



Government of the Republic of Malawi



The World Bank

MINISTRY OF AGRICULTURE, IRRIGATION AND WATER DEVELOPMENT
AGRICULTURAL SECTOR WIDE APPROACH SUPPORT PROJECT – Additional
Financing

Project ID Number: P128576/P148769

RESETTLEMENT POLICY FRAMEWORK

DRAFT FINAL REPORT

January 2012
Updated November 2013

TABLE OF CONTENTS

TABLE OF CONTENTS.....	II
LIST OF ACRONYMS	IX
DEFINITION OF TERMS USED IN THE REPORT.....	X
CHAPTER 1: INTRODUCTION.....	1
1.1 BACKGROUND.....	1
1.1.1 The National Context	1
1.1.2 The Agriculture Sector	1
1.1.3 The Agricultural Sector Wide Approach Support Project (ASWAp-SP)	2
1.2. ASWAp-SP DEVELOPMENT OBJECTIVES.....	3
1.3 BASIS, OBJECTIVES AND JUSTIFICATION OF THE RPF	3
1.3.1 Basis for the RPF.....	3
1.3.2 Objectives of the RPF.....	4
1.3.3 Justification for the RPF for the ASWAp-SP	4
1.3.4 Reasons why a RAP or ARAP cannot be prepared by the Project Appraisal	5
1.4 APPROACH AND METHODOLOGY TO THE PREPARATION OF THE RPF	6
1.5 FORMAT OF THE RESETTLEMENT POLICY FRAMEWORK.....	7
CHAPTER 2: PROJECT COMPONENTS AND DESCRIPTION.....	1
2.1 PROJECT COMPONENTS AND ADDITIONAL ACTIVITIES	1
<i>Description of sub-components.....</i>	<i>2</i>
2.2 PROJECT COMPONENTS LIKELY TO TRIGGER LAND ACQUISITION AND RESETTLEMENT	11
CHAPTER 3: PRINCIPLES AND OBJECTIVES GOVERNING LAND ACQUISITION AND RESETTLEMENT	12
3.1 CATEGORIES OF LAND IN MALAWI.....	12
3.2 EXISTING POLICIES, LEGISLATION AND PRACTICES	13
3.2.1 The constitution of the Republic of Malawi, (1994)	13
3.2.2 Land Policy (2002).....	13
3.2.3 The Environment Management Act, 1996 (Cap. 62:01)	15
3.2.4 Town and Country Planning Act, 1988 (Cap 23.01)	15
3.2.5 The Land Act, 1965 (Cap. 57:01).....	15
3.2.6 The Monuments and Relics Act	16
3.2.7 Public Roads Act, 1962, (69:02)	16
3.2.8 Lands Acquisition Act, 1971 (Cap 58:04).....	17
3.2.9 The Forestry Act.....	18
3.3 THE WORLD BANK'S SAFEGUARD POLICY OP 4.12	18
3.4 GAPS BETWEEN MALAWI LEGISLATION AND WORLD BANK O.P.4.12	21

3.5	BRIDGING THE GAPS	24
CHAPTER 4: LAND ACQUISITION AND OBJECTIVES OF RESETTLEMENT PREPARATION AND IMPLEMENTATION		25
4.1	LAND ACQUISITION PRACTICES.....	25
4.1.1	Previous and Current Land Acquisition Practices	25
4.1.2	Proposed Land Acquisition Mechanism	25
4.1.3	Voluntary Land Contribution with Compensation	27
4.1.4	Voluntary Land Contribution without Compensation	27
4.1.5	Involuntary Acquisition of Land	28
4.2	OBJECTIVES OF RESETTLEMENT PREPARATION AND IMPLEMENTATION.....	29
CHAPTER 5: PREPARING AND APPROVING RESETTLEMENT PLANS		30
5.1	THE SCREENING PROCES FOR SITES FOR PROPOSED PROJECT ACTIVITIES	30
5.2	SCREENING PROCESS FOR RESETTLEMENT SITES.....	31
5.3	PUBLIC CONSULTATION AND PARTICIPATION	32
5.4	APPROVAL OF THE RESETTLEMENT ACTION PLANS	33
CHAPTER 6: AFFECTED POPULATION AND LIKELY CATEGORIES.....		34
6.1	ESTIMATION OF AFFECTED POPULATION.....	34
6.2.	BENEFICIARIES ELIGIBILITY CRITERIA	34
6.3	LIKELY CATEGORIES OF DISPLACED PERSONS	35
CHAPTER 7: ASSET VALUATION METHODS AND ENTITLEMENTS.....		38
7.1	CURRENT ASSET VALUATION METHODS	38
7.1.1	Valuation of land	38
7.1.2	Valuation of physical assets	38
7.1.3	Valuation of field crops and fruit/plantation trees	38
7.1.4	Valuation for forest trees (indigenous and exotic species)	38
7.2	PROBLEMS WITH THE CURRENT VALUATION SYSTEM, PRINCIPLES AND METHODS.....	39
7.3	RECOMMENDED VALUATION METHODS	40
7.3.1	General consideration.....	40
7.3.2	Valuation for physical assets	40
7.3.3	Valuation of Cultural Property and Sacred sites.....	41
7.3.4	Valuation for field crops.....	41
7.3.5	Valuation for vegetable gardens	42
7.3.6	Valuation for Fruit/plantation trees:	42
7.3.7	Valuation for forest trees	43
7.4	ENTITLEMENTS FOR COMPENSATION.....	43
7.5	VALIDITY OF THE CALCULATED VALUES	47
CHAPTER 8: PROCEDURES FOR DELIVERY OF COMPENSATION		48

