. when the last PAP is fully paid).

For each RAP, comprehensive time frames shall be drawn up and agreed upon by all parties including the PAPs.

Compensation payments for acquired land and affected assets, resettlement of PAPs and documentation/validation of voluntary land donations, must be completed as a condition for the taking away of land and before the commencement of civil works.

Adequate time and attention should be allowed for consultation of both the PAPs and host communities before bringing in the PAPs. The actual length of time will depend on the extent of the resettlement and compensation and will have to be agreed upon by all parties.

9.4 Disclosure of Information

The RAP in English and in (Chichewa) or any other local language that the people easily understand will be disclosed to the public by placing a hard copy of both Executive Summary and the full document in the offices of the appropriate District Councils and/or the Local Leaders.

10.0 DELIVERY OF ENTITLEMENTS AND RESPONSIBILITIES

10.1 Introduction

All RAPs must be approved by the SRBMP and the World Bank. They must be disclosed to the public *before* overall subproject approval can be considered and *before any* other subproject activities can begin implementation.

Individual RAPs for sub-projects will be submitted to SRBMP who will check and approve the entitlements. SRBMP will ensure that all the entitlements have been fairly assessed and that the entitlement values have been agreed upon, accepted and signed for by the PAPs. SRBMP will also ensure that the RAPs and the entitlements have been endorsed by the District Councils and cleared by the World Bank before approval and payment.

10.2 Notification of Asset Holders

SRBMP, through the District Councils, shall (by public notice, to be published in the daily newspapers, print media, radio announcements, leaflets and flyers, public meetings and where possible, church announcements and through local leaders) notify the public of its intention to deliver compensation to the eligible PAPs.

A copy of such notice shall be served to each owner, occupier and person or agent having an interest in the land thereof. The names and addresses of the owners, occupiers and agents shall be readily ascertainable.

Where there are clearly no identified land or property owners or users, the respective Regional Lands Authorities and District Councils will notify the Traditional Leaders, the Community Leaders and representatives to help locate and identify the land users and owners. The user(s) will be informed through both formal notification in writing and by verbal notification delivered in the presence of the community leaders or their approved representatives. In addition, representatives of traditional leaders, religious leaders, other elders and individuals who control pastoral routes, fishing areas, indigenous trees, and hunting areas will ascertain localities of these sensitive areas.

10.3 Maintenance of Database of Affected Holdings and Assets

The SRBMP will arrange meetings with the Regional Lands Authorities, the District/Town Councils, Traditional Leaders, and affected individuals to discuss the compensation process. For each individual or household affected, officials of the District/Town Councils will complete a compensation dossier containing necessary personal information on:

- a. The affected party including household members,
- b. Total land holdings,
- c. Inventory of assets affected, and
- d. Information for monitoring their future situation.

This information will be confirmed and witnessed by the Regional/District Lands Authorities, the District Council and Traditional Leaders or their representatives. The dossiers will be kept current and will include documentation of pieces of land that are to be surrendered. All claims and assets will be documented in writing. Such baseline information is necessary for monitoring.

10.4 Consultation and Public Participation

Consultation and public participation with the PAPs will initiate the compensation process. This consultation and public participation will be part of an ongoing process that will have started at the planning stage; and will have continued through the technical design and development, land selection and screening stages. This trend will ensure that all PAPs and households are well informed and adequately involved in the entire process.

10.5 Agreement on Compensation and Preparation of Contracts

Entitlements for compensation shall be based on the eligibility criteria and the various categories of losses identified in the desk studies and field investigations. The matrix in Appendix 6.1 will be used in the

settlement of claims for compensation for lost assets by PAPs, based on the aforementioned principles and legal framework where land is involuntarily taken.

All types of compensation are to be clearly explained to the individual and households involved. The Project Management Team will draw up a contract listing all property and land being surrendered; and the types of compensation (cash and/or in-kind) selected and agreed upon. Those selecting in-kind compensation will sign an agreement form, which will be witnessed by the Village Development Committees' Representative.

The compensation contract and the grievance redress mechanisms shall be read aloud in the presence of the affected party and the representative of the Regional Lands Authorities, District Councils and the Traditional Leaders, prior to signing.

10.6 Delivery of Entitlements for Compensation

Unless otherwise indicated, payment of compensation and other entitlements and the extension of assistance will be given to PAPs households and not individuals.

In dealing with compensation, preference shall be given to land based resettlement strategies for PAPs whose livelihoods are land-based. Where sufficient land is not available at a reasonable price, non-land based options built on opportunities for employment or self re-employment shall be provided in addition to cash compensation for land and other assets lost. However the lack of land shall be well documented and justified, and recorded in project documents.

In addition to these entitlements, households who are found in difficult situations and are at greater risk of impoverishment (i.e. widowed household heads, households without employment, single parent households etc) as identified by the census will be provided with appropriate assistance by the SRBMP. The District Council shall furnish the SRBMP with the necessary information. Assistance may be in form of food, temporary accommodation, medicine subsidy, employment referrals or priority employment in project activities. The assistance is meant to help them cope with the displacement caused by the project.

Payment of compensation will involve several steps in accordance with the RAPs and will be delivered as follows:

- (a) By agreement between SRBMP and the landowner(s):
 - SRBMP shall offer such sums deemed appropriate as compensation, and in accordance with the RAPs, for lost assets to that person; and the person may accept that amount as compensation payable to him or her.
 - Such sums will be disbursed to the District Council for payment to the PAPs. After payment of such sums, the District Council shall document the name(s) of the PAPs, the amount of compensation and the process of how the compensation was arrived at. A copy of such records shall be made available to the SRBMP and the local chiefs.
- (b) By the court if there is no agreement: -
 - If the compensation payable is not agreed upon between the SRBMP and the land/asset owner, such compensation shall be determined by the Courts of Law.

A claim shall not be entertained after five years from the date of the proclamation; and or 12 months after the execution of the purpose out of which the claim has arisen in respect of any damage done to the land acquired.

Payment of compensation shall strictly be based on the results of the census and shall be recorded in the register at the District Council's Office. The Village Chief shall keep a copy for record purposes and future reference.

10.7 Resettlement Assistance

Upon being resettled to new areas, it will be critical for the project in coordination with the government to assist the local communities establish a natural resources management body to allow for integrated management of natural resources. This body could be composed of diverse persons of different skills and experiences in various disciplines including the village committee, area committee and special groups. The exact composition of this body would be determined by the results of the PRA, which would clarify the traditional power structures and their relationship to the official power structures. Where appropriate, it would include religious and/or traditional leaders such as Group Village Headpersons, the Traditional Authorities, local pastors and other leaders to define resource conservation norms in the resettled areas and enhance resources management.

As a deliberate measure, the project would also consider providing seed funding for a local revolving fund to be used specifically for income-generating activities and integrated natural resources management. The seed funding, which will act as a nominal or starter pack amount for interested PAPs would be provided based on the prevailing local agricultural or small scale business capital requirements. The SRBMP will liaise with credit financing institutions such as the Malawi Rural Development Fund (MARDEF), Youth Development und (YEDEF), Pride Malawi etc to identify the qualifying PAPs and provide the assistance in form of a loan. The existing institutional structures, regulations, by-laws and operational framework for these financing institutions would be used in preparing and managing the assistance.

10.8 Community Compensation Payments

Community compensation will be paid in-kind only for a community as a whole. This will be in the form of reconstruction of the facility to at least the same or better standard and as required by local planning regulation. Examples of community compensation include, but are not limited to, compensation for: school building (public or religious), public toilets, well or pump, market place, road and a storage warehouse.

Community compensation may in itself require land-take and people may be affected thereby requiring compensation.

All handing over of property such as land and buildings and compensation payments will be made in the presence of the affected party, the traditional leaders and representatives of the District Council.

10.9 Roles and Responsibilities

The Ministry responsible for water development through the SRBMP will have the overall responsibility for coordinating and monitoring implementation of the RPF. The SRBMP will work through the Project Steering Committee (PSC), which is composed of representatives from key Government Ministries.

The SRBMP shall make every effort to ensure that no land is acquired against the will of any person(s), exercising rights over their land. In the event that land acquisition, resettlement, loss of assets and impact on livelihood is unavoidable, it shall be done according to the process outlined in this RPF.

At the City/Town and District Council Level, the Town and Country Planning Committee (TCPC) or the District Executive Committees (DEC) and staff of the SRBMP will ensure that the RPF is publicly disseminated and that project staff has the requisite skills and knowledge to implement the RPF. Appropriate training should be provided as recommended in the ESA and ESMF.

The TCPC or DEC and staff of the SRBMP will be responsible for the technical work at the local level. They will provide the assistance to carry out the socio-economic surveys and to determine the appropriate compensation amounts. They will also assist with the delivery of compensation and ensure that PAPs are adequately compensated for.

At the Area level, the Area Executive Committees (AEC) for the respective districts shall take full responsibility for the implementation of the RPF by working with the Local Leaders. The AEC shall report to the TCPC or DEC and the SRBMP on activities being undertaken and the progress or problems being encountered. The AEC will be assisted by the Village Development Committee (VDC).

The proposed institutional roles and responsibilities are provided in Table 10.1.

Table 10.1 Proposed Roles and Responsibilities for implementation of the RAP

Level	Implementation Staff	Roles and Responsibilities
SRBMP (PSC)	Project Coordinator	<ul style="list-style-type: none"> • Oversee the preparation (by the consultants) of census, socio-economic survey, RAP, land acquisition plan and environmental and social management plan; • Oversee the progress of land acquisition through the District Council; • Participate in the district level meetings to facilitate land acquisition; • Coordinate with other Government line Departments for ensuring effective delivery of mitigation and rehabilitation support; • Make budgetary provisions for Rehabilitation and Resettlement (R & R) activities; and • Coordinate the implementation of R & R activities with in-house and field staff.
LOCAL LEVEL	District City / Councils	<ul style="list-style-type: none"> • Initiate land acquisition and secure replacement land; • Prepare and maintain of records for the PAPs; • Prepare plans on physical and financial needs on a monthly basis; • Prepare monthly progress reports; • Monitor the progress of R & R., land acquisition and public consultations at the water supply scheme level; • Monitor compliance with applicable environmental and social management clauses in the construction contracts; • Prepare terms of reference and facilitate the appointment of external agencies for monitoring and evaluation (M&E); • Develop terms of reference for any studies identified to enhance the implementation of R & R and facilitate the appointment of consultants; • Coordinating the studies; • Keep financial records for all the project activities and coordinate with the PSC; • Facilitate and monitor the progress of land acquisition; and • Ensure that the land acquired for borrow pits by the contractor is returned to the community within the stipulated time as per the agreement and ensure that the land has not been made unproductive or has been restored/rehabilitated.

Level	Implementation Staff	Roles and Responsibilities
Project Activity Level	AEC/VDC	<ul style="list-style-type: none"> • Coordinate with the District Council to implement the resettlement and rehabilitation (R & R) activities; • Verify PAPs households and property listed in the RAP; • Implement information dissemination campaigns and distribute the relevant information of the RPF to the PAPs; • Ensure inclusion of those PAPs who may not have been covered during the census survey; • Confirm the identity of the PAPs) and their property; • Carry out public consultations with the PAPs on a continuing basis during the implementation of the project; • Establish linkages with inter-agency, e.g. financial institutions, Govt. departments, etc. for income restoration and R&R services; • Enable the PAPs to identify the alternate sites for agriculture, residential and commercial plots; • Participate in the consultations on allotment of shops and residential plots; • Ensure that the PAPs have received their entitlements. • Ensure the preparation of rehabilitation sites; • Participate in the meetings organized by the Coordinator; • Assist the Construction Supervision Consultant (CSC) in ensuring that the contractors are following the various provisions of the applicable environmental laws and regulations concerning the worker's safety, health and hygiene, HIV and AIDS, women's issues and the child labour issues; and • Submit monthly progress reports.

