

Resettlement Policy Framework

Regional Communications Infrastructure Program

Malawi

April, 2009

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definition of terms used in the report

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

1. “Associated projects” means any activity which is directly dependent on a World Bank funded project, or any activity which a World Bank project is dependent upon, regardless of financing source.

2. “Census” means a field survey carried out to identify and determine the number of Project Affected Persons (PAP), their assets, and potential impacts; in accordance with the procedures, satisfactory to the relevant government authorities, 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 Leaders.
3. 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 RCIP construction program and other activities associated with this project regardless of funding agency. 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.
4. “Compensation” means the payment in kind, cash or other assets given in exchange for the taking of land, or loss of, or impact on, other assets, including fixed assets thereon, in part or whole.
5. “Cut-off date” is the date of commencement of the census of PAPs within the project area boundaries. This is the date after which people encroaching into the area will not be eligible for compensation.
6. “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 may have their:
 - standard of living adversely affected, whether or not the Project Affected Person must move to another location ;
 - right, title, interest in any house, land (including premises, agricultural and grazing land) or any other fixed or movable asset acquired, possessed, or impacted, temporarily or permanently, adversely affected;
 - access to productive assets adversely affected, temporarily or permanently; or
 - business, occupation, work or place of residence or habitat adversely affected.
7. “Involuntary Resettlement” means the involuntary taking of land or impact on land or assets, resulting in direct or indirect economic and social impacts, whether or not the PAP must physically relocate, caused by:
 - a) Loss of benefits from use of such land;
 - b) relocation or loss of shelter;
 - c) loss of, or impact on, 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.
8. "Involuntary Land Acquisition" is the taking of land by government or other government agencies for compensation, 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 legal or customary rights.
9. "Land" refers to agricultural and/or non-agricultural land and any structures thereon whether temporary or permanent and which may be required, or impacted, for the Project.
10. "Land acquisition" means the taking of or alienation of land, buildings or other assets thereon for purposes of the Project.
11. "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.
12. "Resettlement and Compensation Plan", also known as a "Resettlement Action Plan (RAP)" or "Resettlement Plan" - is a resettlement instrument (document) to be prepared when subproject locations are identified. In such cases, land acquisition, and/or loss of shelter, and /or loss of livelihoods and/or loss, denial or restriction of access to economic resources, or impact on any asset whether it be land, structures or livelihood. RAPs are prepared by the party impacting on the people and their livelihoods. RAPs contain specific and legally binding requirements to be abided by to resettle and compensate the affected party before implementation of the project activities causing adverse impacts.
13. "Replacement cost" means replacement of assets with an amount sufficient to cover full replacement cost of lost assets and related transaction costs. In terms of land, this may be categorized as follows;
14. "Replacement cost for agricultural land" means the pre-project or pre-displacement, whichever is higher, value of land of equal productive potential or use located in the vicinity of the affected land, plus the costs of:
- o preparing the land to levels similar to those of the affected land;
 - o any registration, transfer taxes and other associated fees;
15. "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. Such costs shall include:
- a) Building materials
 - b) transporting building materials to the construction site;
 - c) any labour and contractors' fees; and
 - d) any registration costs.

16. “Resettlement Assistance” means the measures to ensure that project affected persons are provided with assistance such as moving allowances, residential housing or rentals which ever is feasible and as required, for ease of resettlement during relocation,
17. “The Resettlement Policy Framework (RPF)’ has been prepared as an instrument to be used throughout the RCIP implementation. The RPF will be publicly disclosed in impacted areas 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 RCIP will be prepared consistent with the provisions of this RPF.
18. “Resettlement Action Plan”: see Resettlement and Compensation Plan above
19. “Vulnerable Groups” refers to:
 - Widows, the disabled, marginalized groups, low income households and informal sector operators;
 - Incapacitated households – those no one fit to work and;
 - Women-headed households, Child-headed households 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.

Project description

The World Bank is embarking on a 10-year, multi-country Regional Communications Infrastructure Program (RCIP) to assist Eastern and Southern African countries in implementing a strategy of effective connectivity by offering technical assistance to promote further sector liberalization and resolve market efficiency gaps; financing coordinated backbone deployment to avoid redundant infrastructure initiatives and focus on missing links; designing public-private partnership (PPP) arrangements to leverage private sector investment; and supporting the development of e-government applications and content to complement the deployment of the regional infrastructure.

The first Phase was approved by the World Bank Board of Directors in March 2007 and started in mid-2007. It includes country-specific projects in Kenya, Burundi, and Madagascar, for a total of US \$164M. The second phase was in Rwanda (US\$24m) and the third phase is planned for Tanzania, Malawi and Mozambique. Subsequent phases are anticipated for Democratic Republic of the Congo (DRC), Lesotho, Mauritius, Namibia, Swaziland, Uganda, and Zambia, depending on their readiness. Overall, the program is open to Angola, Botswana, Burundi, Comoros, DRC, Djibouti, Eritrea, Ethiopia, Kenya, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Rwanda, Seychelles, Somalia, South Africa, Sudan, Swaziland, Tanzania, Uganda, Zambia, and Zimbabwe, provided these countries are eligible for IDA or IBRD financing.

OUTLINE OF THE RCIP MALAWI

The primary objective of the RCIP Malawi project is to contribute to the availability of low cost broadband communications in Malawi through providing high-speed communications access to the East coast of Africa where the international submarine fiber-optic cables are expected to land during 2009-2010. The program will also provide support to the government in accessing ICT services for public institutions and technical assistance to support the development of the sector as a whole.

The RCIP Malawi project will have 3 components:

- **Component 1 - Enabling Environment (US\$1.5 million).** This component will provide support to the overall enabling environment for the project. This includes project-specific activities and general support for the sector.
 - **Subcomponent 1.1 – Capacity building an advisory support to sector agencies (US\$1.15m).** This subcomponent will provide technical capacity building and Monitoring and Evaluation (M&E) assistance to the agencies of government involved in the ICT sector. The key agencies are the Privatization Commission (PC) which is currently in transition to be the PPP Unit¹, the Ministry of Information and Civic Education (MICE) and the Malawi Communications Authority (MACRA). The technical capacity building component will support a range of activities designed to assist these agencies in project specific work and in improving the overall competitive and regulatory environment for the ICT sector. This includes the following activities: (a) support for negotiations with private and public agencies relating to cross-border connectivity development, (b) support for regulatory technical assistance to maximize benefits from access to capacity (regulatory tools to guarantee open access to national and international infrastructure, cost-modeling, price control mechanisms, interconnection, essential facility regulation, policy and regulatory competition law, spectrum management, etc) and for assessing the policy and regulatory environment and suggest possible changes; (c) policy and regulatory capacity building, consensus building activities, training in the topics mentioned in 1(b) (sector policy and implementation of regulatory reforms) and in particular for strengthening the policy making role in the Ministry (ICT department), (d) drafting a new ICT law, licensing framework and related regulations to deal with a converged network (including broadcasting aspects), (e) drafting “e-legislation” and its corresponding regulatory framework to address issues such as e-security, fraud, intellectual property rights (f) support for development of legal framework to support the development of Public Private Partnerships (PPP) arrangements in the ICT sector, (g) capacity building for M&E;
 - **Subcomponent 1.2 – Environmental, Social and Resettlement activities (US\$0.3m).** The activities to be undertaken as part of this

¹ Since this transition is not yet complete, we refer to the agency as the PC/PPP Unit throughout the Project Appraisal Document.

project are unlikely to have any major environmental or resettlement implications. However, as is required under Malawian law, the possibility has to be examined as part of the project design and then monitored during implementation.

- **Subcomponent 1.3 – Communications (US\$0.05m).** Overall communications strategy relating to project design and implementation.
- **Component 2 – Connectivity (US\$14.5 million).** This component will support regional and international connectivity in Malawi through two major subcomponents:
 - **Subcomponent 2.1 PPP for regional connectivity (US\$12m).** This subcomponent will support regional connectivity to link Malawi with coastal landing stations of the submarine cables which are due to be completed by 2010. This will be implemented through a Public Private Partnership in which the Government, in its position as major purchaser of ICT services will purchase capacity, thereby reducing the commercial risk to investors in fiber optic cable operators. Any infrastructure developed under this project will be owned and operated by the private sector as part of competitive markets under the regulatory oversight of existing sector institutions. By retaining the option to connect through either Mozambique or Tanzania, the project supports a competitive tendering process for the provision of services and will promote competition between cables and between landing station. This component will include PPP design, studies, legal advice and transaction support.
 - **Subcomponent 2.2 Supply of broadband connectivity to institutions/rural access (US\$2m).** This component will finance last mile connectivity to selected public institutions within Malawi, to be provided by private operators and ISPs operating within the country. Responsibility for implementation of this component will lie with MACRA, as per the current arrangements.
 - **Subcomponent 2.3 Enabling the establishment of a Virtual Landing Point (VLP) (US\$0.5m).** The key to the success of the project will be ensuring that the private sector in Malawi all have equal access to the regional connectivity provided under the project. This will promote competition between players, maximize the usage of the connectivity and ensure that the benefits of lower connectivity are passed on to customers. The key to achieving this will be through the PPP contract design, the regulation of the sector and the establishment of a neutral point of interconnection to which all operators and ISPs can obtain access. The project will support the establishment and operation of this point of interconnection.
- **Component 3 - Project Management (US\$2 million).** This component will consist of support to finance project management related issues, and namely support for (a) a Project Manager, (b) a Technical Expert, (c) a Procurement Specialist, (d) a Financial Management Specialist, (e) an M&E Specialist, (f) office equipment, (g) incremental operating costs, (h) audits, and (i) environmental specialist expertise.

APPLICABLE WORLD BANK SAFEGUARD POLICIES

The physical components of the project will mostly be limited to the building of backbone connectivity and of the virtual landing stations for access to the submarine cable. The risks associated with this kind of infrastructure are generally low, and the Program therefore rates as environmental category B under OP 4.01. Land acquisition for terrestrial facilities (if any) might be needed for virtual landing stations. These are likely to be existing telecom-related buildings and therefore not likely to require involuntary resettlements. The triggering of OP 4.04 - Natural Habitats and OP 4.11 - Physical Cultural Resources are to be determined. The potential application of these safeguards will be assessed during the preparation of the project prior to appraisal and if likely to be triggered appropriate measures will be designed and included in the Environment and Social Management Framework (ESMF).

The two main World Bank safeguard policies triggered are the *OP 4.01 for Environmental Assessment* and *OP 4.12 for Involuntary Resettlement*, as explained below. Other safeguards might be triggered if the project design does not take into consideration the recommendations outlined in the Environmental and Social Management Framework (ESMF) and Resettlement Policy Framework (RPF).