8.1	PUBLIC CONSULTATION AND PARTICIPATION	48
8.2	NOTIFICATION OF LAND RESOURCE HOLDERS.....	49
8.3	MAINTENANCE OF DATABASE OF AFFECTED HOLDINGS AND ASSETS.....	50
8.4	AGREEMENT ON COMPENSATION AND PREPARATION OF CONTRACTS.....	51
8.5	COMMUNITY COMPENSATION PAYMENTS.....	51
8.6	GENERAL CONSIDERATIONS FOR DELIVERY AND MANAGEMENT OF COMPENSATION	51
8.7	INSTITUTIONAL ARRANGEMENT	52
	53
8.8	LAND ACQUISITION AND RESETTLEMENT IMPLEMENTATION PROCESS.....	53
8.9	LINKING RESETTLEMENT IMPLEMENTATION TO CIVIL WORKS	54
8.10	COMPLAINTS AND GRIEVANCES MECHANISMS.....	55
8.10.1	Objections.....	55
8.10.2	Consensus, Negotiations and Conflict Resolution	56
8.11	TIME FRAMES.....	57
8.12	MONITORING AND EVALUATION	57
8.13	BUDGETARY IMPLICATIONS AND FUNDING.....	59
APPENDICES	60
APPENDIX 1.1	Categories of losses and their impacts on project affected persons	61
APPENDIX 1.2	List of Persons and Institutions Consulted.....	62
APPENDIX 5.1	Screening Criteria for Sites for the ASWAp-SP Project Activities	63
APPENDIX 5.2	Screening Criteria for Sites for Resettlement of ASWAp-SP Project Affected Persons	64
APPENDIX 5.3	Main Contents of the Resettlement Action Plan	65
APPENDIX 5.4	Contents for Abbreviated Resettlement Action Plan	66
APPENDIX 6.1:	An example of a Schedule for Labour Costs for activities on Replacement Land.....	67
APPENDIX 6.2	An Example of a Schedule to be used to Determine Monetary Compensation for Land Use	67
APPENDIX 6.3	Example of a schedule for Calculation of Compensation for Buildings	68
APPENDIX 6.4	Example for Calculating Compensation for Fruit Trees	69
APPENDIX 7.1	An Example of Land Acquisition and Resettlement Implementation Plan.....	71
APPENDIX 7.2:	Example of Land Acquisition and Resettlement Process Monitoring Plan	73
APPENDIX 7.3	Contents of a Comprehensive Compensation Budget.....	75

EXECUTIVE SUMMARY

The development objective of the ASWAp - Support Project (ASWAp-SP) is to improve the effectiveness and sustainability of investments in the agricultural sector, aimed at food security and agriculture-led economic growth. The project will strengthen (i) institutional capabilities necessary to develop and implement a harmonized and aligned investment framework leading towards a full-fledged SWAp in the agricultural sector; (ii) land, water and nutrient use efficiency of maize based rain-fed cropping systems; and (iii) resilience of the maize supply system to cope with climate and market induced risks and shocks.

The project is already financed by an IDA credit, a GEF Grant and a Kingdom of Norway Grant. A first additional financing (AF1) was approved in March 2012 to respond to the request from the Government of Malawi (GoM). A second additional financing (AF2) is proposed based on a Multi-Donor Trust Fund (MDTF) established to pool contributions from various donors as a joint effort to improve harmonization, alignment and donor coordination in the agricultural sector in Malawi. The Bank is the administrator of the MDTF. The core concept is to reduce the number of agricultural projects with similar objectives by jointly support the existing ASWAp-SP which is implemented using country systems by the Ministry of Agriculture and Food Security (MoAFS). The breakdown of contributions from the donors to the MDTF is as follows: European Union (28,890,000 Euros); Royal Norwegian Ministry of Foreign Affairs (220,000,000 Norwegian Kroners); United Kingdom's Department for International Development (14,175,000 British Pounds); Department of Foreign Affairs and Trade of the Republic of Ireland (14,000,000 Euros); Flanders International Cooperation Agency (5,300,000 Euros); and United States Agency for International Development (US\$2.5 million).

The ASWAp-SP has four components: Component 1: Institutional Development, will strengthen the capacity of the MoAFS to develop and implement systems for management of the sector and to establish a Sector Wide Approach (SWAp); Component 2: Sustainable Smallholder Productivity Growth, is aimed at sustainable increase of land, water and nutrient use efficiency, in maize based smallholder production systems; Component 3: Project Coordination is aimed at ensuring efficient use of resources, in accordance with the project's objectives and procedures and, Component 4 Improvement and maintenance of unpaved rural roads.

The objective of AF2 is to scale up on-going activities in 5 new districts, namely Karonga, Kasungu, Machinga, Nsanje and Phalombe with particular attention to: (a) Strengthening MoAFS administrative systems, particularly at the district level with a stronger focus on monitoring and evaluation systems; and strengthening MoAFS's capacity to implement the ASWAp; (b) Enhancing FISP organization and implementation, monitoring and evaluation, with a stronger focus on maize and legumes seeds availability; (c) Increasing the nationwide coverage of research and extension activities to reach out to more farmers and to increase FISP payoffs and sustainable impact on smallholders; and (d) Improving the efficiency of agricultural research and extension services while promoting a more pluralistic approach to delivering these services.