11.0 PUBLIC CONSULTATION AND PARTICIPATION

11.1 *Notification Procedure*

The Ministry of Water Development and Irrigation shall by public notice, published in the Press (Daily newspapers, Malawi Television, Radio Broadcasting Stations), notify the public of its intention to acquire land earmarked for the project. The Notice shall state:

- (a) Government's proposal to acquire the land;
- (b) The public purpose for which the land is needed;
- (c) That the proposal or plan may be inspected at the SRBMP offices or the offices of the District Councils in the respective districts, during working hours;
- (d) That any person affected may, by written notice, object to the transaction giving reasons for doing so, to the SRBMP with copies to the District Council (DC), TA and Chief's Headquarters within 14 days of the first public announcement or appearance of the notice.

11.2 *Public Consultation and Participation Mechanisms*

The identification of eligible PAPS and level of mitigation will be ascertained with the affected communities and will further include the assessment of resources, capabilities, and interest not excluding the type and level of support that will be required. In all aspects, activities under the SRBMP will require the full knowledge of the local management structures to the extent that consultations and engagement with local communities will be through their local traditional leaders. Any assistance obtained from established NGOs and CBOs in any area of the SRB will also be of great value

Public consultation and participation are essential because they provide an opportunity for informing the stakeholders about the proposed project. It creates a sense of ownership for the project, providing an opportunity for people to present their views and values and allowing consideration and discussion of sensitive social mitigation measures and trade-offs. Public consultation will thus afford the PAPs an opportunity to contribute to both the design and implementation of the program activities. In so doing, the likelihood for conflicts between and among the affected and with the management committees will be reduced.

In recognition of this, particular attention should be paid to public consultation with PAPs, households and homesteads (including host communities) when resettlement and compensation concerns are involved.

As a matter of strategy, public consultation should be an on-going activity taking place throughout the entire project cycle. Hence, public consultation should take place during the:

- Project inception and planning
- Screening process
- Feasibility study,
- Preparation of project designs
- Resettlement and compensation planning
- Drafting and reading/signing of the compensation contracts.
- Payment of compensations
- Resettlement activities and
- Implementation of after-project community support activities

Public consultation and participation should take place through meetings, radio and television programmes, request for written proposals/comments, completion of questionnaires/application forms, public readings and explanations of the project ideas and requirements.

Public documents should be made available in appropriate languages at both national, and district levels. Public consultation measures should take into account the low literacy levels prevalent in the rural communities, by allowing enough time for discussions, consultations, questions, and feedback.

12.0 GRIEVANCE REDRESS MECHANISMS

Various legislation, including the constitution provide for grievances to be addressed through the formal court system. This is a constitutional right but practice has shown that this can be a costly and time consuming exercise. This RPF therefore proposes that the complaints and grievances mechanism as outlined below is readily accessible to deal with complaints expeditiously. However if this fails the aggrieved party can refer the matter to the formal court system.

12.1 Objections

At the time that the individual resettlement plans are approved and individual compensation contracts are signed, PAPs and households will have been informed of the process for expressing dissatisfaction and to seek redress. The grievance procedure will be simple and will be administered as far as possible, at local levels to facilitate access by PAPs.

Since the implementing agency of the Project would be a party to the contract it would not be the best office to receive, handle and rule on disputes. Therefore, all grievances concerning non-fulfilment of contracts, levels of compensation, or seizure of assets without compensation should be referred to a local committee comprising traditional leaders of the affected area and representatives of the District Council.

All attempts shall be made to settle, grievances amicably. Those seeking redress and wishing to state grievances will do so by notifying their Local Leader. The Local Leader will inform and consult with the District Council to determine validity of claims. If valid, the Local Leader will notify the complainant and s/he will be assisted. If the complainant's claim is rejected, the matter shall be brought before the District Council for settlement. All such decisions must be reached within a full growing season after the complaint is lodged.

It has to be noted that in the local communities, people take time to decide to complain when aggrieved. Therefore, the grievance procedures will give people up to the end of the next full agricultural season, after surrendering their assets, to allow for enough time to present their cases. The grievance procedures will ensure that the PAPs are adequately informed of the procedure, before their assets are taken.

The grievance redress mechanism is designed with the objective of solving disputes at the earliest possible time, which will be in the interest of all parties concerned and therefore, it implicitly discourages referring such matters to the Tribunal for resolution.

Contracts for compensation and resettlement plans will be binding under statute, and will recognize that customary law is the law that governs land administration and tenure in the rural areas. This is the law that most Malawians living in these areas, are used to and understand.

All objections to land acquisition shall be made in writing, in the language that the PAPs understand and are familiar with, to the Local Leader. Copies of the objections shall be sent to SRBMP and the Ministry of Water Development and Irrigation within 20 days after lodging the complaint. Channelling complaints through the Local Leader is aimed at addressing the problem of distance and cost the PAPs may have to face.

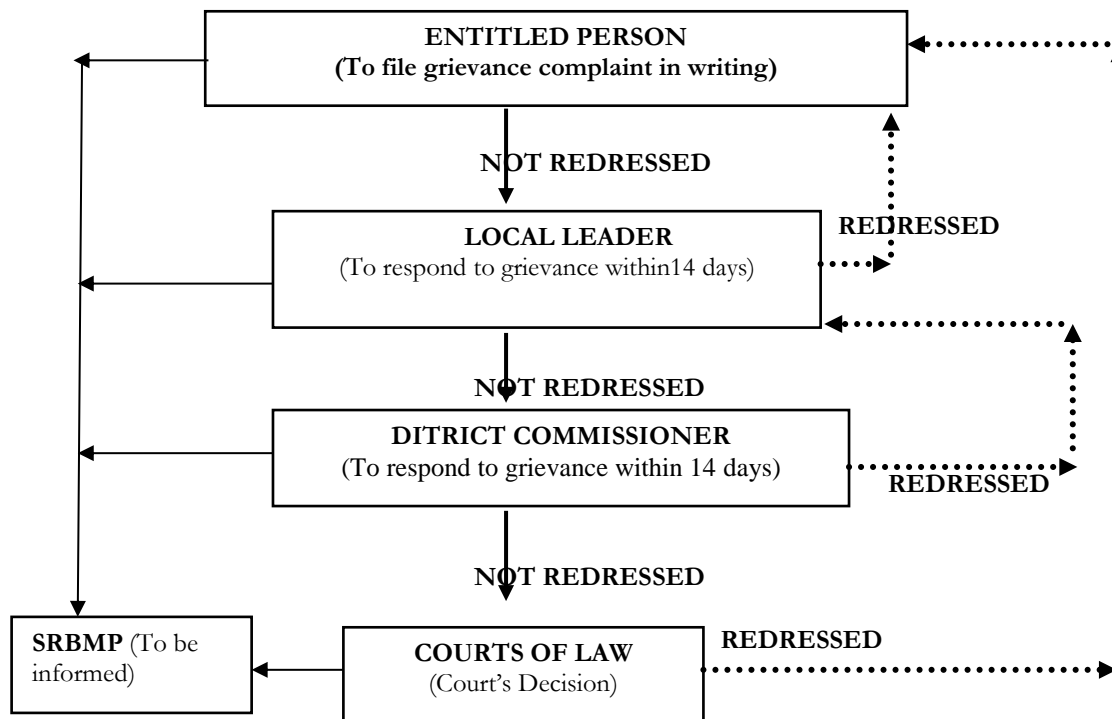
The Local Leaders shall maintain records of grievances and complaints, including minutes of discussions, recommendations and resolutions made. The procedure for handling grievances should be as follows:

- a) The affected person should file his grievance in writing (in English or the local language that s/he is conversant with), to the Local Leader. The grievance note should be signed and dated by the aggrieved person. Where the PAP is unable to write, he should obtain assistance to write the note and emboss the letter with his thumb print.
- b) The Local Leader should respond within 14 days during which any meetings and discussions to be held with the aggrieved person should be conducted. If the grievance relates to valuation of assets, experts may be requested to revalue the assets, and this may necessitate a longer period of time. In this case, the aggrieved person must be notified by the Local Leader that his/her complaint is being considered. The Local Leader should try as much as possible, to use

established mechanisms of grievance redress, which may include the presence of peers of the PAP and other local leaders.

- c) If the aggrieved person does not receive a response or is not satisfied with the outcome within the agreed time he must lodge his grievance to the District Councils and the District Councils must inform the SRBMP of the complaint
- d) The Council will then attempt to resolve the problem (through dialogue and negotiation) within 14 days of the complaint being lodged. If no agreement is reached at this stage, then the complaint is taken to the Courts of Law.

The following chart illustrates the sequential steps for the grievance redress mechanism:



12.2 Consensus, Negotiations and Conflict Resolution

Consensus and negotiations are central to addressing grievances. In general, people are aware of their rights, their commitments to the country as citizens and their allegiance to village and family issues. For this reason, many Government funded community projects have been implemented without obstacles from PAPs.

However some projects have been known to stall due to delays in disbursement of compensation. Prior negotiations between Government representatives and project beneficiaries are therefore crucial to the success of the project. As a guiding principle emphasis shall be placed on simplicity and proximity of the conflict resolution mechanisms to the affected persons and the following shall be noted:

- (a) Negotiation and agreement by consensus will provide the best avenue to resolving any grievances expressed by the individual landowners or households affected by community projects. These grievances shall be channelled through the Local Chiefs.
- (b) SRBMP shall ensure that the main parties involved achieve any consensus freely. SRBMP or the relevant government representative shall clearly advise the general public, as to who is responsible for handling grievances or compensation claims.

- (c) Grievances shall be addressed during the verification and appraisal process. If a suitable solution is not found, SRBMP shall defer consent of the project and the concerned project activities shall not be allowed to proceed.
- (d) Grievances for which solutions have not been found shall be referred back to the community for discussion where the Local Leader and District Council will address the matter of concern to assist the claimants. The mediation process will be implemented according to traditional methods of mediation/conflict resolution. The resolution will then be documented on the relevant consent forms and verified.
- (e) If an agreement cannot be reached at community level the aggrieved party or parties shall raise their concerns to SRBMP who shall refer them to the respective District Councils, within 20 days of the verification meeting. Grievances that cannot be resolved at the Local and District level shall be officially communicated the SRBMP with copies to the District Council. Should grievances remain unresolved at this level, they can be referred to a court of law.

The steps provided below are presented to assist in following the grievance redress procedure:

- Step 1: Approval of RAP by SRBMP after adequate consultation with PAPs
- Step 2: PAPs informed of the Grievance Procedure by SRBMP
- Step 3: Where there are grievances, PAPs present these to the Local Leader
- Step 4: The Local Leader informs and consults with the District Council
- Step 5: The District Council, in consultation with the Local Leader, resolves the grievances.
- Step 6: Grievance that cannot be resolved at step 5 above shall be presented to the SRBMP to resolve
- Step 7: Grievance that cannot be resolved at step 6 above shall be presented to the Court of Law

13.0 MONITORING AND EVALUATION

13.1 *Contents of the Monitoring and Evaluation Plan*

In order to assess whether the goals of the resettlement and compensation plan are met, a monitoring plan will be required. This monitoring plan will indicate parameters to be monitored, institute monitoring milestones and provide resources including responsible persons or institutions, necessary to carry out the monitoring activities. In order to save time and use resources effectively, monitoring for the RPF activities should be done concurrently with the monitoring for the ESMF activities, where possible.

The arrangements for monitoring the resettlement and compensation activities as well as the ESMF activities would fit in the overall monitoring and evaluation (M&E) programme of the entire SRBMP, which would fall under the overall responsibility of SRBMP. SRBMP will institute an administrative reporting system that:

- (a) Alerts project authorities on the necessity and procedures for land acquisition for the project activities and the need to incorporate land acquisition, resettlement, loss of assets and impact on livelihood provisions in the design, technical specifications and budgets;
- (b) Provides timely information about the asset valuation and negotiation process;
- (c) Maintains records of any grievances that require resolution;
- (d) Documents timely completion of resettlement obligations (i.e. payment of the agreed-upon sums, construction of new structures, etc.) for all permanent and temporary losses, as well as unanticipated, additional construction damage;
- (e) Updates the database with respect to changes that occur on the ground as resettlement and compensation activities are being implemented.