Yes	If applicable, how might it apply?
[x]	<i>Environmental Assessment (OP/BP/GP 4.01)</i> The project aims to finance structures such as the construction of ducts for laying the fiber optic networks or from the construction of ancillary infrastructure, notably access roads, associated with towers for microwave links and rural wireless systems. The financing of submarine cables is not foreseen. The risks associated with this kind of infrastructure are generally low, so the project is assigned to environmental category B under OP 4.01. An ESMF will be prepared for the overall program. Specific costed Environmental Management Plans (EMP) will be prepared as necessary for the terrestrial facilities, in line with the ESMF, once the exact locations of those facilities have been identified. The ESMF will be submitted for Bank review and publicly disclosed in the affected countries and InfoShop prior to appraisal.
[TBD]	<i>Natural Habitats (OP/BP 4.04)</i> It is not anticipated that natural habitats and/or protected areas could be affected by the proposed activities. Sub-projects proposed under the RCIP will be screened for impacts prior to financing to avoid and minimize any potential impacts on natural habitats or areas of ecological importance. If impacts may occur, however, an EMP will be prepared that would outline the necessary measures needed to mitigate and address them..
[]	<i>Pest Management (OP 4.09)</i>
[]	<i>Cultural Property (OP 4.11)</i> The RCIP is not anticipated to result in impacts to cultural property in Malawi and therefore does not trigger the policy.. Mitigation clauses for avoiding potential impacts will be inserted into the civil works contracts to ensure that the necessary measures are in place during the construction and operational phase of the projects.
[x]	<i>Involuntary Resettlement (OP/BP 4.12)</i> Land acquisition for terrestrial facilities will likely trigger <i>OP 4.12 Involuntary Resettlement</i> considerations. However, in the case of Malawi, land acquisition for terrestrial facilities (if any) are likely to be existing telecom-related buildings and therefore not likely to require involuntary settlements. A Resettlement Policy Framework (RPF) will be prepared for the overall program. Specific costed RAPs will be prepared as necessary for the terrestrial facilities, in line with the RPF, once the exact locations of those facilities have been identified. The RPF will be submitted for Bank review and publicly disclosed in the affected countries and InfoShop prior to appraisal. Subsequent RAPs will also be subject to World Bank review and approval prior to implementing sub-project activities.
[]	<i>Indigenous Peoples (OP 4.10)</i> As the RCIP will cover a range of countries, some of which contain a number of ethnic and minority groups, it is important that the ESMF and RPF provide the institutional and

	applicable guidelines needed to safeguard the rights and livelihoods of these groups. The ESMF and RPF will outline the tools and mechanisms for undertaking EIAs and RAPs and the proposed measures needed to involve these groups in the consultative process. It is suggested that sub-projects not be financed where such groups are located. It should be noted that this policy is not triggered in the case of Malawi.
[]	<i>Forests (OP/BP 4.36)</i>
[]	<i>Safety of Dams (OP/BP 4.37)</i>
[]	<i>Projects in Disputed Areas (OP/BP/GP 7.60)</i>
[]	<i>Projects on International Waterways (OP/BP/GP 7.50)</i>

OBJECTIVE OF THE RESETTLEMENT POLICY FRAMEWORK

The main objective of this Resettlement Policy Framework (RPF) is to lay out the framework that is to be used for the social screening and assessment of infrastructure project components to be funded within the framework of the third Phase of the Regional Communications Infrastructure Program for Eastern and Southern Africa (RCIP) Malawi.

The RPF will build on the work conducted under Phase 1 to cover the following countries: DRC, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Rwanda, Swaziland, Tanzania, Uganda, and Zambia. Phase 3 includes Malawi and so this RPF will focus on developing options for the implementation of an RPF for this country and will serve as guidelines for the development of country- and project-specific Resettlement Action Plans (RAPs).

The frameworks will include criteria for the selection of sites for the construction activities of the projects under the Program and for the design of environmental and social impact mitigation measures. EMPs and RAPs will be required for any subproject that triggers the OP 4.01 and OP 4.12, in accordance with the relevant local legislation, for the countries included in the second phase of the RCIP.

Objectives And Basic Terms Of Preparation Of The RPF

IMPACTS, LAND ACQUISITION AND RESETTLEMENT

Based on the nature of the sub-projects envisaged under the RCIP, it is likely that certain subproject activities such as the laying of ducts and construction of other ancillary infrastructure e.g. access routes will lead to either land acquisition, restriction to or loss of access to economic assets and resources and therefore, ultimately to the land acquisition and compensation --and, possibly, resettlement of people. In the case of Malawi, land acquisition for terrestrial facilities (if any) are likely to be telecom-related buildings and therefore not likely to require involuntary settlements. Where potential resettlement may occur in activities financed in any of the other RCIP countries, relevant provisions in the laws each respective country and the *World Bank Operational Policy (OP) 4.12 on Involuntary Resettlement* will apply.

The RCIP is not required to prepare a Resettlement and Compensation Plan at this stage since the sub-projects and areas affected have not yet been identified. However, the RCIP is required to prepare a Resettlement Policy Framework (RPF) which is to be disclosed as a separate and stand-alone document from

the ESMF. The disclosure will be made available in locations accessible to the public, locally in impacted areas, at World Bank country offices, and at the Infoshop of the World Bank (in compliance with the *World Bank's Public Consultation and Disclosure Policy*) and the date for disclosure must precede the date for appraisal of the project.

Specific costed Resettlement Action Plans (RAPs) will be prepared as necessary through the RPF process for subprojects which may result in land acquisition and/or impact on assets, including livelihoods.

RESETTLEMENT PREPARATION AND IMPLEMENTATION

The RPF establishes the resettlement and compensation principles, organizational arrangements and design criteria to be applied to meet the needs of the people who may be affected by the project. The RPF is prepared to the standards of the Government's own policy on resettlement and compensation and the policy of the World Bank, OP 4.12.

When specific planning information becomes available and the land areas are identified, sub-project resettlement and compensation plans will be subsequently prepared consistent with this policy framework and will be submitted to the Bank for approval before any land acquisition, compensation, impact on assets, or any other impact on livelihood occurs.

According to World Bank *OP 4.12 (attached as Annex 1)* and the terms of reference provided to the Consultant, this RPF will cover the following sections:

- (i) Introduction and Project Description.
- (ii) Principles and objectives governing resettlement and compensation preparation and implementation.
- (iii) A description of the process for preparing and approving Resettlement and Compensation Plans.
- (iv) Land acquisition and likely categories of impact.
- (v) Eligibility criteria for defining various categories of project affected persons.
- (vi) A legal framework reviewing the fit between the laws of each respective country and regulations and Bank policy requirements and measures proposed to bridge any gaps between them.
- (vii) Methods of valuing affected assets.
- (viii) Organizational procedures for the delivery of entitlements, including, for projects involving private sector intermediaries, the responsibilities of the financial intermediary, the government, and the private developer.
- (ix) A description of the implementation process, linking resettlement and compensation implementation to civil works.
- (x) A description of grievance redress mechanisms.
- (xi) A description of the arrangements for funding resettlement and compensation, including the preparation and review of costs estimates, the flow of funds, and contingency arrangements.
- (xii) A description of mechanisms for consultations with, and participation of, displaced persons in planning, implementation, and monitoring.

- (xiii) Arrangements for monitoring by the implementation agency and, if required, by independent monitors.

Principles and objectives governing resettlement preparation and implementation

BASIC PRINCIPLES OF THE RESETTLEMENT PROGRAM

The impacts due to involuntary resettlement from development projects, may give rise to economic, social and environmental risks resulting in production systems being dismantled, people facing impoverishment when their productive assets or income sources are lost, people being relocated to environments where their productive skills may be less applicable and the competition of resources increases; community institutions and social networks being weakened; kin groups being dispersed; and cultural identity, traditional authority, and the potential for mutual help being diminished or lost.

The Resettlement Policy is triggered when a person experiences an impact on assets, a loss of income, or the project requires land acquisition, namely: a physical piece of land is needed and people may be affected because they are cultivating on that land, they may have buildings on that land, they may use the land for water and grazing of animals or they may otherwise access the land economically, spiritually or any other way which may not be possible during and after the project is implemented. Therefore, people will appropriately be compensated for their loss (of land, property or access, and assets) either in kind or in cash, of which the former is preferred.

This RPF and the laws of Malawi for land acquisition and impacts on assets for the proposed phases of the RCIP set procedures for compensation while acquiring land from citizens. Both respective country laws and the World Bank's *OP 4.12* should be adhered to.

OBJECTIVES OF THE RESETTLEMENT POLICY

Therefore, the objectives of this policy are the following;

- (i) Land acquisition and impact on assets, including livelihoods, will be avoided where feasible, or minimized, by exploring all viable alternatives.
- (ii) Where impacts are unavoidable, resettlement and compensation activities will be conceived and executed as sustainable development programs, ensure replacement of losses, provide sufficient resources to give the persons impacted by the project the opportunity to share project benefits. Impacted persons will be meaningfully consulted and will have opportunities to participate in planning and implementing resettlement and compensation programs.
- (iii) Impacted persons will be assisted in their efforts to improve their livelihoods and standards of living or at least to restore them, in real terms, to pre-impact levels or levels prevailing prior to the beginning of the project implementation, whichever is higher.

Affected people, according to the Bank policy, refers to people who are directly affected socially and economically by Bank-assisted investment projects caused by:

- relocation or loss of shelter
- loss of assets or access to assets, whether or not the affected persons must move to another location
- loss of income sources or means of livelihood, whether or not the affected persons must move to another location; or
- the involuntary restriction or access to legally designated parks and protected areas results in adverse impacts on the livelihood of the impacted persons.

The resettlement policy applies to all components under the project, whether or not they are directly funded in whole or in part by the Bank. The RPF will also apply to sub-projects associated with RCIP, whether or not funding is received from the World Bank. The policy applies to all affected persons regardless of the total number affected, the severity of the impact and whether or not they have legal title to the land. Particular attention will be paid to the needs of vulnerable groups among those impacted; especially those below the poverty line; the landless, the elderly, women and children, and ethnic minorities, orphans, or other affected persons who may not be protected through national land compensation legislation.

In particular for RCIP, the policy also requires that the implementation of individual resettlement and compensation plans are a prerequisite for the implementation of sub project activities causing land acquisition or impact on assets, to ensure that impacts or restriction to access does not occur before necessary measures for compensation are in place. It is further required that these measures include provision of compensation and of other assistance required for replacement of lost assets, prior to impact. In particular, the taking of land and related assets or the denial of access to assets may take place only after compensation has been paid and where applicable, resettlement sites, new homes, related infrastructure, public services and moving allowances have been provided to impacted persons. Furthermore, where relocation or loss of shelter occurs, the policy further requires that measures to assist the impacted persons be implemented in accordance with the resettlement and compensation plan of action.

It is particularly important to neutralize to the extent possible any socio-economic pressures in the communities that are likely to be exacerbated by project impacts, by facilitating the participation of those impacted in the project activities. Therefore, impacted communities must be consulted and are part of the planning process and implementation.

Finally, the RPF seeks to ensure that affected communities are meaningfully consulted, have participated in the planning process and, are adequately compensated to the extent that their pre-impact standard of living have been restored and that the process is a fair and transparent one.