In addition, the AF2 will also help develop the following additional activities: (a) Diversification of the maize-based production systems by: (i) extending the current research and extension approach to increase the adoption rate of selected technologies, diversified crops (cereals, roots and tubers, pulses and leguminous, agro-forestry products, etc.) and

livestock production by farmers; and (ii) improving crop production and marketing, and ensuring availability of sufficient certified seeds to meet increasing demand both within and outside of FISP; (b) Improve the agricultural business environment and promote agribusiness partnerships in support of agricultural diversification with a more market oriented agriculture and integration into agricultural value chains and regional markets; and (c) Improve market access to the most productive agricultural areas through the improvement and sustainable maintenance of feeder roads.

The rural roads component of the ASWAp-SP (component 4) will be implemented by the Ministry of Transport and Public Infrastructure, who will in turn delegate responsibility for procurement, management and supervision of the component activities to the Roads Authority. Production areas within these districts will be identified by the MoAFS, and the selection of individual roads will then take place. Secondary, tertiary and district roads will be prioritised by the Roads Authority and their Regional Engineers, using an existing methodology based on a multi-criteria process. Interventions on Community Roads will be identified using the current district planning process. The following Districts have already been targeted for AF1: Chikwawa, Chitipa, Salima, Mwanza and Ntcheu. The AF2 will add five new Districts: Karonga, Kasungu, Machinga, Nsanje and Phalombe.

The Environment Management Act and the World Bank Operational Policies require that, for projects of this nature, an environmental impact assessment should be conducted. This is not possible for the rural roads component of the ASWAp-SP at this time since the precise types and locations of the roads to be improved are not yet known. However, to ensure that the environmental and social considerations of the project are addressed, the ASWAp-SP is preparing an Environmental and Social Management Framework (ESMF). The ESMF will facilitate identification of potential environmental and social impacts and development of appropriate mitigation measures for the negative impacts.

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

The proposed project activities fall under prescribed projects (category B) of the World Bank's Operational Policy (OP 4.12) on involuntary resettlement. This RPF therefore, has adopted applicable principles outlined in the World Bank's Operational Policy (OP 4.12) into local experiences and legislation because the legislation is not comprehensive enough to accord fair compensation and resettlement arrangements.

Preparation of this RPF is based on the field investigations and public consultations, conducted in the five proposed project districts, as well as consultations with other institutions including Government Ministries. The RPF draws its strength from the legal instruments that exist in Malawi, specifically the Land Policy (2002), the Land Act (1995) the Registered Land Act (1967), the Town and Country Planning Act (1988), the Public Roads Act (1962) and the Lands Acquisition Act (1971). These and other legislative instruments,

including the Environment Management Act and the World Bank Operational Policies, provide the basis and the legal platform for the conduct of land acquisition, compensation and resettlement; and they have been extensively used to prepare this RPF.

The legal instruments have been noted to contain relevant legislation that defines the different classifications/categories of land, and specific issues that relate to land acquisition and land transfer including the management of the land acquisition and transfer processes. The National Land Policy, for instance, dispels the popular notion that customary land in Malawi has no value and advocates that compensation value for customary land, at the time of acquisition by government, should be based on the open market value of the land and all the improvements on it. It is also noted that a Special Law Commission was empanelled in 2003, to review land-related laws and some of the changes recommended by this Special Law Commission are relevant to land acquisition and resettlement.

Field investigations and public consultations have revealed that there are some Land acquisition and resettlement activities managed mostly by the Ministry of Lands, Housing and Urban Development. A number of inconsistencies have been identified in the way these activities are managed, particularly with respect to resettlement and compensation. It was noted during the stakeholder consultations that cash compensations have been preferred in return for houses, buildings and structures. The consultations also revealed that the prices used in the determination of compensation values have, in some cases not been regularly updated. This has resulted in project affected persons (PAPs) receiving inadequate compensation for them to maintain their livelihoods to the same or better levels, compared with pre-project conditions.

Using information obtained through stakeholder consultations and the existing laws and regulations as well as the World Bank Operating Policies, this RPF has developed the screening process, methods for valuing assets and procedures for delivery of compensation. The RPF establishes parameters for the conduct of land acquisition, compensation, including resettlement of (PAPs) who may be affected during implementation of the ASWAp-SP. The RPF has made recommendations for appropriate local and national structures to facilitate effective implementation and monitoring of resettlement and compensation for the ASWAp-SP.

The RPF has been prepared in anticipation that the project activities under the ASWAp-SP will require additional land, especially customary land to be alienated from local people. The RPF therefore, provides safeguards against adverse impacts of development activities of the ASWAp-SP, through minimizing the number of (PAPs) in the first place. It provides procedures and means for adequately compensating for the losses PAPs may incur, in the case that resettlement cannot be avoided. The guiding principle for land acquisition shall be that where land is required for implementation of the ASWAp-SP activities, the recommended safeguards shall be observed to reduce the suffering of the affected community.

The RPF is intended to assist all proponents implementing World Bank funded (Category B) projects on the ASWAp-SP. The overall responsibility for implementation of this Framework shall reside with the ASWAp-SP. The ASWAp-SP will be assisted by the Ministry of Transport and Public Works (MTPW), Ministry of Local Government and Rural Development (MLGRD), Ministry of Agriculture and Food Security (MoAFS), and the Ministry of Lands, Housing and Urban Development (MLHUD).