Specifically, the monitoring system for RAPs should ensure that:

- Land acquired from PAPs, for the purposes of the project, has been replaced;
- Compensation payments have been done to the satisfaction of the PAPs and before actual relocation;
- That where replacement seedlings have been given to PAPs, they have survived.
- Lost or impacted assets have been replaced to the same or better condition and standards of living have remained the same or improved.

As a general guide, Appendix 13.1 provides a sample of land acquisition and resettlement process monitoring plan. Objectively Verifiable Indicators (OVIs) as proposed in Appendix 13.1 shall be used to monitor the impacts of the compensation and resettlement activities. These indicators will be targeted at quantitatively measuring the physical and socio-economic status of the PAPs, to determine and guide improvement in their social wellbeing. Monitoring indicators to be used for specific RAPs or ARAPs will have to be developed to respond to specific site conditions.

13.2 *The Proposed Monitoring and Evaluation Plan*

The monitoring and evaluation activities for this RPF would be performed as follows:

- (a) The Construction Supervision Consultant (CSC) will be mandated to monitor the implementation of the compensation activities against the corresponding time frame as shown in the implementation schedule (Appendix 9.1). The CSC will acquire the services of a Social Scientist for monitoring the implementation of the compensation activities. In the event of delays in payment of compensation or any related activity, the CSC would notify SRBMP and suggest corrective measures.

Approximately one month after completion of compensation, the CSC will make site inspections and evaluations of the project areas in order to determine whether all the PAPs have been compensated in full and before implementation of the sub project activities. It is assumed in the budget that the CSC's head office in Lilongwe will travel to all the sites to carry out this activity.

For the first six months after completion of compensation, the CSC shall submit monthly

monitoring reports of the project to the District Council and SRBMP. **Subsequently, the CSC will submit quarterly monitoring reports** for the remaining period of the project to the District Council and SRBMP. In the budget, it is assumed that the local offices of the CSC in the respective districts will submit their monthly and quarterly reports to the Head Office in Lilongwe.

- (b) **Every three months, CSC will complete Appendix 13.1** (specifically modified to suit the particular district) to monitor the impacts of the compensation activities. The “remarks” column in the table will be completed to contain qualitative assessment of PAPs social conditions and any observations pertinent to the successful implementation of the RPF and specific RAPs where appropriate.
- (c) **Annual evaluations will be made by SRBMP (PSC)** in order to determine whether the PAPs have been paid in full and before implementation of the sub project activities; and whether the PAPs enjoy the same or higher standards of living than before.
- (d) **If warranted due to substantial project-related resettlement or compensation, an external evaluation agency will be commissioned through the standard bidding process for carrying out an end-of-term evaluation of the compensation activities.** This agency would be independent of the project. The external evaluation agency would carry out the evaluation exercise based on the filled-out reporting format as well as the output/impact of the project as outlined in Appendix 13.1. The external evaluation should be based on a recognised sampling method to select the relevant performance indicators to be used in the monitoring. The parameters and indicators suggested in Appendix 13.1 are illustrative only. The evaluation agency may modify, add, eliminate or combine these parameters and indicators as necessary. SRBMP will initiate corrective action, if necessary, based on the recommendations of the agency.

Where it is determined cost effective, the office of the District Council should host the M&E component of the project activities. This would mean giving the District Councils (in place of the CSC) the mandate to carry out monitoring of the implementation of the resettlement and compensation plans at periodic intervals of quarterly or half yearly (as circumstances dictate) during the program life. The District Councils would submit reports to the CSC who would check and forward them to the SRBMP offices. Any deviation from the planned land acquisition and resettlement programme should be brought to the attention of SRBMP. The reports would become part of the official documents of the SRBMP.

Independent monitoring of the compensation and resettlement activities can be done by NGO'S, Private Consultants or the Environmental Affairs Department (EAD). Carrying out such independent monitoring will enhance the openness and transparency of the compensation and resettlement programme. The SRBMP would have to approve participation of NGOs in independent monitoring activities, depending on their requirements. The NGOs participation would be funded by the NGOs themselves, using their own resources; unless under special funding and participation arrangements to be approved by the SRBMP.

13.3 Budget for the Proposed Monitoring and Evaluation Plan

The estimated budget for monitoring the activities of the RPF provided in Table 13.1 is based on the activities described in Section 13.2.

Table 13.1 Monitoring and Evaluation Budget for RPF for One Year

DESCRIPTION	Unit	Qty	Rate (\$)	Total
CSC (Site inspection one month after compensation and resettlement)	Days	5	205	1025
CSC Monthly monitoring reports for the first six months and quarterly thereafter				
20 copies of reports per month for 6months @ \$30 per report	No	120	30	3600
20 copies of reports for each quarter for 2 quarters @ \$30 per report	No	40	30	1200
1 No annual evaluations by NSB	No	1	5,000	5,000
Independent monitoring				
45 Days Consultancy			Sum	30,000
End of term workshop for 30 participants			Sum	12,777
TOTAL				53,602

14.0 BUDGETARY IMPLICATIONS AND FUNDING

14.1 *Expenses for Resettlement and Rehabilitation*

Since this is only a framework rather than a specific RAP, the resettlement and rehabilitation costs can only be an estimate for budgeting purposes at this time and this estimate is presented in Table 14.1. A more accurate estimate of the overall cost of resettlement and rehabilitation would be determined during the socio-economic studies for RAPs in line with Appendix 14.1 (Contents of a Comprehensive Budget).

Table 14.1 Estimated Resettlement and Rehabilitation Expenses

ACTIVITIES	COST SCHEDULE (Thousands USD)					
	Year 1	Year 2	Year 3	Year 4	Year 5	GT
Component B: Catchment Management						
<i>B4: Ecological Management</i>	20	20	15	15	15	85
Component C: Water Related Investments						
<i>C2: Flood Management</i>	15	15	10	10	10	60
GRAND TOTAL	35	35	25	25	25	145

RAPs for specific sub-projects would include an itemized, comprehensive budget. SRBMP or their appointed representative will prepare this budget and SRBMP will finance it through the administrative and financial management rules and manuals, like any other activity eligible for payment under the SRBMP. This budget will be subject to the approval by the SRBMP.

The SRBMP would have to finance the Resettlement and Compensation because they are the parties who would be impacting on the affected people's livelihoods. Disbursements based on budgetary requirements, established by the RAPs will be made through the respective District Councils.

At this stage, it is not possible to estimate the likely number of people who may be affected. This is because the technical designs and details have not yet been developed and the land needs have not yet been identified. When this information is available and after the conclusion of the site specific socio-economic study; information on specific impacts, individual and household incomes, numbers of affected people and other demographic data would be available. Such information will facilitate the preparation of the detailed and accurate budget for resettlement and compensation, to be presented as detailed in the budget framework, highlighting the key elements that the budget must contain.

14.2 *Expenses for Capacity Building and Training*

US\$31,740.00 will be required for training of trainers. It is proposed 20 members of DEC and TCPC; and 4 members from the Ministry/ SRBMP are trained and that these should in turn train the other groups of people that will be implementing the RAP and the ESMF. Details of the capacity building and training activities are presented in a separate document for the overall Capacity Building and Training Programme for the SRBMP.

US\$59,920.00 will be required for training members of the DDC, AEC and VDC in the respective project impact districts.

14.3 *Expenses for Monitoring and Evaluation*

The budget for monitoring and evaluation of the activities of this RPF has been discussed in Section 14 above. The total estimate for the monitoring and evaluation activities is US\$53,602.

14.4 *Total Budget for Implementation of the RPF*

The total estimate for the implementation of the various activities of this RPF is presented in Table 15.2 below. The cost includes the estimated resettlement and rehabilitation expenses, capacity building and training expenses and monitoring and evaluation expenses for the proposed five years duration of the

project.

Table 14.2 Estimated total costs for implementation of the RPF

ACTIVITIES	COST SCHEDULE (Thousands USD)					
	Year 1	Year 2	Year 3	Year 4	Year 5	GT
Component B: Catchment Management						
<i>B4: Ecological Management</i>	20	20	15	15	15	85
Component C: Water Related Investments						
<i>C2: Flood Management</i>	15	15	10	10	10	60
<i>Cost of combined training for RPF and ESMF</i>	92					92
<i>Costs of monitoring and evaluation for RPF</i>	11	11	11	11	11	55
GRAND TOTAL	138	46	36	36	36	292

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APPENDICES

APPENDIX 4.1 Socioeconomic Characteristics of Families and Businesses

Table 1: Property (Goods and Assets Affected)

Household number ¹	Business number ²	Name of household head or business owner	Plot area	Description of houses and constructions	Uses of the property (housing, economic activity, other)	Level of effect (total, partial, minimum) ³	Tenure status (titled owner, owner without documents, tenant, sharecropper, etc.)	Employment status of all adults	Comments

¹ Households should be defined as commensal units i.e. people who eat out of the same pot.

² Business should be defined as any economic activity.

³ “Partial” in cases where family/business can develop activities involving listed goods and assets; “Total” where activities cannot be developed as a result of displacement.

⁴ If they are not owners, include the name and address of the owner.

Table 2: Socioeconomic Characteristics of Families

Household number ¹	Name of household head	No. of persons in household	No. of children <13 years of age	No. of adults +60 years of age	No. of students	Sources of income	Place of work or study and distances	Means of transport to place of study/workplace	Comments

Table 3: Socioeconomic Characteristics of Business

Business number	Name of business owner	Age of business owner	Type of activity	No. of employees	Monthly income average	Destination of production	Place of selling	Duration of existence of business in affected location	Comments

APPENDIX 4.2 *Template for the Design of RAPs*

(Adapted from the World Bank Operational Policies: Involuntary Resettlement Instruments)

1. The scope and level of detail of the resettlement plan vary with the magnitude and complexity of resettlement. The plan is based on up-to-date and reliable information about (a) the proposed resettlement and its impacts on the PAPs and other adversely affected groups, and (b) the legal issues involved in resettlement. The resettlement plan covers the elements below, as relevant. When any element is not relevant to project circumstances, it should be noted in the resettlement plan.

2. *Description of the project.* General description of the project and identification of the project area

3. *Potential impacts.* Identification of the:

- (a) Project component or activities that give rise to resettlement;
- (b) Zone of impact of such component or activities;
- (c) Alternatives considered to avoid or minimize resettlement; and
- (d) Mechanisms established to minimize resettlement, to the extent possible, during project implementation.

4. *Socioeconomic studies.* The findings of socioeconomic studies to be conducted in the early stages of project preparation and with the involvement of potentially displaced people, including

- (a) The results of a census survey covering:
 - (i) Current occupants of the affected area to establish a basis for the design of the resettlement program and to exclude subsequent inflows of people from eligibility for compensation and resettlement assistance;
 - (ii) Standard characteristics of displaced households, including a description of production systems, labour, and household organization; and baseline information on livelihoods (including, as relevant, production levels and income derived from both formal and informal economic activities) and standards of living (including health status) of the displaced population;
 - (iii) The magnitude of the expected loss (total or partial) of assets, and the extent of displacement, physical or economic;
 - (iv) Information on vulnerable groups or persons as provided for in OP 4.12, Para. 8, for whom special provisions may have to be made; and
 - (v) Provisions to update information on the displaced people's livelihoods and standards of living at regular intervals so that the latest information is available at the time of their displacement.
- (b) Other studies describing the following:
 - (i) Land tenure and transfer systems, including an inventory of common property natural resources from which people derive their livelihoods and sustenance, non-title-based usufruct systems (including fishing, grazing, or use of forest areas) governed by local recognized land allocation mechanisms, and any issues raised by different tenure systems in the project area;
 - (ii) The patterns of social interaction in the affected communities, including social networks and social support systems, and how they will be affected by the project;
 - (iii) Public infrastructure and social services that will be affected; and

(iv) Social and cultural characteristics of displaced communities, including a description of formal and informal institutions (e.g., community organizations, ritual groups, nongovernmental organizations (NGOs)) that may be relevant to the consultation strategy and to designing and implementing the resettlement activities.