REVIEW OF THE NATIONAL LEGISLATION GOVERNING LAND ACQUISITION AND RESETTLEMENT IN MALAWI

The following section outlines the main legislation related to land tenure and acquisition, property rights, and resettlement mechanisms in place in Malawi.

Malawi's constitution prohibits deprivation of an individual's property without due compensation. Article 28 states that:

- (1) Every person shall be able to acquire property alone or in association with others;
- (2) No person shall be arbitrarily deprived of property.

In January 2002, the Ministry of Lands published a new land policy, based on the report prepared by the Land Reform Commission, established by the government in 1996 to review land tenure and establish a new land reform program. Among other things, the new land policy aims to improve tenure security by clarifying and strengthening customary land rights and by formalizing the role of traditional authorities in the administration of customary land. The new land policy also aimed to bring about a more equitable distribution of land by resettling people from crowded to less densely settled areas. Other objectives were: to extend land use planning to all urban and rural areas; establish a modern land register; enhance community management of natural resources; and capacity development in land surveying and land management.

At the time of this report, draft legislation was being prepared that should include the abolition of freehold tenure (owners holding permanent title) and the conversion of all freehold titles to leasehold (owners holding land on lease for a maximum period of 99 years).

To date, the Land Acquisition Act of 1971 is the current regulation governing land acquisition in Malawi.

Table 4.4: *Legislative requirements for resettlement in Malawi*

Legal Framework	Functional Relationship to Resettlement
<i>Land Acquisition Act of 1971</i>	<p>According to this Act, the government must justify its acquisition as being in the public interest and must pay fair market value for the land being acquired. Fair market value is assessed by adding the amount the owner originally paid for the land, the value of any permanent improvements that increase the productive capacity, utility or amenity of the land, and any appreciation of the land value.</p> <p>If the private landowner objects to the level of compensation, he may obtain an independent assessment of the land value. According to the Act, however, such cases may not be challenged in court; the Ministry of Lands, Housing, Physical Planning, and Surveys remains the final judge.</p>
<i>Local Government Act of 1998</i>	Organizes the powers and functions of local governments which are formed by Assemblies.

Table 4.5: *Legislative requirements for resettlement in Mozambique*

Legal Framework	Functional Relationship to Resettlement
<i>Land Law, No. 19/97, 1997 and Land Law Regulations (Decree 66/98 of 8 December 1998)</i>	The Land Law sets the land as the property of the State. It cannot be sold or otherwise alienated, mortgaged or encumbered. National individual and corporate persons, men and women, as well as local communities may be holders of the right of land use and benefit.
<i>Land acquisition and termination of land use</i>	<p>Article 12 of the Law stipulates that: ‘The right of land use and benefit is acquired by: a) occupancy by individual persons and by local communities, in accordance with customary norms and practices which do not contradict the Constitution; b) occupancy by individual national persons who have been using the land in good faith for at least ten years; c) authorization of an application submitted by an individual or corporate person in the manner established by this Law.’</p> <p>Article 18 sets the right of land use and benefit. It shall be extinguished: ‘a) By failure to fulfil the exploitation plan or investment project without justifiable reasons within the time limits established in the application approval, even if tax obligations are being complied with; b) By revocation of the right of land use and benefit for reasons of public interest, preceded by payment of fair indemnification and/or compensation; c) Upon the expiry of its term or a renewal thereof; d) By renunciation by the titleholder.’</p>

Legal Framework

Functional Relationship to Resettlement

REQUIREMENTS OF THE WORLD BANK FOR RESETTLEMENT

The World Bank's Safeguard Policy OP 4.12 applies to all components of the programme, all associated activities, 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 OP 4.12 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 groups², ethnic minorities, orphans, and other disadvantaged persons.

The World Bank's Policy requires that a resettlement action plan shall be prepared and cleared by the Bank prior to implementing activities causing loss and/or impacts. The Bank also requires that the provision of compensation and other assistance to Project Affected Persons, to restore livelihoods when these are affected appreciably, shall be done prior to impacting people. In particular, the policy requires that possession of land for project activities may take place only after compensation has been provided. Resettlement sites, new homes and related infrastructure, public services and moving allowances and replacement of impacted assets` must be provided to the affected persons in accordance with the provisions of the RAP.

GAPS BETWEEN MALAWIAN LEGISLATION AND WORLD BANK REQUIREMENTS

The following *Table 4.12* presents a comparison between Malawian legislation and the World Bank OP 4.12. Based on this comparison, it is clear that the local legislation does not contain nor address the measures needed to manage potential resettlement and land acquisition impacts associated with the RCIP. Therefore, the RPF has outlined a set of recommendations which must be implemented in order to address these gaps. As parts of the Malawian legislation were not available for review, it should be assumed that in all cases, the highest of the standards must be followed. The missing values in the table will be determined during the preparation of individual RAPs. All land to be acquired by the RCIP for activities to be financed in Malawi would be so acquired subject to the relevant local laws and the World Bank's OP4.12.

(1) ² There are no indigenous Peoples in Malawi and therefore the World Bank's indigenous Peoples Policy is not triggered

Table 4.12 Recommendations to address gaps between Malawi land legislation governing compensation and the OP 4.12

Category of PAPS/ Type of Lost Assets	National Law	World Bank OP4.12	Measures to address gaps
Land Owners	<p>Malawi has a Land Acquisition Act, 1971 that governs compensation, owner's rights and processes of land acquisition. The detailed act was not available on public domain for review. However the study found specific references from the Land Acquisition Act, 1971 that has been used to analyze/inform this gap assessment. In addition other legislation like Land Act, 1965 and Malawi Customary Land Act, 1967 have provisions that govern state led acquisition.</p> <p>The Land Act of 1965 recognizes private land as land, which is owned, held or occupied under a freehold title, a leasehold title, or a Certificate of Claim. In addition any person who suffers from any loss or damage from the acquisition of customary land by the government is entitled to compensation, "as shall be reasonable", under The Land Act, 1965.</p> <p>According to the Land Acquisition Act of 1971, the government must justify private land acquisition as being in the public interest and must pay fair market value for the land. Fair market value is assessed by summing the amount the owner originally paid for the land, the value of any permanent improvements that increase the productive capacity, utility or amenity of the land, and any appreciation of the land value. If the private landowner objects to the level of compensation, he may obtain an independent assessment of the land value. According to the Act, however, such cases may not be challenged in court; the Ministry of Lands, Housing, Physical Planning, and Surveys remains the final judge.</p>	<p>Recommends land-for-land compensation. Other compensation (loss of assets, productive livelihood) is at ³replacement cost. ⁴Preference should be given to land based resettlement strategies for displaced persons whose livelihoods are land based. These strategies may include resettlement on public land or on private land acquired or purchased for resettlement.</p>	<p>The review of the available national legislation suggests that there are no specific provisions on resettlement measures in case of land acquisition. The provisions of the legislations are solely focused on cash based compensation.</p> <p>Further the provisions of legislation are geared to compensating only land owners. The World Bank policy recommends 'land for land' compensation but as stated the national legislation focuses solely on cash compensation. However the Malawi national legislation is similar to World Bank OP4.12 when it mandates paying market value for land when it comes to calculating cash compensation.</p> <p>The case of customary land is more ambiguous and while recognizing customary ownership, the legislation refers to 'reasonable compensation' which is neither defined nor elaborated.</p> <ul style="list-style-type: none"> • Follow national legislation for awarding cash compensation to land owners. For all other categories such as customary owners follow the provisions of OP4.12. • Enforce OP 4.12 for resettlement measures such as grievance mechanisms, livelihood restoration and additional transitory support for affected land owners.
Land Tenants	<p>There are no specific provisions for tenants in the Land Act, 1965.</p>	<p>Under the provisions of OP4.12 tenants are entitled to some form of compensation whatever the legal recognition of their occupancy. Tenants (such as sharecroppers or lessee) on land are usually entitled to moving costs, transition allowance and crop value for minimum of a year.</p>	<p>No specific categories of tenants and/or their entitlements are mentioned in the national land legislation.</p> <ul style="list-style-type: none"> • Assess the vulnerabilities of the tenants/sharecroppers in terms of economic status • Determine the dependence of the household income from the land and livelihood loss due to displacement. • In principle, adhere to requirements of OP4.12 especially vulnerable households such as those below poverty line or have added vulnerabilities like handicapped or elderly members.
Land Users	<p>The only category of land users (apart from land owners) recognized in the legislations is customary users. The Land Act of 1965 as well as the Malawi Customary Land Act, 1967 recognizes the usage of customary land. The law however does not recognize presence of non legal land users like squatters or encroachers.</p> <p>Specifically under the Land Act, encroachers and illegal users of public, private or customary land may be required to vacate the occupied land, if a complaint is summoned against them.</p>	<p>Entitled to compensation for crops, moving allowance and transition support.</p>	<p>The national legislation does not recognize non legal users of land such as squatters or encroachers. The OP 4.12 recognizes these categories of non legal users and recommends certain resettlement measures.</p> <ul style="list-style-type: none"> • Consult with the Ministry of lands to incorporate provisions in legislation that recognize non legal users in the case of acquisitions of land by the State or private sector leading to physical or economic displacement. • Initiate dialogues between the private sector and government on this issue.

(1) ³ 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.

(2) ⁴ Clause 11, OP4.12

			<ul style="list-style-type: none"> In public-private partnerships where the government is leading the land acquisitions ensure that the private sector company tops up rehabilitation measures for these categories.
Owners of “Non permanent” Buildings	No specific reference to this category is found in the legislations. The directives of the Land Acquisition Act of 1971 (the parts available for review) can be interpreted to an extent. The act directs the government to pay fair market value for land acquired and the fair market value is assessed by summing the amount the owner originally paid for the land, the value of any permanent improvements that increase the productive capacity, utility or amenity of the land, and any appreciation of the land value. This indicates that no provisions/compensation may be payable for non permanent buildings because such structures (according to the definitions of this act) need to add value to the land being acquired.	Entitled to in-kind compensation or cash compensation at full replacement cost of lost asset and relocation expenses, prior to displacement	<p>The review of available legislation reveals no direct or ‘interpretable’ rights or entitlements that this category may have. Thus the compensations and resettlement provisions for loss of assets like non permanent buildings are not addressed in current legislation.</p> <ul style="list-style-type: none"> Conduct a detailed review of the Land Acquisition, 1971 act to see whether this category has been identified in any way Follow the recommendations of OP4.12 to compensate this category of owners/users who may lose non permanent structures
Owners of “Permanent” buildings	As above the provisions of the Land Acquisition Act, 1971 can be used to interpret any entitlements/compensations for this category as the fair market value payable is assessed by summing the amount the owner originally paid for the land, the value of any permanent improvements that increase the productive capacity, utility or amenity of the land, and any appreciation of the land value. It can be assumed that buildings could be considered an improvement on the land or enhancement of its value.	Same as above	<p>Even though the provisions of the LA act, 1971 can be interpreted to mean that compensation is payable to such categories of building owners nevertheless the said act or any other legislation does not specify resettlement measures.</p> <ul style="list-style-type: none"> Follow the recommendations of OP4.12 to compensate and resettle this category of owners/users who may lose permanent structures
Building Tenants	No references found in current legislations.	Entitled to moving costs and transition rent for a minimum of six months	Follow the provisions of OP4.12

RAP preparation, review and approval

As stated earlier, the World Bank policy on Involuntary Resettlement OP4.12 is triggered because the RCIP will finance productive investments that may require the involuntary taking of land, impact other assets or result in economic impact. Since the location of these areas were not known at the time of the preparation of the project, the preparation and disclosure of this RPF by the World Bank and the Borrowers is a conditionality for appraisal of this Project. However, during implementation of the RCIP, in a process defined below, the identification of these areas will be made. When that happens, land will be acquired and people will be affected. At that stage, OP4.12 calls for the preparation of individual RAPs that must be consistent with this RPF.