ASWAp-SP will ensure that the Framework is publicly disseminated and that project staff has the requisite skills and knowledge and where necessary, they have received appropriate training to implement the RPF.

The District Councils shall take responsibility for implementation of the RPF at respective local authorities, with assistance from other line local offices of the above mentioned Government ministries.

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

- A full understanding of the project components, particularly those requiring land acquisition;
- Public consultation and participation;
- Determination of land ownership;
- Screening of the project sites, resettlement sites and project activities;
- Property and asset valuation in line with specific RAPs;
- Preparation and approval of resettlement plans;
- Implementation of the resettlement plans;
- Effective redress of complaints and grievances; and
- Monitoring of the Resettlement Action Plans or Abbreviated Resettlement Action Plans; and

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

LIST OF ACRONYMS

AF	Additional Financing
ARAP	Abbreviated Resettlement Action Plan
ASWAp	Agricultural Sector Wide Approach
ASWAp-SP	Agricultural Sector Wide Approach Support Project
CFA	Core Function Analysis
DC	District Commissioner or District Council
DP	Displaced Person
EMA	Environment Management Act
ESIA	Environmental and Social Impact Assessment
ESMF	Environmental and Social Management Framework
GoM	Government of Malawi
HIV	Human Immuno-Deficiency Virus
IDA	International Development Association
LGA	Local Government Authority
MoAFS	Ministry of Agriculture and Food Security
MLGRD	Ministry of Local Government and Rural Development
MLHUD	Ministry of Lands, Housing and Urban Development
MNREE	Ministry of Natural Resources, Energy and Environment
MTPW	Ministry of Transport and Public Works
NGO	Non-Governmental Organization
OP	Operational Policy
PAPs	Project Affected Persons
PMT	Project Management Team
PMU	Project Management Unit
PPF	Project Planning Facility
RA	Roads Authority
RAP	Resettlement Action Plan
RPF	Resettlement Policy Framework
VDC	Village Development Committee

DEFINITION OF TERMS USED IN THE REPORT

Unless the context otherwise requires, the following terms shall have the following meaning:

-

“census” means a field survey carried out to identify and determined the number of Project Affected Persons (PAP); in accordance with the procedures, satisfactory to the Ministry of Lands, Housing and Urban Development, Ministry of Agriculture, Irrigation and Water Development, 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 chiefs;

“Environmental and Social Management Framework (ESMF)” is a safeguard instrument (document) which establishes mechanisms to determine and assess potential environmental and social impacts of the project activities funded in the ASWAp-SP. The framework sets out mitigation, monitoring and institutional measures for the design, implementation and operation of the project activities to deal with 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;

“compensation” means the payment in kind, cash or other assets given in exchange for the taking of land; including fixed assets thereon, in part or whole; or impact on livelihood. Compensation also includes costs such as fees for obtaining land title, moving costs, etc.; associated with the resettlement process.

“cut-off date” is the date of commencement of the census of PAPs within the project area boundaries. This is the date on and beyond which any person whose land is occupied for project use, will not be eligible for compensation;

“Project affected persons (PAPs)” mean persons who, for reasons of the involuntary taking or voluntary contribution of their land and other assets under the ASWAp-SP, result in direct or indirect economic and or social hardships, regardless of whether or not the PAPs physically relocate. These people will have their:

- (a) Standard of living adversely affected, whether or not they must move to another location;
- (b) Right, title, interest in any house, land (including premises, agricultural and grazing land) or any other fixed or movable asset acquired or possessed, temporarily or permanently, adversely affected;
- (c) Access to productive assets temporarily or permanently adversely affected;
or
- (d) Business, occupation, work or place of residence or habitat adversely affected.

“involuntary displacement” means the compulsory taking of land resulting in direct or indirect economic and social impacts caused by:

- (a) Loss of benefits from use of such land;
- (b) Relocation or loss of shelter;
- (c) Loss of assets or access to assets; or
- (d) Loss of income sources or means of livelihood, whether or not the project affected person has moved to another location.

”Involuntary Land Acquisition” or “Compulsory Land Acquisition” is the taking of land by government or government agencies, against the will of the landowner, for the purposes of a public project. The landowner will be paid compensation but may have the right to negotiate the amount of compensation proposed. The land or assets include those for which the owner enjoys uncontested customary rights;

“land” refers to agricultural and/or non-agricultural land and any structures thereon whether temporary or permanent and which may be required for the ASWAp-SP;

”land acquisition” means the taking of or alienation of land, buildings or other assets thereon for purposes of the ASWAp-SP;

“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 PAPs improve their living standards, income earning capacity and production levels; or at least maintain them at pre-project levels;

“Resettlement and Compensation Plan”, also known as a “Resettlement Action Plan (RAP)” or “Resettlement Plan” - means a resettlement instrument (document) to be prepared when ASWAp-SP locations are identified. In such cases, land acquisition leads to physical displacement of persons, and/or loss of shelter, and /or loss of livelihoods and/or loss, denial or restriction of access to economic or subsistence resources. RAPs are prepared by the party (in the case of the ASWAp-SP, the Roads Authority) impacting on the people and their livelihoods. RAPS contain specific and legally binding requirements to be complied with by the ASWAp-SP, to resettle and compensate the affected party before implementation of the project activities causing adverse impacts.