5. *Institutional Requirements.*

(a) The identification of agencies responsible for resettlement activities; and NGOs that may have a role in project implementation;

(b) Any steps proposed to enhance the institutional capacity of agencies and NGOs responsible for resettlement implementation.

6. *Eligibility.* Criteria for determining the eligibility for compensation and other resettlement assistance, including relevant cut-off dates

7. *Valuation of and compensation and resettlement and for losses.* The methodology to be used in valuing assets and in the determination of their replacement cost. A description of the proposed types and levels of compensation. A description of the packages of compensation and other resettlement measures that will assist each category of eligible PAPs to achieve the objectives of the policy (see OP 4.12, Para. 6)

8. *Relocation.* Alternative relocation sites considered, covering

(a) Relocation sites, whether rural or urban, which are at least comparable to the advantages of the old sites; (b) Procedures for physical relocation under the project, including timetables for site preparation and transfer; and

(d) Legal arrangements for regularizing tenure and transferring titles to resettlers.

9. *Housing, infrastructure, and social services.* Plans to provide (or to finance resettlers' provision of) housing, infrastructure (e.g., water supply, feeder roads), and social services (e.g., schools, health services); plans to ensure comparable services to host populations; any necessary site development, engineering, and architectural designs for these facilities.

10. *Environmental protection and management.* An assessment of the environmental impacts of the proposed resettlement and measures to mitigate and manage these impacts (coordinated as appropriate with the environmental assessment of the main investment requiring the resettlement).

11. *Community participation.* Involvement of resettlers and host communities, including

(a) A description of the strategy for consultation with and participation of resettlers and hosts in the design and implementation of the resettlement activities;

(b) A summary of the views expressed and how these views were taken into account in preparing the resettlement plan;

(c) A review of the resettlement alternatives presented and the choices made by PAPs regarding options available to them, including choices related to forms of compensation and resettlement assistance.

(d) Institutionalized arrangements by which displaced people can communicate their concerns to project authorities throughout planning and implementation, and measures to ensure that such vulnerable groups as indigenous people, ethnic minorities, the landless, and women are adequately represented.

12. *Grievance procedures.* Affordable and accessible procedures for third-party settlement of disputes arising from resettlement; such grievance mechanisms should take into account the availability of judicial recourse and community and traditional dispute settlement mechanisms.

13. *Organizational responsibilities.* The organizational framework for implementing resettlement, including identification of agencies responsible for delivery of resettlement measures and provision of services; arrangements to ensure appropriate coordination between agencies and jurisdictions involved in implementation; and any measures (including technical assistance) needed to strengthen the implementing agencies' capacity to design and carry out resettlement activities; provisions for the transfer to local authorities or resettlers themselves of responsibility for managing facilities and services provided under the project and for transferring other such responsibilities from the resettlement implementing agencies, when appropriate.

14. *Implementation schedule.* An implementation schedule covering all resettlement activities from preparation through implementation, including target dates for the achievement of expected benefits to resettlers and hosts and terminating the various forms of assistance. The schedule should indicate how the resettlement activities are linked to the implementation of the overall project.

15. *Costs and budget.* Tables showing itemized cost estimates for all resettlement activities, including allowances for inflation, population growth, and other contingencies; timetables for expenditures; sources of funds; and arrangements for timely flow of funds, and funding for resettlement, if any, in areas outside the jurisdiction of the implementing agencies.

16. *Monitoring and evaluation.* Arrangements for monitoring of resettlement activities by the implementing agency, to ensure complete and objective information; performance monitoring indicators to measure inputs, outputs, and outcomes for resettlement activities; involvement of the PAPs in the monitoring process; evaluation of the impact of resettlement for a reasonable period after all resettlement and related development activities have been completed; using the results of resettlement monitoring to guide subsequent implementation.

APPENDIX 6.1 **Format for Entitlement Matrix for Various Categories of PAPs**

Category of PAP	Type of Loss	ENTITLEMENTS		
		Compensation for Loss of Structures	Compensation for Loss of land and other Assets	Compensation for Loss of Income/Livelihood
Property Owners (including those covered by customary law)	Loss of Land	Costs at full replacement value	Land replacement at new site, plus land clearing by the project	-Cash compensation for crops/trees at replacement cost in scarce season -Allow sufficient time to harvest crops
	Loss of Structures of Residential Business	Compensation at full replacement value (not depreciated)	(Fences block work, wire, and wood) Wells Stores Waste water facilities Connection to utilities Access roads	For lost income from rented property, pay lump sum cash payment of agreed number of months of rental per tenant.
Residential Tenant: Business Tenant	Loss of rental Accommodation		Replacement costs for non- movables.	-Disturbance assistance. -Transportation assistance, if relocating -Rental for a few months up to 2 months
	-Loss of Premises	None	Replacement costs for non- movables if installation was agreed with owner.	None
	-Loss of business	None	None	For loss of business, payment of lost income at an agreed rate (say payment of six up to 1.5 months' income months of past year average turnover)
	-Loss of business income	None	None	payment of lost income at an agreed rate (say payment of three months of past year average income up to 1.5 months' income)
	-Loss of salary	None	None	payment of lost salary at an agreed rate (say payment of three for up to 1.5 months of past year average salary)
Encroachers (using Land)	Loss of shelter, assets and land for cultivation where applicable	Cash compensation for assets/improvements as identified by the census on the affected land.	Where possible assistance in securing other access to land for growing crops, subject to approval of Local Authorities/communities	-Cash compensation for trees/crops at replacement cost in scarce season. -Allow for sufficient time to harvest crops -allow for sufficient time to relocate -For street vendors on

				right of ways allow possible access to other sites/locations
Encroachers (living on Site)	Loss of Shelter	-Compensation at full replacement value for structure, -relocation to resettlement site, with payment of site rent.	None	-Payments in lieu of wages while rebuilding -Disturbance assistance -Transport assistance if relocating.
Community	Public facilities	-Compensation at full replacement value for structure, -relocation to resettlement site, with payment of site	-Land replacement at new site, plus land clearing by the project -Waste facilities, connection to utilities and provision of access	-For loss of business, payment of lost income -Provision of alternative temporary facilities during construction, where appropriate.
	Sacred sites and graves	None	Land replacement at new site, plus land clearing by the project	None

Note: All payments to be made in Malawi Kwacha.

**THE WORLD BANK OPERATIONAL MANUAL
OPERATIONAL POLICIES OP 4.12, December 2001**

These policies were prepared for use by World Bank staff and are not necessarily a complete treatment of the subject.

Involuntary Resettlement

Note: OP and BP 4.12 together replace OD 4.30, *Involuntary Resettlement*. This OP and BP apply to all projects for which a Project Concept Review takes place on or after January 1, 2002. Questions may be addressed to the Director, Social Development Department (SDV).

1. Bank1. experience indicates that involuntary resettlement under development projects, if unmitigated, often gives rise to severe economic, social, and environmental risks: production systems are dismantled; people face impoverishment when their productive assets or income sources are lost; people are relocated to environments where their productive skills may be less applicable and the competition for resources greater; community institutions and social networks are weakened; kin groups are dispersed; and cultural identity, traditional authority, and the potential for mutual help are diminished or lost. This policy includes safeguards to address and mitigate these impoverishment risks.

Policy Objectives

2. Involuntary resettlement may cause severe long-term hardship, impoverishment, and environmental damage unless appropriate measures are carefully planned and carried out. For these reasons, the overall objectives of the Bank's policy on involuntary resettlement are the following:

- (a) Involuntary resettlement should be avoided where feasible, or minimized, exploring all viable alternative project designs.²
- (b) Where it is not feasible to avoid resettlement, resettlement activities should be conceived and executed as sustainable development programs, providing sufficient investment resources to enable the persons displaced by the project to share in project benefits. PAPs³ should be meaningfully consulted and should have opportunities to participate in planning and implementing resettlement programs.
- (c) PAPs should be assisted in their efforts to improve their livelihoods and standards of living or at least to restore them, in real terms, to pre-displacement levels or to levels prevailing prior to the beginning of project implementation, whichever is higher.⁴

Impacts Covered

3. This policy covers direct economic and social impacts⁵ that both result from Bank-assisted investment projects⁶, and are caused by

- (a) The involuntary⁷ taking of land⁸ resulting in:
 - (i) Relocation or loss of shelter;
 - (ii) Lost of assets or access to assets; or
 - (iii) Loss of income sources or means of livelihood, whether or not the affected persons must move to another location; or
- (b) The involuntary restriction of access⁹ to legally designated parks and protected areas resulting in adverse impacts on the livelihoods of the PAPs.

4. This policy applies to all components of the project that result in involuntary resettlement, regardless of the source of financing. It also applies to other activities resulting in involuntary resettlement that in the judgment of the Bank, are:

- (a) Directly and significantly related to the Bank-assisted project,

- (b) Necessary to achieve its objectives as set forth in the project documents; and
- (c) Carried out, or planned to be carried out, contemporary or continuously with the project.

5. Requests for guidance on the application and scope of this policy should be addressed to the Resettlement Committee (see BP 4.12, paragraph 7.10)

Required Measures

6. To address the impacts covered under paragraph 3 (a) of this policy, the borrower prepares a resettlement plan or a resettlement policy framework (see paragraphs 25-30) that covers the following:

(a) The resettlement plan or resettlement policy framework includes measures to ensure that the PAPs are:

- (i) Informed about their options and rights pertaining to resettlement;
- (ii) Consulted on, offered choices among, and provided with technically and economically feasible resettlement alternatives; and
- (iii) Provided prompt and effective compensation at full replacement cost¹¹ for losses of assets¹² attributable directly to the project.

(b) If the impacts include physical relocation, the resettlement plan or resettlement policy framework includes measures to ensure that the PAPs are

- (i) Provided assistance (such as moving allowances) during relocation; and
- (ii) Provided with residential housing, or housing sites, or, as required, agricultural sites for which a combination of productive potential, locational advantages, and other factors is at least equivalent to the advantages of the old site.¹³

(c) Where necessary to achieve the objectives of the policy, the resettlement plan or resettlement policy framework also include measures to ensure that PAPs are

- (i) Offered support after displacement, for a transition period, based on a reasonable estimate of the time likely to be needed to restore their livelihood and standards of living;¹⁴ and
- (ii) Provided with development assistance in addition to compensation measures described in paragraph 6(a)
- (iii), Such as land preparation, credit facilities, training, or job opportunities.

7. In projects involving involuntary restriction of access to legally designated parks and protected areas (see paragraph 3(b)), the nature of restrictions, as well as the type of measures necessary to mitigate adverse impacts, is determined with the participation of the PAPs during the design and implementation of the project. In such cases, the borrower prepares a process framework acceptable to the Bank, describing the participatory process by which:

- (a) Specific components of the project will be prepared and implemented;
- (b) The criteria for eligibility of PAPs will be determined;
- (c) Measures to assist the PAPs in their efforts to improve their livelihoods, or at least to restore them, in real terms, while maintaining the sustainability of the park or protected area, will be identified; and
- (d) Potential conflicts involving PAPs will be resolved.

The process framework also includes a description of the arrangements for implementing and monitoring the process.

8. To achieve the objectives of this policy, particular attention is paid to the needs of vulnerable groups among those displaced, especially those below the poverty line, the landless, the elderly, women and

children, indigenous peoples,¹⁵ ethnic minorities, or other PAPs who may not be protected through national land compensation legislation.

9. Bank experience has shown that resettlement of indigenous peoples with traditional land-based modes of production is particularly complex and may have significant adverse impacts on their identity and cultural survival. For this reason, the Bank satisfies itself that the borrower has explored all viable alternative project designs to avoid physical displacement of these groups. When it is not feasible to avoid such displacement, preference is given to land-based resettlement strategies for these groups (see paragraph 11) that are compatible with their cultural preferences and are prepared in consultation with them (see Annex A, paragraph 11).

10. The implementation of resettlement activities is linked to the implementation of the investment component of the project to ensure that displacement or restriction of access does not occur before necessary measures for resettlement are in place. For impacts covered in paragraph 3(a) of this policy, these measures include provision of compensation and of other assistance required for relocation, prior to displacement, and preparation and provision of resettlement sites with adequate facilities, where required. In particular, taking of land and related assets may take place only after compensation has been paid and, where applicable, resettlement sites and moving allowances have been provided to the PAPs. For impacts covered in paragraph 3(b) of this policy, the measures to assist the PAPs are implemented in accordance with the plan of action as part of the project (see paragraph 30).