To address the impacts under this policy, resettlement and compensation plans must include measures to ensure that impacted persons are:

- (a) informed about their options and rights pertaining to the project, resettlement and compensation.
- (b) consulted on, offered choices among, and provided with technically and economically feasible resettlement and compensation alternatives.
- (c) and provided prompt and effective compensation at full replacement value for losses of assets and access, attributable to the project.

RAP IMPLEMENTING AGENCIES

In Malawi, the RPF will be implemented by the Agency Responsible for the project, the Privatization Commission/PPP Unit and the operators that are responsible for implementing the project. As per the legal framework in Malawi, the Department of Lands, Natural Resources and Environment will be responsible for screening the Environmental and Social Impacts of activities undertaken in the project.

In the RPF developed for previous phases of the RCIP program, it was advised that an Environmental Specialist be assigned to the executing agency. However, in the case of Malawi it is considered that a more cost-effective solution would be to take advantage of existing environmental capacity in the Ministry of Lands, Natural Resources and Environment and to supplement this by buying in additional expertise on contract where necessary. This is further defined in Section 9.

PROCESS FOR SCREENING AND REVIEW OF RAPs

The first stage in the process of preparing the individual resettlement and compensation plans is the screening process to identify the land, areas, and assets that are being impacted. The resettlement and compensation plans will contain the analysis of alternative sites undertaken during the screening process.

This section sets out a “harmonized” step by step process that the RCIP will take to determine whether the subproject will result in land acquisition, impact on assets, and/or loss of livelihood, and therefore whether a resettlement action plan (RAP) is required and if so, how to prepare and implement one.

Section 5.3 describes the screening process, while sections thereafter describe the detailed actions required to prepare RAPs.

The screening process presented below will ensure that subprojects presented to the RCIP for funding comply with the requirements of OP 4.12 and each respective country’s legislation.

SCREENING FOR INVOLUNTARY RESETTLEMENT

Subproject screening is used to identify the types and nature of potential impacts related to the activities proposed under the RCIP and to provide adequate measures to address the impacts. Screening for resettlement issues shall be part of the environmental and social screening, as is detailed in the ESMF (refer to *Annex 2* in the RPF).

Measures to address resettlement shall ensure that PAPs are:

- Informed about their options and rights pertaining to project impacts;
- Included in the consultation process and given the opportunity to participate in the selection of technically and economically feasible alternatives;
- Provided prompt and effective compensation at full replacement value; and
- Experiencing losses of assets and access attributable to the subproject(s).

Subproject screening will be incorporated into the subproject application form which the respective local government council must submit to a Resettlement Committee established in each country under the RCIP. The goal is to identify and consider resettlement issues as early as possible.

Screening Checklist

The screening checklist form is shown in *Annex 2* and is based on the same format to be used in the implementation of the ESMF. This is to ensure that the process for screening remains simple and concise.

The list of sub projects that have potential resettlement issues will then be subjected to a comprehensive sensitization and consultation process with the potentially impacted communities and the outcome of this process would be documented for each site. The list and the outcome of the consultative process for each site/sub-project on the list would then be sent to the respective local government council in the jurisdiction mandated to confirm, approve, disapprove, refer for further consultation and/or take a final decision on each proposed site/sub-project. Carrying out the screening process in this way is designed to give it the integrity and transparency it needs to allow all stakeholders to have confidence in the process.

Once sub-projects have been approved using this consultative process, the chosen locations will be the subject of a study and the preparation of a document as follows:

- a socio-economic study (this study will include determination of impacts)
- preparation of individual resettlement action plans (RAPs).

Subproject screening and RAP processes will include technical assistance from World Bank to ensure proper implementation.

BASELINE, SOCIO-ECONOMIC DATA, AND CENSUS

An important aspect of preparing a RAP is to establish appropriate and accurate baseline socio-economic data and census to identify the persons who will be affected by the individual subproject, to determine who will be eligible for compensation and assistance, and to discourage inflow of people who are ineligible for these benefits (see *section 6.3.3* for cut-off date).

The PAPs may be classified into three groups:

- Those who have formal legal rights to the land they occupy;
- Those who do not have formal legal rights to land, but have a claim to land that is recognized or recognizable under the national, local, or traditional laws including those measures put in place by the draft land policy; or
- Those who have no recognizable legal right or claim to the land they occupy, but are occupying or using the site prior to sub-project cut-off date.

In summary, the census consolidates information that 1), provides initial information on the scale of impacts;) gives an indication of further socioeconomic research needed to quantify losses to be compensated and, if required, to design appropriate development interventions; and 3) establishes indicators that can/be measured at a later date during monitoring and evaluation.

An illustrative example of a census survey and land asset inventory form is provided in *Annex 3*.

Public Consultation and Participation

Projects involving the community owe their success to community participation and involvement from the planning stage to implementation. Hence public consultations through participatory rural appraisal shall be mandatory for all projects requiring land acquisition, impact on assets, compensation and resettlement for the RCIP 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 RCIP activities, facilities and structures. The affected persons must be made aware of:

- a) their options and rights pertaining to the project as well as resettlement and compensation;

- b) specific technically and economically feasible options and alternatives;
- c) process of and proposed dates for compensation;
- d) effective compensation rates at full replacement cost for impact on assets and services; and
- e) proposed measures and costs to maintain or improve their living standards.

The aim of public consultations at the screening stage will be to:

- disseminate concepts for proposed project activities with a view to provoking project interest amongst the communities;
- promote sense of ownership for the project and compensation activities;
- invite contributions and participation on the selection of project sites;
- determine communities' willingness to contribute in kind towards the implementation of the project; and
- determine community willingness to contribute towards long term maintenance of the project facilities.

During public consultation, there is the need to negotiate compensation and resolve conflicts. Grievance redress is very important to the success of implementation of resettlement action plans. Grievance redress is covered in more detail in *Chapter 10* of this RPF.

PREPARATION OF A SUBPROJECT RAP

A RAP shall be prepared by the Project Planning Teams assigned to the implementing agency preferably with the support of technical service providers or mobile extension teams, for subprojects that have been determined to result in potential involuntary resettlement, land acquisition, or impacts assets, including livelihood. When a RAP is required, the District Management Teams (DMTs) shall submit completed studies along with their RAP's subproject application to the Resettlement Committee for appraisal, and subsequently to the World Bank.

Detailed guidelines for preparing a RAP and an abbreviated RAP are available on the World Bank's website (www.worldbank.org) and in the *World Bank's Resettlement and Rehabilitation Guidebook*.

The basic elements of a RAP, as outlined in the OP 4.12 (refer to *Annex I*), are provided in *Box 5.1*.

Box 5.1 Contents of a RAP

-
- Identification of project impacts and affected populations;
 - Baseline socio-economic data and census
 - Legal framework for land acquisition and compensation;
 - Compensation framework;
 - Description of resettlement assistance and restoration of-livelihood activities;
 - Detailed budget;
 - Implementation schedule;
 - Description of organizational responsibilities;
 - Framework for public consultation, participation, and development planning;
 - Description of provisions for redress of grievances; and
 - Framework for monitoring, evaluation, and reporting.
-

This process of identifying sites, consulting people and carrying out socio-economic studies will be an interactive one. If the Village/District Planning Teams or District Management Team (DMT), in close consultation with their respective local government council determines that the mitigation measures (i.e. compensation levels) are too costly in terms of compensation amounts and the overall number of people impacted, the Planning Teams or DMTs can propose and investigate alternative sites. However, irrespective of whether the process of identifying potential sites is pursued iteratively or whether a number of sites are examined simultaneously, the selection process must be as described above.

REVIEW OF SUBPROJECT RAPS

The final list of sites approved by the local government councils, the process of selection of the sites, and the RAP are all subject to final review and approval by the World Bank in order to ensure compliance with Bank safeguards. At its sole discretion the World Bank may delegate through the Government to the Local Governments this responsibility to ensure compliance with the provisions in this RPF after it is satisfied that effective monitoring of this process is in place.

Capacity will be built at the levels of Local Government Councils, Technical Planning Teams, and communities through training and technical assistance to ensure that all stakeholders involved discharge their different responsibilities effectively.

Estimated population displacement and Eligibility categories

ESTIMATION OF DISPLACED POPULATION

At this stage in the project, it is difficult to estimate the number or likelihood of people to be negatively impacted by the RCIP, including those in Malawi, as the subproject locations have not yet been determined. Therefore, the purpose of the RPF to establish the mechanisms by which the appropriate tools, screening checklists and RAPs, will be implemented to mitigate potential resettlement impacts once subprojects have been identified.

LAND ACQUISITION AND LIKELY CATEGORIES OF IMPACT

Generally, however, the RCIP investments are individually not expected to result in major impacts of people, land, property, including people's access to natural and other economic resources. Notwithstanding, land acquisition, compensation and resettlement of people may be necessary for some of the sub-projects. The severity of impact, determines what the resettlement measures will be. For example, in the installation of cables or building structures, the impact would be linear, whereas the installation of a mast, only a very small portion of the land may be impacted. The entitlement matrix presented below is so designed to assist in the process of determining severity of impacts.

Table 6.1 Eligibility matrix based on severity of impact

Activity	Nature of Impact	Resettlement Measure
Installation of masts and towers	Small plot	Replace land and/or pay compensation
Installation of fixed line cables and connectors	Limited linear impact, along existing roads	Pay compensation, if not in public right of way. Pay for any asset occupying right of way prior to sub-project cut-off date.
Construction of landing stations	Plot for building	Replace land, and other impacted assets, and/or pay compensation;
Equipment housing (e.g. shelters, cabinets, auxiliary power units)	Plot for infrastructure	Replace land, and other impacted assets, and/or pay compensation; Compensate for other assets
Road infrastructure (mostly feeder roads)	Linear impact	Replace land, and other impacted assets, and/or pay compensation

ELIGIBILITY CRITERIA FOR VARIOUS CATEGORIES OF AFFECTED PEOPLE

The likely displaced persons can be categorized into four groups, namely;

- (i) *Affected Individual* – An individual who suffers loss of assets or investments, land and property and/or access to natural and/or economic resources as a result of the sub-project activities and to whom compensation is due. For example, an affected individual is a person who farms a land, or who has built a structure on land that is now required by a sub project for purposes other than farming or residence by the initial individuals.
- (ii) *Affected Household* – A household is affected if one or more of its members is affected by sub-project activities, either by loss of property, land, loss of access, or otherwise affected in any way by project activities. This provides for:
 - (a) any members in the households, men, women, children, dependent relatives and friends, tenants.
 - (b) vulnerable individuals who may be too old or ill to farm along with the others.
 - (c) relatives who depend on one another for their daily existence.
 - (d) relatives who may not eat together but provide housekeeping and other domestic chores, and
 - (e) other vulnerable people who cannot participate for physical or cultural reasons in production, consumption, or co-residence.