”replacement cost” means the value for replacement of assets, with an amount sufficient to cover full replacement cost of the lost assets and related transaction costs. The cost is to be based on **Market rate (commercial rate)** according to the Malawi law. In terms of land, this may be categorized as follows:

- (a) Replacement cost for agricultural land means the pre-project or pre-displacement cost, whichever is higher, for the market value of land of equal productive potential or use located in the vicinity of the affected land, plus the costs of:
 - (i) Preparing the land to levels similar to those of the affected land; and
 - (ii) Any registration, transfer taxes and other associated fees

“Replacement cost for houses and other structures” means the prevailing cost of replacing affected structures, in an area with structures of the quality similar to or better than that of the affected structures. Such costs shall include but not limited to:

- (a) Transporting building materials to the construction site;
- (b) Any labour and contractors’ fees; and
- (c) Any registration costs.

“Resettlement Assistance” means such measures as moving allowances, temporary accommodation, housing or rentals, or any form of assistance that PAPs may require to be physically relocated. ASWAp-SP has to ensure that such assistance is provided for, as required, to facilitate smooth transition during relocation for ease of resettlement.

CHAPTER 1: INTRODUCTION

1.1 BACKGROUND

1.1.1 The National Context

Malawi has a population of about 13 million and is one of the poorest countries in the world; with average per capita income of only US\$170. 52% of the population lives below the poverty line (Integrated Household Survey 2004/2005); and poverty rates have only marginally improved since the 1997/98 household survey. GDP per capita incomes increased at only one percent annual rate between 1996 and 2005.

One of the consequences of the prevailing poverty situation is persistently high malnutrition. Approximately 43% of the children are stunted, and 22% are underweight.

1.1.2 The Agriculture Sector

Agriculture remains the main source of growth and exports in Malawi. With 85% of the population residing in the rural areas, the sector accounts for over 80% of the country's employment, over one-third of GDP, and about 80% of merchandise exports.

The primary staple for most of these households is maize. Over 70% of all farmers in the country cultivate less than one ha and a significant number of these farmers still struggle to produce enough food to meet their annual consumption requirements.

The country continues to experience dry spells, especially in the southern region, rendering a significant number of households in these regions perpetually food insecure. In areas where production has been good, poor roads have often prevented the marketing of surpluses.

With the current low prices in the tobacco market, Malawi is facing a dramatic decrease in export revenues, leading to severe foreign exchange constraints, while leaving many tobacco farmers in need of alternative sources of cash income. There is thus an urgent need to assist the country to diversify the maize and tobacco-based production systems; and to encourage traditional (often subsistence) smallholder farmers to engage in more market oriented agriculture through better market access and integration into agricultural value chains.

High population density and poverty have led to significant pressure on the environment and degradation of Malawi's natural resource base, notably land, forests and water. The growing population increases the land area under cultivation and exploits forests and woodlands for firewood and charcoal production.

Deforestation, soil erosion and sedimentation are serious threats to the environment and natural resource base, resulting in the increased incidences of run-off and flash floods. These problems are a direct result of unsustainable land use and management practices, and increased use of chemical fertilizers with minimal complementary soil conservation measures.

Malawi's agricultural development strategy is laid out in detail in the ASWAp investment plan drafted by the GoM, together with its Development Partners. The largest and most costly investment program in the sector is the Farm Input Subsidy Programme (FISP), targeted towards the poorer households, to attain food security. Notwithstanding the success of FISP, rates of malnutrition and especially stunting levels among children, remain high.

1.1.3 The Agricultural Sector Wide Approach Support Project (ASWAp-SP)

The main development goal of the Government is food security. This goal is described in the Malawi Growth and Development Strategy (MGDS) in terms of two medium term outcomes:

- (i) food is available in sufficient quantities and qualities through domestic production or imports and;
- (ii) all Malawians have, at all times, physical and economic access to sufficient nutritious food required to lead a healthy and active life.

Both these objectives have been prioritized in the newly defined Agricultural Sector Wide Approach (ASWAp) recently prepared and adopted under the CAADP process. The ASWAp is now the well-recognised overall framework for investments across the agriculture sector. Co-financed by the World Bank, the GEF and the Kingdom of Norway, Agricultural Development Programme – Support Project (ADP-SP) has played a crucial role in supporting the preparation of the ASWAp and now its effective implementation. As such, the project has been renamed Agricultural Sector Wide Approach Support Project (ASWAp-SP).

The ASWAp-SP has four components: (i) Institutional development and capacity building in preparation for a SWAp in agriculture; (ii) Sustainable food security, to increase the land, water and nutrient use efficiency of maize based cropping systems and improve payoffs to the FISP, and to increase the resilience of the maize supply system to climate induced risks and shocks; (iii) Project coordination; and (iv) Improvement and maintenance of unpaved rural roads. The original ASWAp-SP was financed by an IDA credit of SDR 19.5 million (US\$32 million equivalent), and an additional IDA credit (AF1) of SDR 19.4 million (US\$30 million equivalent). The original project was co-financed by a grant from the Global Environment Fund (GEF) of US\$5.8 million (fully blended), and a grant from the Kingdom of Norway of Nkr 50 million (approximately US\$10 million equivalent). The original Project was approved by the Board on June 24, 2008 and declared effective on December 9, 2009. The AF1 was approved on March 22, 2012, became effective on December 14, 2009, and is due to close on June 30, 2015.