11. Preference should be given to land-based resettlement strategies for PAPs whose livelihoods are land-based. These strategies may include resettlement on public land (see footnote 1 above), or on private land acquired or purchased for resettlement. Whenever replacement land is offered, resettlers are provided with land for which a combination of productive potential, locational advantages, and other factors is at least equivalent to the advantages of the land taken. If land is not the preferred option of the PAPs, the provision of land would adversely affect the sustainability of a park or protected area, ¹⁶ or sufficient land is not available at a reasonable price, non-land-based options built around opportunities for employment or self-employment should be provided in addition to cash compensation for land and other assets lost. The lack of adequate land must be demonstrated and documented to the satisfaction of the Bank.

12. Payment of cash compensation for lost assets may be appropriate where (a) livelihoods are land based but the land taken for the project is a small fraction¹⁷ of the affected asset and the residual is economically viable; (b) active markets for land, housing, and labor exist, PAPs use such markets, and there is sufficient supply of land and housing; or (c) livelihoods are not land-based. Cash compensation levels should be sufficient to replace the lost land and other assets at full replacement cost in local markets.

13. For impacts covered under paragraph 3(a) of this policy, the Bank also requires the following:

(a) PAPs and their communities, and any host communities receiving them, are provided timely and relevant information, consulted on resettlement options, and offered opportunities to participate in planning, implementing, and monitoring resettlement. Appropriate and accessible grievance mechanisms are established for these groups.

(b) In new resettlement sites or host communities, infrastructure and public services are provided as necessary to improve, restore, or maintain accessibility and levels of service for the PAPs and host communities. Alternative or similar resources are provided to compensate for the loss of access to community resources (such as fishing areas, grazing areas, fuel, or fodder).

(c) Patterns of community organization appropriate to the new circumstances are based on choices made by the PAPs. To the extent possible, the existing social and cultural institutions of resettlers

and any host communities are preserved and resettlers' preferences with respect to relocating in preexisting communities and groups are honored.

Eligibility for Benefits¹⁸

14. Upon identification of the need for involuntary resettlement in a project, the borrower carries out a census to identify the persons who will be affected by the project (see the Annex A, paragraph 6(a)), to

determine who will be eligible for assistance, and to discourage inflow of people ineligible for assistance. The borrower also develops a procedure, satisfactory to the Bank, for establishing the criteria by which PAPs will be deemed eligible for compensation and other resettlement assistance. The procedure includes provisions for meaningful consultations with affected persons and communities, local authorities, and, as appropriate, nongovernmental organizations (NGOs), and it specifies grievance mechanisms.

15. *Criteria for Eligibility.* PAPs may be classified in one of the following three groups:

- (a) Those who have formal legal rights to land (including customary and traditional rights recognized under the laws of the country);
- (b) Those who do not have formal legal rights to land at the time the census begins but have a claim to such land or assets—provided that such claims are recognized under the laws of the country or become recognized through a process identified in the resettlement plan (see Annex A, paragraph 7(f)); and¹⁹
- (c) Those who have no recognizable legal right or claim to the land they are occupying.

16. Persons covered under paragraph 15(a) and (b) are provided compensation for the land they lose, and other assistance in accordance with paragraph 6. Persons covered under paragraph 15(c) are provided resettlement assistance²⁰ in lieu of compensation for the land they occupy, and other assistance, as necessary, to achieve the objectives set out in this policy, if they occupy the project area prior to a cut-off date established by the borrower and acceptable to the Bank.²¹ Persons who encroach on the area after the cut-off date are not entitled to compensation or any other form of resettlement assistance. All persons included in paragraph 15(a), (b), or (c) are provided compensation for loss of assets other than land.

Resettlement Planning, Implementation, and Monitoring

17. To achieve the objectives of this policy, different planning instruments are used, depending on the type of project:

- (a) a resettlement plan or abbreviated resettlement plan is required for all operations that entail involuntary resettlement unless otherwise specified (see paragraph 25 and Annex A);
- (b) a resettlement policy framework is required for operations referred to in paragraphs 26-30 that may entail involuntary resettlement, unless otherwise specified (see Annex A); and
- (c) a process framework is prepared for projects involving restriction of access in accordance with paragraph 3(b) (see paragraph 31).

18. The borrower is responsible for preparing, implementing, and monitoring a resettlement plan, a resettlement policy framework, or a process framework (the "resettlement instruments"), as appropriate, that conform to this policy. The resettlement instrument presents a strategy for achieving the objectives of the policy and covers all aspects of the proposed resettlement. Borrower commitment to, and capacity for, undertaking successful resettlement is a key determinant of Bank involvement in a project.

19. Resettlement planning includes early screening, scoping of key issues, the choice of resettlement instrument, and the information required to prepare the resettlement component or subcomponent. The scope and level of detail of the resettlement instruments vary with the magnitude and complexity of resettlement. In preparing the resettlement component, the borrower draws on appropriate social, technical, and legal expertise and on relevant community-based organizations and NGOs.²² The borrower informs potentially PAPs at an early stage about the resettlement aspects of the project and takes their views into account in project design.

20. The full costs of resettlement activities necessary to achieve the objectives of the project are included in the total costs of the project. The costs of resettlement, like the costs of other project activities, are treated as a charge against the economic benefits of the project; and any net benefits to resettlers (as compared to the "without-project" circumstances) are added to the benefits stream of the project. Resettlement components or free-standing resettlement projects need not be economically viable on their own, but they should be cost-effective.

21. The borrower ensures that the Project Implementation Plan is fully consistent with the resettlement instrument.

22. As a condition of appraisal of projects involving resettlement, the borrower provides the Bank with the relevant draft resettlement instrument which conforms to this policy, and makes it available at a place accessible to PAPs and local NGOs, in a form, manner, and language that are understandable to them. Once the Bank accepts this instrument as providing an adequate basis for project appraisal, the Bank makes it available to the public through its Info Shop. After the Bank has approved the final resettlement instrument, the Bank and the borrower disclose it again in the same manner.²³

23. The borrower's obligations to carry out the resettlement instrument and to keep the Bank informed of implementation progress are provided for in the legal agreements for the project.

24. The borrower is responsible for adequate monitoring and evaluation of the activities set forth in the resettlement instrument. The Bank regularly supervises resettlement implementation to determine compliance with the resettlement instrument. Upon completion of the project, the borrower undertakes an assessment to determine whether the objectives of the resettlement instrument have been achieved. The assessment takes into account the baseline conditions and the results of resettlement monitoring. If the assessment reveals that these objectives may not be realized, the borrower should propose follow-up measures that may serve as the basis for continued Bank supervision, as the Bank deems appropriate (see also BP 4.12, paragraph 16).

Resettlement Instruments

Resettlement Plan

25. A draft resettlement plan that conforms to this policy is a condition of appraisal (see Annex A, paragraphs 2-21) for projects referred to in paragraph 17(a) above.²⁴ However, where impacts on the entire displaced population are minor, 25 or fewer than 200 people are displaced; an abbreviated resettlement plan may be agreed with the borrower (see Annex A, paragraph 22). The information disclosure procedures set forth in paragraph 22 apply.

Resettlement Policy Framework

26. For sector investment operations that may involve involuntary resettlement, the Bank requires that the project implementing agency screen subprojects to be financed by the Bank to ensure their consistency with this OP. For these operations, the borrower submits, prior to appraisal, a resettlement policy framework that conforms to this policy (see Annex A, paragraphs 23-25). The framework also estimates, to the extent feasible, the total population to be displaced and the overall resettlement costs.

27. For financial intermediary operations that may involve involuntary resettlement, the Bank requires that the financial intermediary (FI) screen subprojects to be financed by the Bank to ensure their consistency with this OP. For these operations, the Bank requires that before appraisal the borrower or the FI submit to the Bank a resettlement policy framework conforming to this policy (see Annex A, paragraphs 23-25). In addition, the framework includes an assessment of the institutional capacity and procedures of each of the FIs that will be responsible for subproject financing. When, in the assessment of the Bank, no resettlement is envisaged in the subprojects to be financed by the FI, a resettlement policy framework is not required. Instead, the legal agreements specify the obligation of the FIs to obtain from the potential sub borrowers a resettlement plan consistent with this policy if a subproject gives rise to resettlement. For all subprojects involving resettlement, the resettlement plan is provided to the Bank for approval before the subproject is accepted for Bank financing.

28. For other Bank-assisted project with multiple subprojects²⁶ that may involve involuntary resettlement, the Bank requires that a draft resettlement plan conforming to this policy be submitted to the Bank before appraisal of the project unless, because of the nature and design of the project or of a specific subproject or subprojects (a) the zone of impact of subprojects cannot be determined, or (b) the zone of impact is known but precise sitting alignments cannot be determined. In such cases, the borrower submits a resettlement policy framework consistent with this policy prior to appraisal (see Annex A, paragraphs 23-25). For other subprojects that do not fall within the above criteria, a resettlement plan conforming to this policy is required prior to appraisal.

29. For each subproject included in a project described in paragraph 26, 27, or 28 that may involve resettlement, the Bank requires that a satisfactory resettlement plan or an abbreviated resettlement plan that is consistent with the provisions of the policy framework be submitted to the Bank for approval before the subproject is accepted for Bank financing.

30. For projects described in paragraphs 26-28 above, the Bank may agree, in writing that sub-project resettlement plans may be approved by the project implementing agency or a responsible government agency or financial intermediary without prior Bank review, if that agency has demonstrated adequate institutional capacity to review resettlement plans and ensure their consistency with this policy. Any such delegation, and appropriate remedies for the entity's approval of resettlement plans found not to be in compliance with Bank policy, is provided for in the legal agreements for the project. In all such cases, implementation of the resettlement plans is subject to ex post review by the Bank.

Process Framework

31. For projects involving restriction of access in accordance with paragraph 3(b) above, the borrower provides the Bank with a draft process framework that conforms to the relevant provisions of this policy as a condition of appraisal. In addition, during project implementation and before enforcing of the restriction, the borrower prepares a plan of action, acceptable to the Bank, describing the specific measures to be undertaken to assist the PAPs and the arrangements for their implementation. The plan of action could take the form of a natural resources management plan prepared for the project.

Assistance to the Borrower

32. In furtherance of the objectives of this policy, the Bank may at a borrower's request support the borrower and other concerned entities by providing:

- (a) Assistance to assess and strengthen resettlement policies, strategies, legal frameworks, and specific plans at a country, regional, or sectoral level;
- (b) Financing of technical assistance to strengthen the capacities of agencies responsible for resettlement, or of affected people to participate more effectively in resettlement operations;
- (c) Financing of technical assistance for developing resettlement policies, strategies, and specific plans, and for implementation, monitoring, and evaluation of resettlement activities; and
- (d) Financing of the investment costs of resettlement.

33. The Bank may finance either a component of the main investment causing displacement and requiring resettlement, or a free-standing resettlement project with appropriate cross-conditionalities, processed and implemented in parallel with the investment that causes the displacement. The Bank may finance resettlement even though it is not financing the main investment that makes resettlement necessary.

34. The Bank does not disburse against cash compensation and other resettlement assistance paid in cash, or against the cost of land (including compensation for land acquisition). However, it may finance the cost of land improvement associated with resettlement activities.

1. "Bank" includes IDA; "loans" includes credits, guarantees, Project Preparation Facility (PPF) advances and grants; and "projects" includes projects under (a) adaptable program lending; (b) learning and innovation loans; (c) PPFs and Institutional Development Funds (IDFs), if they include investment activities; (d) grants under the Global Environment Facility and Montreal Protocol, for which the Bank is the implementing/executing agency; and (e) grants or loans provided by other donors that are administered by the Bank. The term "project" does not include programs under adjustment operations. "Borrower" also includes, wherever the context requires, the guarantor or the project implementing agency.