In the local cultures, members of production, consumption, and co-resident groups form overlapping, often incongruent sets of people who may exchange domestic or farming services on a regular basis even though living separately.

Compensation will not be limited to people who live together in a co-resident group, since this might leave out people whose labor contributions are critical to the functioning of the “household”. For example, among polygamous groups, each wife has her own home.

- (iii) *Affected local community* – A community is affected if project activities affect their socio-economic and/or social-cultural relationships or cohesion. For example project activities could lead into such improvement of socio-economic welfare that class-consciousness arises coupled with cultural erosion etc.
- (iv) *Vulnerable Households* – Vulnerable households may have different land needs from most households or needs unrelated to the amount of land available to them:
 - Unmarried women
 - Non-farming
 - Elderly
 - The infirm or ill
 - Orphans

These household types are not mutually exclusive, so that the elderly may be internally displaced persons, and women are affected individuals.

World Bank Criteria for Determining Eligibility for Compensation

The Bank's OP 4.12 suggests the following three criteria for eligibility;

- a) Those who have formal rights to land (including customary and statutory rights of occupancy recognized under the Laws of each respective 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 each respective RCIP country or become recognized through a process identified in the resettlement and compensation plan.
- c) Those who have no claim to land they are occupying or using.

Those covered under a) and b) above are to be provided compensation for land they lose, and other assistance in accordance with the policy. Persons covered under c) above are to be provided with resettlement assistance in lieu of compensation for the land they occupy or use, and other assistance, as necessary, to achieve the objectives set out in this policy, if they occupy or use the project area prior to a cut-off date established by the local Government Technical Planning Teams and acceptable to the Bank. 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 a), b) or c) above are to be provided with compensation for loss of assets other than land.

Therefore, it is clear that all affected persons irrespective of their status or whether they have formal titles, legal rights or not, are eligible for some kind of assistance if they occupied the land before the entitlement cut-off date. The entitlement cut-off date refers to the time when the census of persons and their property in the area is carried out, i.e. the time when the project area has been identified and when the socio-economic study is taking place. Thereafter, no new cases of affected people will be considered. Persons who encroach the

area after the socio-economic study (census and valuation) are not eligible for compensation or any form of resettlement assistance.

Eligibility for Community Compensation

Local Communities (villages, districts, towns, communes etc,) permanently losing land and/or access to assets under customary rights will be eligible for compensation.

Method to Determine the Cut – Off Dates

When the respective local council approves the sub-project, the Technical Planning Teams or DMT, will meet to discuss and agree on a programme of implementation. They will also choose tentative cut-off dates. Cut-off dates tend to coincide with the date of the initial census. The dates would then be communicated to the community through their respective representative in the Village Council or District Councillors.

The entitlement cut-off date refers to the time when the assessment of persons and their property in the sub-project area is carried out, i.e. the time when the sub-project area has been identified and when the site-specific socio-economic study is taking place. Thereafter, no new cases of affected people will be considered. The establishment of a cut-off date is required to prevent opportunistic invasions/rush migration into the chosen land areas thereby posing a major risk to the sub-project. Therefore, establishment of a cut-off date is of critical importance. The Project Planning Team's will play a crucial role in identifying users of land since most of them would have acquired their customary rights to use the land from their local customary heads or Village Government.

Where there are clearly no identified owners or users of land or assets, the respective Regional Lands Board, District Administration and the Traditional Leaders will notify the community leaders and representatives to help to identify and locate the land users. These leaders and representatives will also be charged with the responsibility to notify their members about the established cut-off date and its significance. 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 representatives.

methods of valuing affected assets

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 Proponent will, in consultation with the land administration of the government, and impacted persons using public lands, identify suitable replacement land for use by the public.

Although the subproject locations have not been identified, it can be concluded that the RCIP investments may cover several types of land, including urban, peri-urban and rural segments. For all the three segments (urban, peri-urban and rural) land and assets will be valued and compensated for according to the following guidelines and as appropriate for each segment:

- The RCIP will compensate for assets and investments (including labour, crops, buildings, and other improvements) according to the provisions of the resettlement plan.
- Eligibility for compensation will not be valid for new persons occupying/using the project sites after the cut-off date, in accordance with this policy.
- 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.
- The market prices for cash crops will have to be determined based on the values as determined by each country's respective agency. This is often the Ministry of Agriculture but may differ from country to country. In Malawi, the market prices are set by The Ministry of Lands, Natural Resources and Environment.
- PAPs who lose farmland allotted by the village under customary tenure will be provided an equivalent plot of equal quantity and quality. However, since the 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.

CALCULATIONS FOR COMPENSATION PAYMENTS AND RELATED CONSIDERATIONS

Individual and household compensation will be made in kind and/or in cash (refer to *Table 7.1*). Although the type of compensation may be an individual's choice, compensation in kind will be preferred, if the loss amounts to more than 20% of the total loss of assets.

Table 7.1 ***Forms of compensation***

Cash Payments	Compensation will be calculated and paid in local currency. Rates will be adjusted for inflation.
In – Kind Compensation	Compensation may include items such as land, houses other buildings, building materials, seedlings, agricultural inputs and financial credits for equipment.
Assistance	Assistance may include moving allowance, transportation and labour, title fees, or other related costs.

For cash payments, compensation will be calculated in the relevant currency for each country adjusted for inflation. For compensation in kind, items such as land, houses, other buildings, building materials, seedlings, agricultural inputs and financial credits for equipment may be included. Assistance may include moving allowance, transportation and labour.

Making cash payments raises issues regarding inflation and security that have to be considered. Cash payments 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 local administration. These are some of the reasons why compensation in-kind will be preferred. For payment of compensation in-kind, the time and new location will have to be decided and agreed upon by each recipient, in consultation with the Local Government Authorities.

Compensation for Land

Compensation for land is aimed at providing for loss of crop and the labour used to prepare the land and 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 rates for labour invested, as well as the replacement cost of the crop lost.

Land measurement

The unit of measurement for land will be that which is used and understood by the affected persons. 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.

Determination of Crop Compensation Rates

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 each country's respective agency. Rate schedules must be verified for accuracy. Each type of crop is to be compensated for, using the same rate. Calculating compensation using one rate guarantees uniformity and allows anyone to measure the area of land for which compensation is due and to multiply the area by the one rate known to all.

Compensation Rates for Labour

The value of labour invested in preparing agricultural land will be compensated for at the average wage in the community for the same period of time. The labour cost for preparing replacement land is based on costs for clearing the land and ploughing.

Labour costs will be paid in the relevant currency per the prevailing labour law. 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 each country 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.

Compensation for Buildings and Structures

Compensation for buildings and structures will be paid by replacing huts, houses, farm outbuildings, latrines, fences and other impacted structures. Any homes lost will be rebuilt on the acquired replacement land. However cash compensation will be available as a preferred option for structures such as extra buildings lost, that are not the main house or house in which someone is living. The applicable replacement costs for construction materials, as well as associated labour costs needed to build replacement structure, will be used to calculate the values. Alternatively, compensation will be paid in-kind for the replacement cost without depreciation of the structure. The project will survey and update construction material prices on an ongoing basis and will consult with the Ministry of Public Works and Housing (or relevant authority in each RCIP country) in updating these prices.

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

Replacement values will be based on:

- Drawings of individual's house and all its related structures and support services,
- 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.),
- Prices of these items collected in different local markets and as provided by the Ministry of Public Works and Housing (or relevant authority in each RCIP country),
- Costs for transportation and delivery of these items to acquired/replacement land or building site,
- Estimates of construction of new buildings including labour required.

Compensation for Sacred Sites

Compensation for sacred sites (e.g., proprietary rites and reconstruction) is determined through negotiation with the appropriate parties.

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 village government, the use of sacred sites for any project activities is not permitted under the RCIP.

Compensation for Horticultural, Floricultural and Fruit 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 cashew, mango and some coconut trees)
- Traditional medicinal value

Given their significance to the local subsistence economy in these countries, fruit trees will be compensated on a combined replacement value. Fruit crop compensation will be the value of lost production until the replacement seedling comes into production. These values are determined and verified by the Ministry of Agriculture, or other respective government agency, rate schedule. Preference will be given to the replacement of affected trees with new seedlings unless otherwise decided by the PAPs. The compensation will be adjusted for inflation.

The cost of new fruit trees seedlings, the labour for planting and tending the new trees to maturity and compensation rates for loss of income will be based on information obtained from the Ministry of Agriculture, or appropriate agency for each respective government, and from the socio-economic surveys. Based on this information, a compensation schedule for fruits such as cashew, coconut, guava, mango and other trees can be developed, incorporating the following criteria:

- replace loss of income for subsistence fruit (e.g. coconut, cashew, guava or mango) based on production yields as quickly as possible. Cash payments to farmers will be aimed at replacing income derived from the sale of excess fruit production until replacement trees produce the equivalent (or more) in projected cash income.
- provide subsistence farmers with new tree seedlings to replace the affected trees to sustain future source of income and food from the fruits.
- Provide farmers with the opportunity to derive alternative income from trees bearing more valuable fruits at off-season periods.

Other Domestic Fruit and Shade Trees

These trees have recognized local market values, depending upon the species and age. Compensation for wild trees "owned" by individuals, who are located in lands as defined in this policy, will be paid. Wild, productive trees belong to the community when they appear in the bush as opposed to a fallow land. These trees will be compensated for under the umbrella of the village or community compensation.

Entitlement Matrix

A summary of all the assets that the PAP is entitled to shall be prepared for easy reference. *Annex 4* provides an example of an entitlement matrix. The RCIP Environmental Specialist should be involved in preparing a country specific entitlement matrix under the RCIP with the assistance of the project unit and the relevant regional and local resettlement committees.

ORGANIZATIONAL ELEMENTS AND PROCEDURES FOR DELIVERY OF ENTITLEMENTS

PROCESS BY WHICH INDIVIDUAL RAPS FOR SUB-PROJECTS WILL BE SUBMITTED TO PROJECT AUTHORITIES, CONSIDERED AND APPROVED

Funding would be processed and effected through the executing agencies established in each country under the RCIP and channeled through the decentralized local governments, where appropriate. They will comply with the financial arrangements agreed upon at project appraisal.