AF2 will be financed by a Multi-Donor Trust Fund (MDTF) established to pool contributions from various donors as a joint effort to improve harmonization, alignment and donor coordination in the agricultural sector in Malawi. The Bank is the administrator of the MDTF. The core concept is to reduce the number of agricultural projects with similar objectives by jointly support the existing ASWAp-SP which is implemented using country systems by the Ministry of Agriculture and Food Security (MoAFS). The breakdown of contributions from the donors to the MDTF is as follows: European Union (28,890,000 Euros); Royal Norwegian Ministry of Foreign Affairs (220,000,000 Norwegian Kroners); United Kingdom's Department for International Development (14,175,000 British Pounds); Department of Foreign Affairs and Trade of the Republic of Ireland (14,000,000 Euros); Flanders International Cooperation Agency (5,300,000 Euros); and United States Agency for International Development (US\$2.5 million).

The objective of AF2 is to scale up on-going activities with particular attention to: (a) Strengthening MoAFS administrative systems, particularly at the district level with a stronger focus on monitoring and evaluation systems; and strengthening MoAFS's capacity to implement the ASWAp; (b) Enhancing FISP organization and implementation, monitoring and evaluation, with a stronger focus on maize and legumes seeds availability; (c) Increasing

the nationwide coverage of research and extension activities to reach out to more farmers and to increase FISP payoffs and sustainable impact on smallholders; and (d) Improving the efficiency of agricultural research and extension services while promoting a more pluralistic approach to delivering these services.

In addition, the AF2 will also help develop the following additional activities: (a) Diversification of the maize-based production systems by: (i) extending the current research and extension approach to increase the adoption rate of selected technologies, diversified crops (cereals, roots and tubers, pulses and leguminous, agro-forestry products, etc.) and livestock production by farmers; and (ii) improving crop production and marketing, and ensuring availability of sufficient certified seeds to meet increasing demand both within and outside of FISP; (b) Improve the agricultural business environment and promote agribusiness partnerships in support of agricultural diversification with a more market oriented agriculture and integration into agricultural value chains and regional markets; and (c) Improve market access to the most productive agricultural areas through the improvement and sustainable maintenance of feeder roads.

1.2. ASWAP-SP DEVELOPMENT OBJECTIVES

The development objective of the ASWAp-SP is to improve the effectiveness and sustainability of investments in the agricultural sector, aimed at food security and the agriculture led economic growth. The ASWAp-SP will:

- (a) strengthen institutional capabilities necessary to further develop and implement a harmonized and aligned investment framework, leading to a full-fledged SWAp in the agricultural sector;
- (b) improve land, water and nutrient use efficiency of maize based rain fed cropping systems, supported by the Government's Input Subsidy Program; and
- (c) improve the resilience of the maize supply system to cope with climate and market induced risks and shocks.

Success in achieving the objectives will be measured by, among other things, increased sustainable productivity of maize based cropping systems, resulting from improved management of land, rainwater and nutrients.

1.3 BASIS, OBJECTIVES AND JUSTIFICATION OF THE RPF

1.3.1 Basis for the RPF

Involuntary resettlement, arising from development projects, often gives rise to severe economic, social and environmental hardships. The hardships stem from the following reasons among others:

- (a) Disruption of production and income generating systems;

- (b) Affected persons' skills being rendered inapplicable in new environments;
- (c) Increased competition for resources;
- (d) Weakening of community and social fabric and networks;
- (e) Dispersion of kin groups;
- (f) Loss of cultural identity and traditional authority; and
- (g) Loss of mutual help.

In most cases, resettlement of people to pave way for development projects is done because the project activities demand land acquisition. Little attention, if any, is given to the welfare of the people who may be affected because of loss of agricultural land, loss of buildings, loss of access or proximity to water, health and social amenities. Appendix 1.1 gives details of categories of losses and their impacts on PAPs.

1.3.2 Objectives of the RPF

The objective of this RPF is to provide a screening process, for future ASWAp-SP activities, to ensure that where land acquisition and acquisition of other assets, or impact on livelihood arising from the project activities is inevitable, resettlement and compensation activities for lost resources should be conceived and executed in a sustainable manner. This entails providing sufficient investment resources to meet the needs of the persons affected and/or displaced from their habitat and resources. It also requires adequate collaborative consultation and agreement with the PAPs to ensure that they maintain or improve their livelihoods and standards of living in the new environment.

The RPF provides guidelines for development of appropriate mitigation and compensation measures, for the impacts caused by the ASWAp-SP future project activities whose exact locations are not known prior to project appraisal. The RPF is intended for use as a practical tool to guide the preparation of RAPs for sub-project activities during implementation of the ASWAp-SP; and it has been prepared as one of the safeguard instruments to be used throughout the ASWAp-SP implementation. The RPF will be disclosed to set out the resettlement and compensation policy, organizational arrangements and design criteria to be applied to meet the needs of the people who may be affected by the project. The RAPs for the ASWAp-SP will be prepared consistent with the provisions of this RPF.

1.3.3 Justification for the RPF for the ASWAp-SP

In the ASWAp-SP, road improvement activities implemented under Component 4 are likely to affect people's livelihoods and access to land and socio-economic opportunities, or in some isolated cases, result in resettlement of people. This RPF therefore is necessary to provide guidelines for addressing concerns of affected persons and to guide on the protection of their interest where: -

- (a) land will be contributed voluntarily for the ASWAp-SP, in return for compensation;
- (b) land will be contributed voluntarily without seeking compensation, for the

ASWAp-SP; and

- (c) land will be acquired involuntarily for the ASWAp-SP activities.