2. In devising approaches to resettlement in Bank-assisted projects, other Bank policies should be taken into account, as relevant. These policies include OP 4.01 *Environmental Assessment*, OP 4.04 *Natural Habitats*, OP 4.11 *Safeguarding Cultural Property in Bank-Assisted Projects*, and OD 4.20 *Indigenous Peoples*.

3. The term "Project Affected Persons" refers to persons who are affected in any of the ways described in paragraph 3 of this OP.

4. PAPs under paragraph 3(b) should be assisted in their efforts to improve or restore their livelihoods in a manner that maintains the sustainability of the parks and protected areas.

5. Where there are adverse indirect social or economic impacts, it is good practice for the borrower to undertake a social assessment and implement measures to minimize and mitigate adverse economic and social impacts, particularly upon poor and vulnerable groups. Other environmental, social, and economic impacts that do not result from land taking may be identified and addressed through environmental assessments and other project reports and instruments.

6. This policy does not apply to restrictions of access to natural resources under community-based projects, i.e. where the community using the resources decides to restrict access to these resources, provided that an assessment satisfactory to the Bank establishes that the community decision-making process is adequate, and that it provides for identification of appropriate measures to mitigate adverse impacts, if any, on the vulnerable members of the community. This policy also does not cover refugees from natural disasters, war, or civil strife (see OP/BP 8.50, *Emergency Recovery Assistance*).

7. For purposes of this policy, "involuntary" means actions that may be taken without the displaced person's informed consent or power of choice. 8. "Land" includes anything growing on or permanently affixed to land, such as buildings and crops. This policy does not apply to regulations of natural resources on a national or regional level to promote their sustainability, such as watershed management, groundwater management, fisheries management, etc. The policy also does not apply to disputes between private parties in land titling projects, although it is good practice for the borrower to undertake a social assessment and implement measures to minimize and mitigate adverse social impacts, especially those affecting poor and vulnerable groups.

9. For the purposes of this policy, involuntary restriction of access covers restrictions on the use of resources imposed on people living outside the park or protected area, or on those who continue living inside the park or protected area during and after project implementation. In cases where new parks and protected areas are created as part of the project, persons who lose shelter, land, or other assets are covered under paragraph 3(a). Persons who lose shelter in existing parks and protected areas are also covered under paragraph 3(a).

10. The *Resettlement Sourcebook* (forthcoming) provides good practice guidance to staff on the policy.

11. "Replacement cost" is the method of valuation of assets that helps determine the amount sufficient to replace lost assets and cover transaction costs. In applying this method of valuation, depreciation of structures and assets should not be taken into account (for a detailed definition of replacement cost, see Annex A, footnote 1). For losses that cannot easily be valued or compensated for in monetary terms (e.g., access to public services, customers, and suppliers; or to fishing, grazing, or forest areas), attempts are made to establish access to equivalent and culturally acceptable resources and earning opportunities. Where domestic law does not meet the standard of compensation at full replacement cost, compensation under domestic law is supplemented by additional measures necessary to meet the replacement cost standard. Such additional assistance is distinct from resettlement assistance to be provided under other clauses of paragraph 6.

12. If the residual of the asset being taken is not economically viable, compensation and other resettlement assistance are provided as if the entire asset had been taken.

13. The alternative assets are provided with adequate tenure arrangements. The cost of alternative residential housing, housing sites, business premises, and agricultural sites to be provided can be set off against all or part of the compensation payable for the corresponding asset lost.

14. Such support could take the form of short-term jobs, subsistence support, salary maintenance or similar arrangements
15. See OD 4.20, *Indigenous Peoples*.
16. See OP 4.04, *Natural Habitats*.
17. As a general principle, this applies if the land taken constitutes less than 20% of the total productive area.
18. Paragraphs 13-15 do not apply to impacts covered under paragraph 3(b) of this policy. The eligibility criteria for PAPs under 3 (b) are covered under the process framework (see paragraphs 7 and 30).
19. Such claims could be derived from adverse possession, from continued possession of public lands without government action for eviction (that is, with the implicit leave of the government), or from customary and traditional law and usage, and so on.
20. Resettlement assistance may consist of land, other assets, cash, employment, and so on, as appropriate. 21. Normally, this cut-off date is the date the census begins. The cut-off date could also be the date the project area was delineated, prior to the census, provided that there has been an effective public dissemination of information on the area delineated, and systematic and continuous dissemination subsequent to the delineation to prevent further population influx.
22. For projects that are highly risky or contentious, or that involve significant and complex resettlement activities, the borrower should normally engage an advisory panel of independent, internationally recognized resettlement specialists to advise on all aspects of the project relevant to the resettlement activities. The size, role, and frequency of meeting depend on the complexity of the resettlement. If independent technical advisory panels are established under OP 4.01, *Environmental Assessment*, the resettlement panel may form part of the environmental panel of experts. See BP 17.50, *Disclosure of Operational Information* (forthcoming) for detailed disclosure procedures.
24. An exception to this requirement may be made in highly unusual circumstances (such as emergency recovery operations) with the approval of Bank Management (see BP 4.12, paragraph 8). In such cases, the Management's approval stipulates a timetable and budget for developing the resettlement plan.
25. Impacts are considered "minor" if the affected people are not physically displaced and less than 10% of their productive assets are lost. 26. For purpose of this paragraph, the term "subprojects" includes components and subcomponents.

OP 4.12 -- Annex A. December 2001
Involuntary Resettlement Instruments

These policies were prepared for use by World Bank staff and are not necessarily a complete treatment of the subject.

1. This annex describes the elements of a resettlement plan, an abbreviated resettlement plan, a resettlement policy framework, and a resettlement process framework, as discussed in OP 4.12, paragraphs 17-31.

Resettlement Plan

2. The scope and level of detail of the resettlement plan vary with the magnitude and complexity of resettlement. The plan is based on up-to-date and reliable information about (a) the proposed resettlement and its impacts on the PAPs and other adversely affected groups, and (b) the legal issues involved in resettlement. The resettlement plan covers the elements below, as relevant. When any element is not relevant to project circumstances, it should be noted in the resettlement plan.

3. *Description of the project.* General description of the project and identification of the project area

4. *Potential impacts.* Identification of:

- (a) The project component or activities that give rise to resettlement;
- (b) The zone of impact of such component or activities;
- (c) The alternatives considered to avoid or minimize resettlement; and
- (d) The mechanisms established to minimize resettlement, to the extent possible, during project implementation.

5. *Objectives.* The main objectives of the resettlement program

6. *Socioeconomic studies.* The findings of socioeconomic studies to be conducted in the early stages of project preparation and with the involvement of potentially displaced people, including

- (a) The results of a census survey covering:
 - (i) Current occupants of the affected area to establish a basis for the design of the resettlement program and to exclude subsequent inflows of people from eligibility for compensation and resettlement assistance;
 - (ii) Standard characteristics of displaced households, including a description of production systems, labor, and household organization; and baseline information on livelihoods (including, as relevant, production levels and income derived from both formal and informal economic activities) and standards of living (including health status) of the displaced population;
 - (iii) The magnitude of the expected loss—total or partial—of assets, and the extent of displacement, physical or economic
 - (iv) Information on vulnerable groups or persons as provided for in OP 4.12, paragraph. 8, for whom special provisions may have to be made; and
 - (v) Provisions to update information on the displaced people's livelihoods and standards of living at regular intervals so that the latest information is available at the time of their displacement.
- (b) Other studies describing the following:
 - (i) Land tenure and transfer systems, including an inventory of common property natural resources from which people derive their livelihoods and sustenance, non-title-based usufruct systems (including fishing, grazing, or use of forest areas) governed by local recognized land allocation mechanisms, and any issues raised by different tenure systems in the project area;
 - (ii) The patterns of social interaction in the affected communities, including social networks and social support systems, and how they will be affected by the project;
 - (iii) Public infrastructure and social services that will be affected; and

(iv) Social and cultural characteristics of displaced communities, including a description of formal and informal institutions (e.g., community organizations, ritual groups, nongovernmental organizations (NGOs)) that may be relevant to the consultation strategy and to designing and implementing the resettlement activities.

7. *Legal framework.* The findings of an analysis of the legal framework, covering:

- (a) The scope of the power of eminent domain and the nature of compensation associated with it, in terms of both the valuation methodology and the timing of payment;
- (b) The applicable legal and administrative procedures, including a description of the remedies available to PAPs in the judicial process and the normal timeframe for such procedures, and any available alternative dispute resolution mechanisms that may be relevant to resettlement under the project;
- (c) Relevant law (including customary and traditional law) governing land tenure, valuation of assets and losses, compensation, and natural resource usage rights; customary personal law related to displacement; and environmental laws and social welfare legislation;
- (d) Laws and regulations relating to the agencies responsible for implementing resettlement activities;
- (e) gaps, if any, between local laws covering eminent domain and resettlement and the Bank's resettlement policy, and the mechanisms to bridge such gaps; and
- (f) Any legal steps necessary to ensure the effective implementation of resettlement activities under the project, including, as appropriate, a process for recognizing claims to legal rights to land—including claims that derive from customary law and traditional usage (see OP 4.12, paragraph 15 (b)).

8. *Institutional Framework.* The findings of an analysis of the institutional framework covering

- (a) The identification of agencies responsible for resettlement activities and NGOs that may have a role in project implementation;
- (b) An assessment of the institutional capacity of such agencies and NGOs; and
- (c) Any steps that are proposed to enhance the institutional capacity of agencies and NGOs responsible for resettlement implementation.

9. *Eligibility.* Definition of PAPs and criteria for determining their eligibility for compensation and other resettlement assistance, including relevant cut-off dates.

10. *Valuation of and compensation for losses.* The methodology to be used in valuing losses to determine their replacement cost; and a description of the proposed types and levels of compensation under local law and such supplementary measures as are necessary to achieve replacement cost for lost assets.¹

11. *Resettlement measures.* A description of the packages of compensation and other resettlement measures that will assist each category of eligible PAPs to achieve the objectives of the policy (see OP 4.12, paragraph 6). In addition to being technically and economically feasible, the resettlement packages should be compatible with the cultural preferences of the PAPs, and prepared in consultation with them.

12. *Site selection, site preparation, and relocation.* Alternative relocation sites considered and explanation of those selected, covering:

- (a) Institutional and technical arrangements for identifying and preparing relocation sites, whether rural or urban, for which a combination of productive potential, locational advantages, and other factors is at least comparable to the advantages of the old sites, with an estimate of the time needed to acquire and transfer land and ancillary resources;
- (b) Any measures necessary to prevent land speculation or influx of ineligible persons at the selected sites;
- (c) Procedures for physical relocation under the project, including timetables for site preparation and transfer; and

(d) Legal arrangements for regularizing tenure and transferring titles to resettlers.

13. *Housing, infrastructure, and social services.* Plans to provide (or to finance resettlers' provision of) housing, infrastructure (e.g., water supply, feeder roads), and social services (e.g., schools, health services); 2 plans to ensure comparable services to host populations; any necessary site development, engineering, and architectural designs for these facilities.

14. *Environmental protection and management.* A description of the boundaries of the relocation area; and an assessment of the environmental impacts of the proposed resettlement³ and measures to mitigate and manage these impacts (coordinated as appropriate with the environmental assessment of the main investment requiring the resettlement).

15. *Community participation.* Involvement of resettlers and host communities, 4 including:

(a) A description of the strategy for consultation with and participation of resettlers and hosts in the design and implementation of the resettlement activities;

(b) A summary of the views expressed and how these views were taken into account in preparing the resettlement plan;

(c) A review of the resettlement alternatives presented and the choices made by PAPs regarding options available to them, including choices related to forms of compensation and resettlement assistance, to relocating as individuals families or as parts of preexisting communities or kinship groups, to sustaining existing patterns of group organization, and to retaining access to cultural property (e.g. places of worship, pilgrimage centers, cemeteries); 5 and

(d) Institutionalized arrangements by which displaced people can communicate their concerns to project authorities throughout planning and implementation, and measures to ensure that such vulnerable groups as indigenous people, ethnic minorities, the landless, and women are adequately represented.