The compensation process will involve several steps and would be in accordance with the individual project resettlement and compensation plans, significantly;

Public Participation with the local communities would initiate the compensation process as part of an ongoing process that would have started at the land selection/screening stage and at the time the socio-economic assessment is being carried. This would ensure that no affected individual/household is simply "notified" one day that they are affected in this way. Instead, this process seeks their involvement and wishes to inform communities in a participatory approach with the project, from the beginning.

Notification of land resource holders – the respective local/district heads involved in identifying the land will notify the District, Village Council and village inhabitants who will help to identify and locate the property users. The users will be informed through both a formal notification in writing and, as many people are illiterate, by verbal notification delivered in the presence of the Village Executive Officer or his representative. In addition, the Village

Committees and individuals who control land will accompany the survey teams to identify sensitive areas.

Results of the census surveys, including:

Documentation of Holdings and Assets – Village, and District Officials to arrange meetings with affected individuals and/or households to discuss the compensation process. For each individual or household affected, the District Official completes a compensation dossier containing necessary personal information on the affected party and those that s/he claims as household members, dependents, total landholdings, inventory of assets affected, and information for monitoring their future situation. This information is confirmed and witnessed by Village Officials and Technical Planning Teams. Dossiers will be kept current and will include documentation of all assets surrendered and/or impacted. Each individual will be provided a copy of the dossier at the time of negotiations. This is necessary because it is one way in which individuals and households can be monitored over time. All claims and assets will be documented in writing.

Agreement on Compensation and Preparation of Contracts – All types of compensation are clearly explained to the individual or household. The Technical Planning Team draws up a contract, listing all property and land being surrendered and/or assets impacted, and the types of compensation (cash and/or in-kind) selected. A person selecting in-kind compensation has an order form, which is signed and witnessed. The compensation contract is read aloud in the presence of the affected party and the respective Technical Planning Team, Village officials and other village leaders prior to signing.

Compensation Payments – All handing over of property such as land and buildings and compensation payments will be made in the presence of the affected party and the village officials.

GENERIC ASPECTS OF THE IMPLEMENTATION SCHEDULE, INCLUDING HOW RESETTLEMENT WILL BE LINKED TO THE CIVIL WORKS

RESETTLEMENT ACTION PLANS

The process of preparing the resettlement action plans, in line with the requirements will involve the following:

- establishment of the cut of date and carrying out of a census to identify PAPs;
- census will generate information about the PAPs, their entitlements regarding compensation, resettlement and rehabilitation assistance as required;
- disturbances, especially those affecting income-earning activities, shall be properly recorded for the sake of compensation or asset replacement.

- based on the census and inventory of losses, and in consultation with the PAPs, a time phased action plan with a budget for provision of compensation, resettlement, and other assistance as required, shall be prepared.

The executing agency (the Privatization Commission/PPP Unit) through the project unit and the additional environment and social protection expertise required shall make sure that following the census, a comprehensive Resettlement Action Plan (RAP) is prepared for each project activity that triggers resettlement.

In this undertaking, the project planning teams may employ a private consultant to provide valuation services required for the RAPs. This assignment shall be financed by the RCIP.

In case of involuntary resettlement, approval of the new pieces of land to be used for resettlement shall be sought from the Government in consultation with local communities and affected individuals.

To ensure transparency of procedures, PAPs shall be informed of the method of valuation used to assess their assets. All payments of compensation, resettlement assistance and rehabilitation assistance, as the case may be, shall be made in the presence of the PAPs in question and the local leaders.

TIMEFRAMES

The following key timeframes shall apply unless otherwise agreed by the executing agency, the Resettlement Committee and the PAPs; provided however, that no agreement to waive the timeframes shall adversely affect the rights or interests of PAPs, under this Framework:

- the inventory shall be completed at most four months prior to the commencement of work;
- the Resettlement Plan shall be submitted to implementing agency for approval immediately after completion of inventory;
- civil works shall commence after compensation, resettlement and rehabilitation activities have been effected.

Comprehensive time frames shall be drawn up and agreed upon by all parties including the PAPs.

Compensation payments for acquired land and affected assets and resettlement of households as described above, must be completed as a condition for the taking away of land and before commencement of the civil works under the project.

Adequate time and attention shall be allowed for consultation of both the displaced and host communities before bringing in the new comers. 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.

LINKING RESETTLEMENT IMPLEMENTATION TO CIVIL WORKS

PAPs will need to be compensated, in accordance with this Resettlement Policy Framework and subsequent Resettlement and Compensation Plan, before work on civil works can begin

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

In particular, land and related assets may be impacted only after compensation has been paid and resettlement sites and moving allowances have been provided to PAPs. For project activities requiring relocation or resulting in loss of shelter, the resettlement policy further requires that measures to assist the project affected persons are implemented in accordance with the individual RAPs.

In the Implementation Schedule of each RAP, details on impacts, losses, and compensation must be provided. The schedule for the implementation of activities, as agreed between the Project Planning team 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, or impact on assets (this date must be after transfer date for completed civil works to PAPs and for payments of all compensation) and;
- the link between RAP activities to the implementation of the overall sub project.

When approving recommendations for resettlement during screening, PAPs must confirm that the resettlement plans contain acceptable measures that link resettlement activity to civil works, in compliance with this policy. Proper timing and coordination of the civil works shall ensure that no affected persons will be impacted (economically or physically) due to civil works activity, before compensation is paid and before any project activity can begin.

grievance redress mechanisms

OBJECTIVE OF GRIEVANCE REDRESS

At the time that the individual RAPs are approved and individual compensation contracts are signed, affected individuals 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.

All grievances concerning non-fulfilment of contracts, levels of compensation, or seizure of assets without compensation shall be addressed to the Local Leader.

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 Administration 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 local government authority for settlement. The complainant may seek redress in the established national legal system within each respective country.

It has to be noted that in the local communities, people take time to decide to complain when aggrieved. Therefore, the grievance procedures will ensure that the PAPs are adequately informed of the procedure, before their assets are taken. The grievance redress mechanisms 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 a Tribunal for resolution.

Compensation and resettlement plans (contracts) will be binding under statute, and will recognize that customary law is the law that governs land administration and tenure in the rural/village areas. This is the law that inhabitants living in these areas, are used to and understand.

All objections to land acquisition or project impacts on assets shall be made in writing, in the language that the PAPs understands and are familiar with, to the Local Leader. Copies of the complaint shall be sent to Project Planning Team and Environmental Specialist and the relevant Minister for administration of land matters, within 20 days after the public notice. Channelling complaints through the Local Leader is aimed at addressing the problem of distance and cost the PAP may have to face. PAPs will not be required to cover any grievance costs should they need to explore further processes beyond the local level.

The Local Leaders shall maintain records of grievances and complaints, including minutes of discussions, recommendations and resolutions made. Grievances shall be reported to the implementing agency to be included in regular reports.

The procedure for handling grievances should be as follows:

- 1) The affected person should file his/her grievance in writing, to the Local Leader. The grievance note should be signed and dated by the aggrieved person. Where the affected person is unable to write, s/he should obtain assistance to write the note and emboss the letter with his/her thumbprint. A sample grievance form is provided in *Annex 5*.
- 2) 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 need to 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.

- 3) If the aggrieved person does not receive a response or is not satisfied with the outcome within the agreed time he lodge his grievance to the Local Administration or the relevant Municipal Council.
- 4) The Local Administration or Municipal 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 for each respective country.

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 project affected persons.

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 or failure 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 or leaders.
- b) The Project Planning teams shall ensure that the main parties involved achieve any consensus freely. The relevant government representative shall clearly advise the general public, as to who is responsible for the activity and the procedure for handling grievances or compensation claims.
- c) Grievances shall be addressed during the verification and appraisal process. If a suitable solution is not found, the Project Planning teams 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 Administration will redress 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 the Project Planning teams who shall refer them to the respective District Administration, within 20 days of the verification meeting. Grievances that cannot be resolved at the Local and District level shall be submitted to the Local

Government, the District Administration and to executing agencies. Should grievances remain unresolved at this level, they can be referred to the court of law for each respective country.

method for consultation and participation

NOTIFICATION PROCEDURE

The RCIP shall by public notice, and publicly announced in the media (Daily newspapers, National Television, National Broadcasting Radios), notify the public of its intention to acquire land or cause impacts due to project activities.

The notice shall state:

- a) government's proposal to acquire the land or impact assets
- b) the public purpose for which the land is needed or impacts will be experienced
- c) that the proposal or plan may be inspected by Project Planning teams or the offices of the District Administrator 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 Project Planning teams with copies to District Administration and the Local Village Chief's Headquarters within 14 days of the first public announcement or appearance of the notice. Assurances must be made that affected persons have actually received this information and notification.

PUBLIC CONSULTATION MECHANISMS

Public consultation and participation are essential because they provide an opportunity for informing the stakeholders about the proposed project. Public consultation and participation create 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 and participation will 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 shall 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 shall be an on-going activity taking place throughout the entire project cycle. Hence, public consultation shall 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 shall take place through local 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 shall be made available in appropriate languages at the national, local and homestead levels and at suitable locations including the official residences/offices of village governments and village elders. Public consultation measures shall take into account the low literacy levels prevalent in the rural communities, by allowing enough time for discussions, consultations, questions, and feedback.

monitoring and evaluation arrangements

In order to assess whether the goals of the resettlement and compensation plan are being 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 to carry out the monitoring activities.

The arrangements for monitoring the resettlement and compensation activities will fit the overall monitoring programme of the RCIP project in Malawi which will be executed by the Privatization Commission/PPP Unit. The Commission will institute an administrative reporting system that:

- a) alerts project authorities on the necessity and procedures for land acquisition, or impact on assets, 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, and
- d) documents timely completion of project 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

Periodic evaluations will be made 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 standard of living than before.

This framework is suggesting that where appropriate and where it is determined to be cost effective, the office of the District Administration shall be structured to host the monitoring and evaluation component of the project/program. This will take the form of giving the districts the mandate to

carry out independent 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 objective will be to make a final evaluation in order to determine:

- a) if affected people have been paid in full and before implementation of the subproject, and
- b) if the people who were affected by the subproject have been affected in such a way that they are now living a higher standard than before, living at the same standard as before, or they are actually poorer than before.

INDICATORS

A number of objectively verifiable indicators (OVI's) 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. Therefore, monitoring indicators to be used for the RAP will have to be developed to respond to specific site conditions. As a general guide, The following *Table 12.1* provides a set of indicators which can be used.

Table 12.1 *Types of verifiable indicators*

Monitoring	Evaluation
Outstanding compensation or resettlement contracts not completed before next agricultural season.	Outstanding individual compensation or resettlement contracts.
Communities unable to set village-level compensation after two years.	Outstanding village compensation contracts.
Grievances recognized as legitimate out of all complaints lodged.	All legitimate grievances rectified
Pre- project production and income (year before land used) versus present production and income of resettlers, off-farm-income trainees, and users of improved mining or agricultural techniques.	Affected individuals and/or households compensated or resettled in first year who have maintained their previous standard of living at final evaluation.
Pre- project production versus present production (crop for crop, land for land).	Equal or improved production per household.