The guiding principle for land acquisition shall be that where land is required for implementation of the ASWAp-ISP activities, appropriate safeguards shall be observed to reduce the suffering of the affected community members.

This RPF shall be used on all ASWAp-SP sites where land disputes have not been resolved and on all ASWAp-SP future demand-driven project activities. The framework is intended for use by all proponents implementing World Bank funded (Category B) projects under the ASWAp-SP and will be applicable to private and NGO institutions that will utilize ASWAp-SP funds; and all project activities that fall under the ASWAp-SP. The RPF is presented in a much more comprehensive manner so as to guide and ensure that all situations of population disturbance, resulting from the implementation of the ASWAp-SP activities are catered for.

This RPF, to be used for screening of projects in the ASWAp-SP, has been prepared following the results of the findings from field investigations. Interviews with local people and officials from various Ministries, Local Government Offices, Private Sector; and information from some previous studies reports and documents have been used in preparing this framework.

1.3.4 Reasons why a RAP or ARAP cannot be prepared by the Project Appraisal

A RAP is a detailed and specific plan that contains information prepared for well defined specific project activities. A RAP contains detailed census information with the numbers and names of persons that are to be displaced or persons that are affected. A RAP will contain information on property values and the basis for compensation. A RAP also contains specific work plans including dates when the displaced persons are going to be relocated. An ARAP is a brief Resettlement Action Plan that is prepared and used for small projects that may not require a comprehensive RAP. Both RAPS and ARAPS contain specific and legally binding requirements to be abided by the project developer to resettle and compensate the affected party before implementation of the project activities causing adverse impacts.

For the ASWAp-SP roads component, the specific locations of the project activities are not yet well defined. The number of displaced persons is not yet known and the compensation values and the persons to be compensated cannot be precisely determined.

It is therefore, impossible to prepare a RAP or an ARAP in the absence of the specific project details for the extent and location of the project activities. Hence, at the the time of the project appraisal of additional financing for the ASWAp-SP, it is not possible to prepare these instruments which require very specific project details. Consequently, only a resettlement policy framework can be prepared at this time.

Unmitigated involuntary resettlement arising from development projects often leads to severe economic, social and environmental impacts where:

- production systems are dismantled,
- people face impoverishment if their productive assets or income sources are lost;
- people are relocated to environments where their community institutions and social networks are weakened;
- kin groups are dispersed, and cultural identity, traditional authority and the potential

for mutual help are diminished or lost.

Appendix 1.1 gives categories of losses and the social impacts on PAPs.

The ASWAp-SP will support the improvement of unpaved rural roads. More important for this RPF, activities whose location and technical specifications are not known at the moment, are planned for future implementation.

To ensure that the project activities are carried out in an environmentally and socially sustainable manner, the ASWAp-SP has prepared an Environmental and Social Management Framework (ESMF), as a separate document. This RPF is confined to those impacts relating to land acquisition, loss of assets, or impact on livelihood and resettlement, arising from implementation of the proposed ASWAp-SP activities. The RPF serves to provide safeguards against severe adverse impacts of the proposed project activities and proposes mitigation against potential impoverishment risks by:

- a) Avoiding displacement of people in the first place;
- b) Minimizing the number of PAPs;
- c) Adequately compensating the PAPs for losses incurred or;
- d) Adequately addressing adverse impacts of the intended interventions.

Implementation of the ASWAp-SP may result in denying people access to land, different types of natural resources and sources of livelihood and/or the resettlement of people. This is particularly so considering the increasing population and the decreasing available land resources. Although the number of people to be displaced and the magnitude of adverse impacts associated with land acquisition, resettlement, loss of assets and impact on livelihood are unlikely to be significant under the ASWAp-SP, it is quite appropriate and timely that this RPF be prepared in conformity with the environmental and other sectoral legislation as well as the World Bank policies

1.4 APPROACH AND METHODOLOGY TO THE PREPARATION OF THE RPF

In order to prepare this RPF the basic strategy involved extensive consultations with the various key stakeholders. The rationale of these consultations was to solicit the views of the key stakeholders from the local, district, and central government level.

The strategies of executing the assignment included the steps listed below:

- Review of typical implementation approach and processes for the proposed project activities;
- Review of the existing Malawi policies and legislation applicable to land acquisition, resettlement and compensation;
- Review of land acquisition, resettlement and compensation practices used in other countries within the region;
- Identification and analysis of potential environmental and social impacts the implementation processes will likely trigger and generate within and around the

project areas. The focus was on the impacts related to land acquisition, resettlement, compensation loss of assets and impact on livelihood;

- Field investigations and public consultations to identify case studies and to learn about the existing practices for land acquisition, resettlement and compensation;
- Development of the appropriate screening processes for the proposed project and settlement sites;
- Development of appropriate land acquisition, resettlement and compensation measures and;
- Compilation of the general contents and format of Resettlement Action Plans and Abbreviated Resettlement Action Plans to be used for the ASWAp-SP.