16. *Integration with host populations.* Measures to mitigate the impact of resettlement on any host communities, including:

(a) Consultations with host communities and local governments;

(b) Arrangements for prompt tendering of any payment due the hosts for land or other assets provided to resettlers;

(c) Arrangements for addressing any conflict that may arise between resettlers and host communities; and

(d) Any measures necessary to augment services (e.g., education, water, health, and production services) in host communities to make them at least comparable to services available to resettlers.

17. *Grievance procedures.* Affordable and accessible procedures for third-party settlement of disputes arising from resettlement; such grievance mechanisms should take into account the availability of judicial recourse and community and traditional dispute settlement mechanisms.

18. *Organizational responsibilities.* The organizational framework for implementing resettlement, including identification of agencies responsible for delivery of resettlement measures and provision of services; arrangements to ensure appropriate coordination between agencies and jurisdictions involved in implementation; and any measures (including technical assistance) needed to strengthen the implementing agencies' capacity to design and carry out resettlement activities; provisions for the transfer to local authorities or resettlers themselves of responsibility for managing facilities and services provided under the project and for transferring other such responsibilities from the resettlement implementing agencies, when appropriate.

19. *Implementation schedule.* An implementation schedule, covering all resettlement activities from preparation through implementation; including target dates for the achievement of expected benefits to resettlers and hosts and terminating the various forms of assistance. The schedule should indicate how the resettlement activities are linked to the implementation of the overall project.

20. *Costs and budget.* Tables showing itemized cost estimates for all resettlement activities, including allowances for inflation, population growth, and other contingencies; timetables for expenditures; sources of funds; and arrangements for timely flow of funds, and funding for resettlement, if any, in areas outside the jurisdiction of the implementing agencies.

21. *Monitoring and evaluation.* Arrangements for monitoring of resettlement activities by the implementing agency, supplemented by independent monitors as considered appropriate by the Bank, to ensure complete and objective information; performance monitoring indicators to measure inputs, outputs, and outcomes for resettlement activities; involvement of the PAPs in the monitoring process; evaluation of the impact of resettlement for a reasonable period after all resettlement and related development activities have been completed; using the results of resettlement monitoring to guide subsequent implementation.

Abbreviated Resettlement Plan

22. An abbreviated plan covers the following minimum elements: 6

- (a) A census survey of PAPs and valuation of assets;
- (b) Description of compensation and other resettlement assistance to be provided;
- (c) Consultations with displaced people about acceptable alternatives;
- (d) Institutional responsibility for implementation and procedures for grievance redress;
- (e) Arrangements for monitoring and implementation; and
- (f) A timetable and budget.

Resettlement Policy Framework

23. The purpose of the policy framework is to clarify resettlement principles, organizational arrangements, and design criteria to be applied to subprojects to be prepared during project implementation (see OP 4.12, paragraphs 26-28). Subproject resettlement plans consistent with the policy framework subsequently are submitted to the Bank for approval after specific planning information becomes available (see OP 4.12, paragraph 29). 24. The resettlement policy framework covers the following elements, consistent with the provisions described in OP 4.12, paragraphs 2 and 4:

- (a) A brief description of the project and components for which land acquisition and resettlement are required, and an explanation of why a resettlement plan as described in paragraphs 2-21 or an abbreviated plan as described in paragraph 22 cannot be prepared by project appraisal;
- (b) Principles and objectives governing resettlement preparation and implementation;
- (c) A description of the process for preparing and approving resettlement plans;
- (d) estimated population displacement and likely categories of PAPs, to the extent feasible;
- (e) Eligibility criteria for defining various categories of PAPs;
- (f) A legal framework reviewing the fit between borrower laws and regulations and Bank policy requirements and measures proposed to bridge any gaps between them;
- (g) Methods of valuing affected assets;
- (h) Organizational procedures for delivery of entitlements, including, for projects involving private sector intermediaries, the responsibilities of the financial intermediary, the government, and the private developer;
- (i) A description of the implementation process, linking resettlement implementation to civil works;
- (j) A description of grievance redress mechanisms;
- (k) A description of the arrangements for funding resettlement, including the preparation and review of cost estimates, the flow of funds, and contingency arrangements;
- (l) A description of mechanisms for consultations with, and participation of, PAPs in planning, implementation, and monitoring; and
- (m) Arrangements for monitoring by the implementing agency and, if required, by independent monitors.

25. When a resettlement policy framework is the only document that needs to be submitted as a condition of the loan, the resettlement plan to be submitted as a condition of subproject financing need not include the policy principles, entitlements, and eligibility criteria, organizational arrangements, arrangements for

monitoring and evaluation, the framework for participation, and mechanisms for grievance redress set forth in the resettlement policy framework. The subproject-specific resettlement plan needs to include baseline census and socioeconomic survey information; specific compensation rates and standards; policy entitlements related to any additional impacts identified through the census or survey; description of resettlement sites and programs for improvement or restoration of livelihoods and standards of living; implementation schedule for resettlement activities; and detailed cost estimate.

Process Framework

26. A process framework is prepared when Bank-supported projects may cause restrictions in access to natural resources in legally designated parks and protected areas. The purpose of the process framework is to establish a process by which members of potentially affected communities participate in design of project components, determination of measures necessary to achieve resettlement policy objectives, and implementation and monitoring of relevant project activities (see OP 4.12, paragraphs. 7 and 31). 27. Specifically, the process framework describes participatory processes by which the following activities will be accomplished:

- (a) *Project components will be prepared and implemented.* The document should briefly describe the project and components or activities that may involve new or more stringent restrictions on natural resource use. It should also describe the process by which potentially PAPs participate in project design;
- (b) *Criteria for eligibility of affected persons will be determined.* The document should establish that potentially affected communities will be involved in identifying any adverse impacts, assessing of the significance of impacts, and establishing of the criteria for eligibility for any mitigating or compensating measures necessary;
- (c) *Measures to assist affected persons in their efforts to improve their livelihoods or restore them, in real terms, to pre-displacement levels, while maintaining the sustainability of the park or protected area will be identified.* The document should describe methods and procedures by which communities will identify and choose potential mitigating or compensating measures to be provided to those adversely affected, and procedures by which adversely affected community members will decide among the options available to them
- (d) *Potential conflicts or grievances within or between affected communities will be resolved.* The document should describe the process for resolving disputes relating to resource use restrictions that may arise between or among affected communities, and grievances that may arise from members of communities who are dissatisfied with the eligibility criteria, community planning measures, or actual implementation. Additionally, the process framework should describe arrangements relating to the following;
- (e) *Administrative and legal procedures.* The document should review agreements reached regarding the process approach with relevant administrative jurisdictions and line ministries (including clear delineation for administrative and financial responsibilities under the project); and
- (f) *Monitoring arrangements.* The document should review arrangements for participatory monitoring of project activities as they relate to (beneficial and adverse) impacts on persons within the project impact area, and for monitoring the effectiveness of measures taken to improve (or at minimum restore) incomes and living standards.

1. With regard to land and structures, "replacement cost" is defined as follows: For agricultural land, it is the pre-project or pre-displacement, whichever is higher, market value of land of equal productive potential or use located in the vicinity of the affected land, plus the cost of preparing the land to levels similar to those of the affected land, plus the cost of any registration and transfer taxes. For land in urban areas, it is the pre-displacement market value of land of equal size and use, with similar or improved public infrastructure facilities and services and located in the vicinity of the affected land, plus the cost of any registration and transfer taxes. For houses and other structures, it is the market cost of the materials to build a replacement structure with an area and quality similar to or better than those of the affected structure, or to repair a partially affected structure, plus the cost of transporting building materials to the construction site, plus the cost of any labor and contractors' fees, plus the cost of any registration and transfer taxes. In determining the replacement cost, depreciation of the asset and the value of salvage materials are not taken into account, nor is the value of benefits to be derived from the project deducted

from the valuation of an affected asset. Where domestic law does not meet the standard of compensation at full replacement cost, compensation under domestic law is supplemented by additional measures so as to meet the replacement cost standard. Such additional assistance is distinct from resettlement measures to be provided under other clauses in OP 4.12, paragraph 6.

2. Provision of health care services, particularly for pregnant women, infants, and the elderly, may be important during and after relocation to prevent increases in morbidity and mortality due to malnutrition, the psychological stress of being uprooted, and the increased risk of disease.

3. Negative impacts that should be anticipated and mitigated include, for rural resettlement, deforestation, overgrazing, soil erosion, sanitation, and pollution; for urban resettlement, projects should address such density-related issues as transportation capacity and access to potable water, sanitation systems, and health facilities.

4. Experience has shown that local NGOs often provide valuable assistance and ensure viable community participation.

5. OPN 11.03, *Management of Cultural Property in Bank-Financed Projects*.

6. In case some of the PAPs lose more than 10% of their productive assets or require physical relocation, the plan also covers a socioeconomic survey and income restoration measures.

APPENDIX 7.2 Malawian Law and World Bank OP 4.12 Regarding Compensation

Category of PAPS/Type of Lost Assets	Malawian Law	World Bank OP4.12
Land Owners	Cash compensation based upon market value under statute. Land for Land under Customary Law	Recommends land-for-land compensation. Other compensation is at replacement cost.
Land Tenants	Entitled to compensation based on the amount of rights they hold upon land under relevant laws. Illegal tenants not entitled to compensation	Are entitled to some form of compensation whatever the legal/illegal recognition of their occupancy.
Land Users	-In some cases land users have some form of secured tenure extended to them under new laws. In other cases land users are not entitled to compensation for land. -Entitled to compensation for crops and any other economic assets. -Land for Land under customary	Entitled to compensation for crops, may be entitled to replacement land and income must be restored to at least pre-project levels.
Owners of Temporary Buildings	Cash compensation based on market value or entitled to new housing on authorized land under government (state or local) housing programs.	Entitled to in-kind compensation or cash compensation at full replacement cost including labour and relocation expenses, prior to displacement.
Owners of Permanent buildings	Cash Compensation based on market value.	Entitled to in-kind compensation or cash compensation at full replacement cost including labour and relocation expenses, prior to displacement.
Businesses	Not covered	As per specifications of this RPF, once approved by the Bank and disclosed at the Bank info shop
Marketers	Not covered	As per specifications of this RPF, once approved by the Bank and disclosed at the Bank info shop
Crops	Cash compensation based upon rates calculated as an average net agricultural income.	As per specifications of this RPF, once approved by the Bank and disclosed at the Bank info shop
Grievance procedure	Not covered	As per specifications of this RPF, once approved by the Bank and disclosed at the Bank info shop
Consultation and Participation	Covered in the Land Law. It requires the PAPs to be consulted	As per specifications of this RPF, once approved by the Bank and disclosed at the Bank info shop
Monitoring & evaluation	Not covered	As per specifications of this RPF, once approved by the Bank and disclosed at the Bank info shop

APPENDIX 8.1 **Schedule for Determining Monetary Compensation for Land Use**

Item Compensated	Basis of Calculating Value	Malawian Malawi Kwacha/ha
Value of Crops	Average of the highest current official and market survey of prices per Ha of staple food crops (maize, rice etc.), plus value of cash crops (e.g. sugar).	
Labour Invested	Labour costs of preparing the replacement land	
Total	Replacement value of crops plus labour for preparing replacement land	

* Note: Malawian currency payments will be revised to reflect crop values and labour rates applicable at the time of compensation

Crop values will be determined based on a combination of staple foods and cash crops.

The value of staple crops to be taken as the highest market price (over 3 years) reached during the year, in recognition of these factors:

- Although most farmers grow staple crops mainly for home consumption, they always have the option of selling these crops to take advantage of-the market price.
- Farmers most often purchase cereals when they have run out, during the "hungry season" when prices are high. Compensating at a lower value might put the individual or household at risk.
- Averaging the highest price of staple foods yields a high per ha value that reimburses for the vegetables and other foods that are commonly intercropped with staples, but are almost impossible to measure for compensation.