(a) Indicators to determine status of affected people

A number of indicators would be used in order to determine the status of affected people (land being used compared to before, standard of house compared to before, level of participation in project activities compared to before, how many kids in school compared to before, health standards, etc). Therefore, the resettlement and compensation plans will set two major socio-economic goals by which to evaluate its success:

- Affected individuals, households, and communities are able to maintain their pre-project standard of living, and even improve on it; and
- The local communities remain supportive of the project.

(b) Indicators to measure RAP performances

In order to assess whether these goals are met, the resettlement and compensation plans will indicate parameters to be monitored, institute monitoring milestones and provide resources necessary to carry out the monitoring activities.

For example the following parameters and verifiable indicators will be used to measure the resettlement and compensation plans performance;

- Questionnaire data will be entered into a database for comparative analysis at all levels of Local Governments,
- Each individual will have a compensation dossier recording his or her initial situation, all subsequent project use of assets/improvements, and compensation agreed upon and received.
- The Local Governments will maintain a complete database on every individual impacted by the sub-project land use requirements including relocation/resettlement and compensation, land impacts or damages
- Percentage of individuals selecting cash or a combination of cash and in-kind compensation,
- Proposed use of payments
- The number of contentious cases out of the total cases
- The number of grievances and time and quality of resolution
- Ability of individuals and families to re-establish their pre-displacement activities, land and crops or other alternative incomes
- Mining and agricultural productivity of new lands
- Number of impacted locals employed by the civil works contractors
- Seasonal or inter-annual fluctuation on key foodstuffs
- General relations between the project and the local communities

(c) Indicators to monitor and evaluate implementation of RAPs

Financial records will be maintained by the Local Governments and the executing agencies to permit calculation of the final cost of resettlement and compensation per individual or household. Each individual receiving compensation will have a dossier containing;

- Individual bio-data information,
- Number of people s/he claims as household dependents
- Amount of land and assets available to the individual or household when the dossier is opened.

Additional information will be acquired for individuals eligible for resettlement/compensation:

- Level of income and of production
- Inventory of material assets and improvements in land, and
- Debts.

estimated budget

The RPF recommends a lumpsum amount of \$100,000 to cover costs associated with the preparation, implementation and monitoring of RAPs. This is an estimate based on the fact that resettlement costs will not be significant since existing ROWs will be used and new land will not be acquired in most cases. Since it is highly unlikely that RAPs will be required in Malawi, a specific amount has not been allocated. The proposed lumpsum amount will cover the preparation, implementation and monitoring of RAPs in the second phase of the RCIP and will have to be updated depending on the number of countries that will commit to subsequent phases.

Individual RAPs will be funded like any other project activity eligible under the RCIP. Funding will be processed and effected through the programme's financial processing arrangements. In general, the cost burden of compensation will be borne by the respective implementing agency for RAPs undertaken in each of the RCIP countries. The RAP for a sub-project would include an itemised, indicative budget and the implementing agency will finance this budget through the administrative and financial management rules and manuals like any other activity eligible for payment under the RCIP. This budget will be subject to the approval by the implementing agency.

The implementing agency or the operators implementing the work of the project will have to finance the resettlement compensation as per the standard arrangements in place for the telecommunications sector in Malawi. Disbursements based on budgetary requirements, established by the RAPs in consultation with PAPs and local leaders, will be made through the relevant District Administration.

Training costs are included in the ESMF budget.

Annex 1: World Bank Safeguard Policy OP 4.12

Annex 2: Screening form

Sub-project name:

Subproject Location (e.g. province, district, etc).

(include map/sketch):

Type of activity : (e.g. new construction, rehabilitation, periodic maintenance)

Estimated Cost:

Proposed Date of

Commencement of Work:

Technical (circle answer): Yes No

Drawing/Specifications

Reviewed :

This report is to be kept short and concise.

1. Site Selection:

When considering the location of a subproject, rate the sensitivity of the proposed site in the following table according to the given criteria. Higher ratings do not necessarily mean that a site is unsuitable. They do indicate a real risk of causing undesirable adverse environmental and social effects, and that more substantial environmental and/or social planning may be required to adequately avoid, mitigate or manage potential effects.

Issues	Site Sensitivity			Rating (L, M, or H)
	Low (L)	Medium (M)	High (H)	
Natural habitats	No natural habitats present of any kind	No critical natural habitats; other natural habitats occur	Critical natural habitats present	
Water quality and water resource availability and use	Water flows exceed any existing demand; low intensity of water use; potential water use conflicts expected to be low; no potential water quality issues	Medium intensity of water use; multiple water users; water quality issues are important	Intensive water use; multiple water users; potential for conflicts is high; water quality issues are important	
Natural hazards vulnerability, floods, soil stability/erosion	Flat terrain; no potential stability/erosion problems; no known volcanic/seismic/ flood risks	Medium slopes; some erosion potential; medium risks from volcanic/seismic/ flood/ hurricanes	Mountainous terrain; steep slopes; unstable soils; high erosion potential; volcanic, seismic or flood risks	
Cultural property	No known or suspected cultural heritage sites	Suspected cultural heritage sites; known heritage sites in broader area of influence	Known heritage sites in project area	

Issues	Site Sensitivity			Rating (L, M, or H)
	Low (L)	Medium (M)	High (H)	
Involuntary resettlement	Low population density; dispersed population; legal tenure is well-defined; well-defined water rights	Medium population density; mixed ownership and land tenure; well-defined water rights	High population density; major towns and villages; low-income families and/or illegal ownership of land; communal properties; unclear water rights	
Indigenous peoples or ethnic minority	No indigenous population or ethnic minority	Dispersed and mixed ethnic minorities; highly acculturated ethnic minority	Indigenous territories, reserves and/or lands; vulnerable ethnic minority populations	
Loss of assets or access to resources	No impact to assets and/or access to resources	Minimal impact to assets and/or access to resources	Significant impact to assets and/or access to resources	

2. Checklist questions:

Physical data:	<i>Yes/No answers and bullet lists preferred except where descriptive detail is essential.</i>
Site area in ha	
Extension of or changes to existing alignment	
Any existing property to transfer to sub-project	
Any plans for new construction	

Refer to project application for this information.

Preliminary Environmental and Social Information:	<i>Yes/No answers and bullet lists preferred except where descriptive detail is essential.</i>
State the source of information available at this stage (proponents report, EIA or other environmental study).	
Has there been litigation or complaints of any environmental or social nature directed against the proponent or sub-project	

Refer to application and/or relevant environmental authority for this information.

Identify type of activities and likely environmental and social impacts:	<i>Yes/No answers and bullet lists preferred except where descriptive detail is essential.</i>
What are the likely environmental and social impacts, opportunities, risks and liabilities associated with the sub-project?	

Refer to ESMF Chapter 3 – Impact, Mitigation and Monitoring Guidelines

Determine environmental screening category:	<i>Yes/No answers and bullet lists preferred except where descriptive detail is essential.</i>
After compiling the above, determine which category the subproject falls under based on the environmental categories A, B and C.	

Refer to ESMF Chapter 4 – Screening and Review Process

Mitigation of Potential Pollution:	<i>Yes/No answers and bullet lists preferred except where descriptive detail is essential.</i>
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Does the sub-project have the potential to pollute the environment, or contravene any environmental and social laws and regulations?	
Will the subproject require pesticide use?	
If so, then the proposal must detail the methodology and equipment incorporated in the design to constrain pollution within the laws and regulations and to address pesticide use, storage and handling.	
Does the design adequately detail mitigating measures?	

Refer to ESMF Chapter 3 – Impact, Mitigation and Monitoring Guidelines

Environmental Assessment Report or environmental studies required:	<i>Yes/No answers and bullet lists preferred except where descriptive detail is essential.</i>
If Screening identifies environmental issues that require an EIA or a study, does the proposal include the EIA or study?	
Indicate the scope and time frame of any outstanding environmental study.	
Required Environmental Monitoring Plan:	
If the screening identifies environmental or social issues that require long term or intermittent monitoring, does the proposal detail adequate monitoring requirements?	

Refer to ESMF Chapter 3 – Impact, Mitigation and Monitoring Guidelines

Public participation/information requirements:	<i>Yes/No answers and bullet lists preferred except where descriptive detail is essential.</i>
Does the proposal require, under national or local laws, the public to be informed, consulted or involved?	
Has consultation been completed?	
Indicate the time frame of any outstanding consultation process.	

Refer to Chapter RPF – Relevant legislative acts in the RCIP country

Land and resettlement:	<i>Yes/No answers and bullet lists preferred except where descriptive detail is essential.</i>
What is the likelihood of land acquisition for the sub-project?	If yes, prepare a RAP
How will the proponent go about land acquisition?	
What level or type of compensation is planned?	
Who will monitor actual payments?	

Refer to the Resettlement Policy Framework.

Actions:	
List outstanding actions to be cleared before sub-project appraisal.	
Approval/rejection	<i>Yes/No answers and bullet lists preferred except where descriptive detail is essential.</i>
If proposal is rejected for environmental or social reasons, should the sub-project be reconsidered, and what additional data would be required for re-consideration?	

Recommendations:

- Requires an EIA and/or RAP, to be submitted on date:.
- Requires EMP, to be submitted on date:.
- Does not require further environmental studies

Reviewer :

Name: _____

Reviewer : _____
Signature: _____
Date: _____

Annex 3: Census survey and land asset inventory form

1 A 1 Socio-economic Household Datasheet of PAPs

Name of Interviewer		Signature
ID Code		
Name of Supervisor		(after verification of interview)
ID Code		

Village Name	
ID Code	
Number of Concession in Village	
(GPS Coordinates	

Date:2006....
 Day Month Year

Name of Head of Extended Family :	
Number of Nuclear Families in Extended Residential Group (including household of head of extended family)	

1 A 2 Household Interview

Name and Surname	Relationship to Head of Family	Sex		Place of Birth	Age	Marital Status	Residence Tenure	Ethnic Group	Religion	Educational Level	Income Earner		Economic Activities	
		M	F								Yes	No	Primary	Secondary
1.														
2.														
3.														
4.														
5.														
6.														
7.														

Relation to Head of Family : 1 HoH; 2 Spouse of HoH ; 3 Child of HoH; 4 Spouse of child of HoH ; 5 Grandchild of HoH; 6 Parent of HoH; 7; 8 9 Other (specify) ; 0 No Answer.
Marital Status : 1 Married ; 2 Widowed ; 3 Divorced ; 4 Unmarried; 0 No Answer.
Residential Status: 1 PRP (Permanent Resident) ; 2 RA (Resident absent) ; 3 Member of non-resident HH; 4 Visitor; 9 Other (specify) ; 0 No Answer.
Occupations : -
Principle Occupation: 1. Farmer ; 2 Shepard; 3 Household ; 4 Merchant; 5 Religious leader, teacher ; 6 Artisan ; 7 Transport ; 8 Unemployed; 9 Other (specify) ; 0 No Answer
Secondary Occupations: idem.
Educational Level : 1 Illiterate ; 2 Three years or less; 3 Primary School ; 4 Secondary School ; 5 Technical School ; 6 Religious School (literate in Arabic) ; 0 No Answer
Religion : 1 Muslim ; 2 Christian (specify denomination); 3 Animist. 9 Other (specify) ; 0 No Answer

Annex x: Land asset inventory for Project Affected People

District: _____

Date: _____

Village: _____

Survey no.	Name of Head of Household	No. of Persons in household	Total land holding of Hhold (m ²)	Land to be acquired (m ²)	Land Use Type *	Loss of % total	Loss of assets		Loss of crops			Loss of other assests	Other losses		
							Structures Permanent (m ²)	Structures temporary (m ²)	Area of residential land lost (m ²)	Fruit trees lost type and number	Agricultural land lost (m ²)		Other (specify)	e.g. graveyards, wells, etc. (type and no.)	Residence (rented)

* Land types are as follows (please fill in the types of land appropriate for the respective country)

- 1.
- 2.
- 3.
- 4.

Annex x: Entitlements of Project Affected People

District: _____

Date: _____

Village: _____

Survey no.	Name of Head of Household	Compensation for Land			Compensation for structures			Compensation for crops and trees			Compensation for other assets and losses (e.g, graveyards, wells, businesses, etc)			Total (local currency)
		Quantity (m ²)	Unit price (local currency) per m ²	Entitlement (local currency)	Quantity (m ²)	Unit price (local currency) per m ²	Entitlement (local currency)	Quantity Unit	Unit price (local currency)	Entitlement (local currency)	Quantity Unit	Unit price (local currency)	Entitlement (local currency)	

Annex 4: sample entitlement matrix

ASSET ACQUIRED	TYPE OF IMPACT	ENTITLED PERSON	COMPENSATION ENTITLEMENT
	No displacement: Cash compensation for affected land equivalent to market	Farmer/title holder	Cash compensation for affected land equivalent to market value

ASSET ACQUIRED	TYPE OF IMPACT	ENTITLED PERSON	COMPENSATION ENTITLEMENT
AGRICULTURAL LAND	value Less than 20% of land holding affected, The remaining land remains economically viable	Tenant/lease holder	Cash compensation for the harvest of the affected land equivalent to average market value of last 3 years, or market value of the crop for the remaining period of tenancy/lease agreement, whichever is greater.
	Displacement: More than 20% of land holding lost OR Less than 20% of land holding lost but remaining land not economically viable	Farmer/title holder	Land for land replacement where feasible, or compensation in cash for the entire landholding according to PAP's choice. Land for land replacement will be in terms of a new parcel of land of equivalent size and productivity with a secure tenure status at an available location which is acceptable to the PAP. Transfer of the land to the PAP shall be free of taxes, registration & other costs. Relocation assistance (costs of shifting + assistance in reestablishing economic trees + allowance up to a maximum of 12 months while short-term crops mature) Relocation assistance (costs of shifting + assistance in reestablishing economic trees + allowance up to a maximum of 12 months while short-term crops mature)
		Tenant/lease holder	Cash compensation equivalent to average of last 3 years' market value for the mature and harvested crop, or market value of the crop for the remaining period of tenancy/lease agreement, whichever is greater. Relocation assistance (costs of shifting + allowance).
COMMERCIAL LAND	No displacement: Land used for business partially affected, limited loss	Title holder/business owner	Cash compensation for affected land Opportunity cost compensation equivalent to 5% of net annual income based on tax records for previous year (or tax records from comparable business, or estimates where such records do not exist).
		Business owner is lease holder	Opportunity cost compensation equivalent to 10% of net annual income based on tax records for previous year (or tax records from comparable business, or estimates where such records do not exist)

ASSET ACQUIRED	TYPE OF IMPACT	ENTITLED PERSON	COMPENSATION ENTITLEMENT
	Displacement: Premise used for business severely affected, remaining area insufficient for continued use	Title holder/ business owner	Land for land replacement or compensation in cash according to PAP's choice. Land for land replacement will be provided in terms of a new parcel of land of equivalent size and market potential with a secured tenure status at an available location which is acceptable to the PAP. Transfer of the land to the PAP shall be free of taxes, registration & other costs. Relocation assistance (costs of shifting + allowance) Opportunity cost compensation equivalent to 2 months net income based on tax records for previous year (or tax records from comparable business, or estimates).
		Business person is lease holder	Opportunity cost compensation equivalent to 2 months net income based on tax records for previous year (or tax records from comparable business, or estimates), or the relocation allowance, whichever is higher. Relocation assistance (costs of shifting) Assistance in rental/lease of alternative land/property (for a maximum of 6 months) to re-establish the business.
RESIDENTIAL LAND	No displacement: Land used for residence partially affected, limited loss, and the remaining land remains viable for present use	Title holder	Cash compensation for affected land
		Rental/lease holder	Cash compensation equivalent to 10% of lease/rental fee for the remaining period of rental/lease agreement (written or verbal)
		Title holder	Land for land replacement or compensation in cash according to PAP's choice. Land for land replacement shall be of minimum plot of acceptable size under the zoning law/s or a plot of equivalent size, whichever is larger, in either the community or a nearby resettlement area with adequate physical and social infrastructure systems as well as secured tenure status. When the affected holding is larger than the relocation plot, cash compensation to cover the difference in value. Transfer of the land to the PAP shall be free of taxes, registration & other costs. Relocation assistance (costs of shifting + allowance)
	Displacement: Premise used for residence severely affected, remaining area insufficient for continued use or becomes smaller than minimally accepted under zoning law/s	Rental/lease holder	Cash compensation equivalent to 3 months of lease/rental fee Assistance in rental/lease of alternative land/property Relocation assistance (costs of shifting + allowance)

ASSET ACQUIRED	TYPE OF IMPACT	ENTITLED PERSON	COMPENSATION ENTITLEMENT
BUILDING AND STRUCTURES	No displacement: Structure partially affected but the remaining structure remains viable for continued use	Owner	Cash compensation for affected building and other fixed assets Cash assistance to cover costs of restoration of the remaining structure
		Rental/lease holder	Cash compensation for affected assets (verifiable improvements to the property by the tenant – e.g. a fence) Disturbance compensation equivalent to two months rental costs
	Displacement: Entire structure affected OR structure partially affected but the remaining structure is not suitable for continued use	Owner	Cash compensation for entire structure and other fixed assets without depreciation, or alternative structure of equal or better size and quality in an available location which is acceptable to the PAP. Right to salvage materials without deduction from compensation Relocation assistance (costs of shifting + allowance) Rehabilitation assistance if required (assistance with job placement, skills training)
		Rental/lease holder	Cash compensation for affected assets (verifiable improvements to the property by the tenant – e.g. a fence) Relocation assistance (costs of shifting + allowance equivalent to four months rental costs) Assistance to help find alternative rental arrangements Rehabilitation assistance if required (assistance with job placement, skills training)
		Squatter/ Informal dwellers	Cash compensation for affected structure without depreciation Right to salvage materials without deduction from compensation Relocation assistance (costs of shifting + assistance to find alternative secure accommodation preferably in the community of residence through involvement of the project CBO. Alternatively, assistance to find accommodation in rental housing or in a squatter settlement scheme, if available) Rehabilitation assistance if required (assistance with job placement, skills training)
Street vendor (informal without title or lease to the stall or shop)	Opportunity cost compensation equivalent to 2 months net income based on tax records for previous year (or tax records from comparable business, or estimates), or the relocation allowance, whichever is higher. Relocation assistance (costs of shifting) Assistance to obtain alternative site to re-establish the business		
STANDING CROPS	Crops affected by land acquisition or temporary acquisition or easement	PAP (whether owner, tenant, or squatter)	Cash compensation equivalent to average of last 3 years market value for the mature and harvested crop

ASSET ACQUIRED	TYPE OF IMPACT	ENTITLED PERSON	COMPENSATION ENTITLEMENT
TREES	Trees lost	Title holder	Cash compensation based on type, age and productive value of affected trees PLUS 10% premium
TEMPORARY ACQUISITION	Temporary acquisition	PAP (whether owner, tenant, or squatter)	Cash compensation for any assets affected (e.g. boundary wall demolished, trees removed)

Annex 5: Sample grievance form

Grievance Form				
<i>Grievance Number</i>		Copies to forward to:		
<i>Name of the Recorder</i>		<i>(Original)-Receiver Party</i>		
<i>Province/District/Settlement</i>		<i>(Copy)-Responsible Party</i>		
<i>Date</i>				
INFORMATION ABOUT GRIEVANCE				
Define The Grievance:				
INFORMATION ABOUT THE COMPLAINANT			Forms of Receive	
<i>Name-Surname</i>		<input type="checkbox"/> <i>Phone Line</i> <input type="checkbox"/> <i>Community/ Information Meetings</i> <input type="checkbox"/> <i>Mail</i> <input type="checkbox"/> <i>Informal</i> <input type="checkbox"/> <i>Other</i>		
<i>Telephone Number</i>				
<i>Address</i>				
<i>Village/ Settlement</i>				
<i>District/ Province</i>				
<i>Signature of Complainant</i>				
DETAILS OF GRIEVANCE				
1. Access to Land and Resources a) <i>Fishing grounds</i> b) <i>Lands</i> c) <i>Pasturelands</i> d) <i>House</i> e) <i>Commercial site</i> f) <i>Other</i>	2. Damage to a) <i>House</i> b) <i>Land</i> c) <i>Livestock</i> d) <i>Means of livelihood</i> e) <i>Other</i>	3. Damage to Infrastructure or Community Assets a) <i>Road/Railway</i> b) <i>Bridge/Passageways</i> c) <i>Power/Telephone Lines</i> d) <i>Water sources, canals and water infrastructure for irrigation and animals</i> e) <i>Drinking water</i> f) <i>Sewerage System</i> g) <i>Other</i>	4. Decrease or Loss of Livelihood a) <i>Agriculture</i> b) <i>Animal husbandry</i> c) <i>Beekeeping</i> d) <i>Small scale trade</i> e) <i>Other</i>	5. Traffic Accident a) <i>Injury</i> b) <i>Damage to property</i> c) <i>Damage to livestock</i> d) <i>Other</i>
6. Incidents Regarding Expropriation and Compensation (Specify)	7. Resettlement Process (Specify)	8. Employment and Recruitment (Specify)	9. Construction Camp and Community Relations a) <i>Nuisance from dust</i> b) <i>Nuisance from noise</i> c) <i>Vibrations due to explosions</i> d) <i>Misconduct of the project personal/worker</i> e) <i>Complaint follow up</i> f) <i>Other</i>	10. Other (Specify)