APPENDIX 8.2 Sample Schedule for Calculation of Compensation for Buildings

No.	TYPE OF CONSTRUCTION	Cost/ m ²	N/O	TYPE OF CONSTRUCTION	Cost/ m ²
<u>1.</u>	<u>Type of fence</u>		<u>3.</u>	<u>Informal markets</u>	
1.1	Hedge	250.00	3.1	Mobile kiosk with zinc sheet	2000.00
1.2	Fence with zinc sheet	600.00	3.2	Container	2500.00
1.3	Fence with reed	400.00	3.3	Market shops with stakes	300.00
1.4	Barbed wire	250.00	3.4	Market shops with insecure material	400.00
1.5	Wood fence	400.00	3.5	Market shops with non-plastered masonry	2500.00
1.6	Shark wire	400.00	3.6	Market shops with plastered masonry	3000.00
1.7	Brick walls not plastered (thickness 20cm)	1000.00	3.7	Market shops with plastered masonry and painted with installations	3500.00
1.8	Brick walls plastered (thickness 20cm)	1000.00	3.8	Market shop with ceiling and mosaic	4000.00
1.9	Brick walls not plastered (thickness 10 cm)	800.00	3.9	Covered shed and paved	1000.00
1.10	Brick walls plastered (thickness 10 cm)	800.00	<u>4.</u>	<u>Housing</u>	
<u>2.</u>	<u>Floor</u>		4.1	Reed House	2500.00
2.1	Gravel Floor	200.00	4.2	Masonry house (plastered or not) average height 2.5m	3000.00
2.2	Gravel floor with kerb surrounding	200.00	4.3	Masonry house plastered or not (height higher than 2,5m)	3500.00
2.3	Floor with mortar	400.00	4.4	Plastered house, painted with ceiling and mosaic	4000.00
2.4	Floor with concrete and mortar	600.00	<u>5.</u>	<u>Latrine</u>	
2.5	Block paving	800.00	5.1	Latrine	1000.00
2.6	Pavement with concrete and mosaic	1200.00	5.2	Shower	400.00

Note : The above cost amounts are estimates and rates will be modified to reflect the current price at time of compensation

: Buildings and structures will be replaced by an equivalent structure or, on exceptional basis cash and/or credit will be paid based on replacement costs

: Replacement latrines will be similar to those currently operational and financed by the bank or other donor agencies at health centres, schools.

Land owners: Those who hold legal title to the land through official tenure or customary law. **Land**

tenants: Those who are renting land. **Land users:** This refers to those that are freely using a

piece of land but do not have legal title and are not renting the land from any one **Permanent building:**

refers to structures constructed in durable materials such as cement, bricks and steel. **Temporary**

buildings are usually constructed with local materials

APPENDIX 8.3 Example for Calculating Compensation for Fruit Trees

Local Fruit Trees, e.g. Guava and Mangoes	
Estimated Avg. Fruit Yield (kg) of mature tree	800 to 1,300 kg/year
Estimated Yield used	Ten sacks (1, 000kg)/tree/year
Market Price: <ul style="list-style-type: none"> • Peak of harvest season (March/April) • End of season (late May) Price used as basis of this estimate	Malawi Kwacha/kg Malawi Kwacha/kg 80% height of season; 20% end of season
Years to Production	Six to seven
Years to Maximum Production	Twenty
Costs of Sapling	Malawi Kwacha, locally available
Grafted Fruit Trees, e.g. Mangoes	
Estimated Avg. Fruit Yield (kg) of Mature Tree	800 to 1,300 kg/year
Estimated Yield used	Almost entire yield due to market value
Market Price (varies according to variety). <ul style="list-style-type: none"> • Height of harvest season (June/September) • Price used as basis of this estimate 	Malawi Kwacha/kg Price per fruit or sac (100kg) as quoted by the Ministry of Agriculture and confirmed with grower
Years to Production	Four to five
Years to Maximum Production	Eight
Costs of Sapling	Malawi Kwacha, not locally available.

Proposed schedule for fruit (e.g. Guava or Mango) trees cut down			
Average age of tree	Estimate age (yrs)	In kind replacement for local guava and mangoes	Credits/Financial support
Sapling Trees planted after project cut-off date in area will not be eligible for compensation	0-1	Deliver to farmer: -Choice of two guava or mango trees - (local and/or improved grafted) -Supplies: fencing to protect tree, a bucket for watering and a spade	Malawi Kwacha
Sapling/young tree: First minor production 12-50 fruits occurs about age 4-5	1-6	Deliver to farmer: -Choice of two guava or mango trees. -(local and/or improved grafted) -Supplies: fencing to protect tree, a bucket for watering, and a spade	Equivalent of x number of trees. Malawi Kwacha in credits or other financial support for labour invested in planting, fencing, and watering, made in one payment.

<p>Mature, fruit producing trees</p>	<p>6-30</p>	<p>Deliver to farmer: -Choice of two guava or mango trees (local and/or improved grafted) -Supplies: fencing to protect tree, a bucket for watering, and a spade</p>	<p>Equivalent of X number of trees. Malawi Kwacha in credits or other financial support for labour invested in planting, fencing, and watering, made in one payment.</p> <p>Equivalent of X number of trees. Malawi Kwacha in credits or other financial support, representing eight years, (8 years x 10 sacks x Malawi Kwacha/sack) for lost income/subsistence until replacement trees begin production. This rate to be agreed by farmers. Malawi Kwacha in cash or equivalent financial support to be paid in one instalment.</p>
<p>Mature Trees - Low or Non- Fruit Producing</p>	<p>30+</p>	<p>Same as for mature trees above</p>	<p>Same as above</p>

APPENDIX 9.1 Land Acquisition and Resettlement Implementation Schedule

Item No	STAGE OF WORK	KEY ACTIVITY	Time	Responsible Person/Institution	Monitoring Institution
1.0	Project Planning	Setting up an effective administrative reporting system			
		SRBMP concept/objectives studied and understood by key stakeholders		SRBMP	PSC
		Resettlement Policy Framework discussed with stakeholders		SRBMP	PSC, SRBMP
		Project authorities and stakeholders alerted on the necessity for land acquisition and resettlement.		DC/CC	SRBMP, DEC AND TCPC
		Formation of National, District and Village Implementation Committees		PSC, DC/CC	SRBMP
		Community involvement, sensitisation and participation initiated		DC/CC	SRBMP
2.0	Land acquisition	Community involvement, sensitisation and participation			
		Screening of project sites indicating areas of possible resettlement		DC/CC/AEC.	SRBMP
		Prepare maps for the affected areas		Consultant	SRBMP
		Obtain land authorization		SRBMP	MWDI, Lands
		Demarcate authorized area to be affected		Min for Lands/DC	SRBMP
		Set cut-off date		DC and AEC or TCPC	SRBMP
3.0	Socio-economic Survey	Community involvement, sensitisation and participation			
		Identify affected persons, party or homestead and register their names in detail		DC/AEC or TCPC	SRBMP
		Estimate the magnitude of the impacts relative to the need for resettlement and/or compensation		DC/AEC. Or TCPC	SRBMP, Lands
		Compile land register		DC, TCPC.	SRBMP II, Lands
		Carry out valuation of assets to be compensated		Consultant, DC, TCPC.	Consultant, Lands
		Create a database for		SRBMP	MWDI

		comparative analysis at all levels of Government			
		Report any grievances that require resolution		AEC /DC or TCPC	SRBMP
4	Resettlement /compensation	Community involvement, sensitisation and participation			
		Create fora for identifying social investment opportunities		DC	SRBMP, Lands
		Identify social investment opportunities as part of the projects activities		DC/AEC or TCPC.	SRBMP, Lands
		Provide information about the valuation and negotiation process		DC or TCPC	SRBMP, Lands
		Prepare RAPs		Consultant	SRBMP /Lands
		Authorization of project and RAPs by GoM		SRBMP	MWDI, Lands
		Up-date database for comparative analysis at all levels of Government		SRBMP /DC	MWDI, Lands
		Formulate compensation offers and obtain signed agreements with those affected		DC, TCPC	SRBMP, Lands
		Provide alternative land (if applicable) inclusive of ancillary support services such as transport, housing, crop starter packs and food support		SRBMP /DC or TCPC	MIWD/Lands
5	After Resettlement Activities	Draw up a programme for after resettlement activities			
		Provide Resettlement After-care Assistance		SRBMP	NWDP
		Up-date database for comparative analysis at all levels of Government		SRBMP	MWDI
		Carry out monitoring activities		CSC, DC, SRBMP, TCPC	MIWD

APPENDIX 13.1: Land Acquisition and Resettlement Process Monitoring Plan

Item No	ISSUES / ACTIVITIES TO BE MONITORED	INDICATORS ¹
1	General success/acceptability of the compensation/resettlement process	Outstanding (unsigned) individual compensations/resettlement contracts as a percentage of total compensation/resettlement contracts
		Ratio of PAPs remaining supportive of the project against those not supportive
		Level of public consultation measured as ratio of those that acknowledge to have been consulted vs. those that were not consulted. This ratio can be determined by random sampling. The ratio should be greater than 1.5
		Actual time of completing resettlement compared to planned time
2	Project acceptance (or not) by the community	Number of complaints as a percentage of total PAPs
		Number of grievances successfully resolved as a percentage of total number of grievances
3	Acceptance (or not), of PAPs by host community	Number of conflicts between PAPs and host community
4	Restoration of grazing land temporarily disrupted by construction	Area of land restored to cultivation as a percentage of total area of land disrupted
5	Replacement of grazing land permanently displaced by access roads and building construction	Area of new land opened up for cultivation/grazing as a percentage of total original land area cultivated/grazed
6	Quality of life compared with that before compensation/resettlement	Number of larger houses of better quality provided as a percentage of total number of houses in the original settlement
		Number of individuals and families able to re-establish their pre-displacement activities, land and crops or other alternative incomes, as a percentage of total PAPs
		Number of impacted locals employed by the Management Board's civil works' contractors
		Pre-project income of vulnerable affected individuals/groups versus their present income
		Number of people participating in project activities compared to total PAPs
		Number of students in school as a percentage of total persons eligible for school
		Trends in environmental diseases such as malaria, diarrhoea, coughs etc
		Trends in respiratory diseases
		Trend in HIV/AIDS statistics in comparison with pre-settlement statistics
		Mortality rates after resettlement compared with pre-settlement rates
7	Productivity	Number of PAPs with access to potable water compared with total PAPs
		Pre- project production versus present production (crop for crop, land for land).
		Post project production per affected household/homestead compared with pre-project income.
		Wildlife conservation and eco-tourism activity on acquired land as per plan.

¹ These are only some of the indicators that could be used. Specific indicators will need to be developed taking into account site specific conditions

APPENDIX 14.1 Contents of a Comprehensive Compensation Budget

No.	Item	Costs (in Malawi Kwacha)*	Assumptions
1	Compensation for loss of Land	/hectare	For land acquisition purposes, based on cost realized in projects involving similar issues in Malawi.
2	Compensation for loss of Crops	/hectare of farm lost	Includes costs of labour invested and cost of crop based on average of highest price of staple food crops as per methods described in Appendix 8.1 above
3	Compensation for loss of access to pastoralists	N/a	Those affected will be provided with shared access, or alternate routes (decision agreed through consultation and participation of all)
4	Compensation for loss of access to fishing resources.	/fishmonger	Data provided from revised socio-economic study will determine market values of catch for fish.
5	Compensation for Buildings and Structures		This compensation will preferably be in-kind. The new buildings will be built and then given to those affected. Cost based on basic housing needs for a family of ten, including house with four bedrooms, ventilated pit latrines, outside kitchen and storage
6	Compensation for Trees	/year/tree	Based on methods described in Appendix 7.4 above.
7	Cost of Relocation Assistance Expenses	/household	This cost is to facilitate transportation, etc.
8	Cost of Restoration of Individual Income	/person	Assumed to be higher than the GDP/capita.
9	Cost of Restoration of Household Income	/household	Through employment in Program Activities.
10	Cost of Training Farmers, pastoralists and other PAPs	/person	This is a mitigation measure, which seeks to involve those affected by the project activities.

* These costs are to be confirmed during the socio-economic study and revised at the time the payments are made