1.5 FORMAT OF THE RESETTLEMENT POLICY FRAMEWORK

The Resettlement Policy Framework is presented in the in the following manner:

- (a) Chapter 1 provides a brief background of the ASWAp-SP, narrating the development objectives which are to improve the livelihood of the local communities through provision of the necessary road infrastructure. The Chapter also gives the objectives, basis and justification of preparing the RPF. The main objective is given as the protection of the PAPs from harsh consequences of resettlement through provision of appropriate and adequate compensation to ensure improved livelihoods of the PAPs after resettlement;
- (b) Chapter 2 gives a comprehensive narration of the project components and highlights those components that might lead to land acquisition, resettlement, loss of assets and impact on livelihood. The Chapter concludes by describing the project component (component 4) likely to trigger land acquisition and resettlement;
- (c) Chapter 3 makes a comparison between Malawi's Legal Framework and the World Bank Operating Policies. The gaps between the two are identified and suggestions are made for bridging these gaps;
- (d) Chapter 4 summarizes the principles and objectives governing land acquisition, resettlement, loss of assets and impact on livelihood in Malawi. The Chapter starts by narrating categories of land which include public, private, customary and Government land; and continues to describe the existing policies, legislation and practices that govern land acquisition, resettlement, loss of assets and impact on livelihood;
- (e) Chapter 5 describes the process for preparing and approving resettlement plans. Screening processes for sites for project activities and for resettlement sites are given in this Chapter to guide the processes of land acquisition and resettlement. Public consultation is highlighted as one of the key factors for successful implementation of Resettlement Action Plans. Finally the Chapter summarizes the process for approval of RAPs;
- (f) Chapter 6 highlights the method for estimating displaced population, which include

physical head count and the use of land area and also gives the eligibility criteria for the beneficiaries and finally describes the likely categories of displaced persons, which among others include orphans, female headed households and the elderly;

- (g) Chapter 7 presents asset valuation methods and entitlements for compensation. In this Chapter, the problems with current valuation methods are highlighted and a recommendation is given for appropriate valuation methods;
- (h) Chapter 8 gives the procedures for delivery of compensation, emphasizing consultation and public participation as key in ensuring fair compensation. The Chapter highlights the need for maintenance of up-to-date database of PAPs and assets. The Chapter also states the importance of preparing and signing agreements for compensation payments; additionally, chapter 8 highlights the institutional and implementation arrangements for efficient delivery of land acquisition, resettlement and compensation; Finally, this chapter summarizes the budgetary and funding implications.

CHAPTER 2: PROJECT COMPONENTS AND DESCRIPTION

2.1 PROJECT COMPONENTS AND ADDITIONAL ACTIVITIES

The programme has four components and the proposed changes consist of scaling up existing activities and adding new ones to increase the impact of the Project as described thereafter:

- (a) **Component 1:** *Institutional Development*, will strengthen the capacity of the MoAFS to develop and implement systems for management of the sector, and establishment of a Sector Wide Approach (SWAp);

AF2 will continue improving the capacity of MoAFS's staff in planning and budgeting, in internal communication and coordination, in policy making, in sector coordination, and in monitoring and evaluation of public investments in the agricultural sector. The leadership of the Ministry on the overall sector investment coordination should be further strengthened to improve the efficiency of public investments in agriculture. New studies will be carried out to strengthen the knowledge base and monitoring of the agricultural sector and to ensure the production of reliable and timely published agricultural statistics (using a range of methodologies based on a combination of satellite imagery and field surveys to improve the existing Ministry's APES¹). Under the land administration subcomponent, the Project will further support the policy decision making process by providing up-to-date information and analyses on land management and land use planning. This will include the development of a land information system to help the Ministry of Lands and Housing ensure and secure a proper recording of deeds, with a specific objective of monitoring the evolution of land use under Estates management.

- (b) **Component 2:** *Sustainable Smallholder Productivity Growth* (Appendix 1.1) is aimed at sustainable increase of land, water and nutrient use efficiency, in maize based smallholder production systems and;

Under AF2, the objective will be to look beyond food security by not only supporting the existing and generalized maize-based farming system, but also encouraging diversification and marketing. This will translate in developing expanded and new research and extension activities to increase the adoption rate of selected technologies, diversified crops and livestock productions by farmers. The component will expand the coverage and improve the quality of extension activities to reach out to more farmers by promoting innovative and more pluralistic extension methodologies. As a result of the scaled-up agricultural extension program, it is expected that smallholder farmers will increase their agricultural productivity and outputs, while diversifying from their maize-based subsistence farming practices.

Further support will be provided to the design, programming and implementation of the Farm Input Subsidy Program (FISP), including support to improving the efficiency of the FISP in terms of procurement, tracking of fertilizer and seeds distribution and implementation time line. The Project will support the MoAFS in revisiting the overall design, objectives and implementation modalities of the FISP, to strengthen its impact on the ground. The approach will be based on analysing various options for modernizing the FISP and to better articulate its content and targeting with complementary social protection programs.

¹ Agricultural Production Estimates Survey

- (c) **Component 3:** *Project Coordination* is aimed at ensuring efficient use of resource, in accordance with the project's objectives and procedures.

AF2 will provide further support to the ASWAp secretariat within the Ministry of Agriculture which has a critical role in coordinating the different Departments in charge of the execution of ASWAp-SP activities. Additional support will consist of technical studies, consultancies and technical assistance, the details of which will be determined in the course of project implementation. As per the recommendations of the last implementation support mission, the additional support will also be provided through technical assistance to speed up implementation of activities, financial management and procurement processes, as well reporting of activities.

- (d) **Component 4:** *Improvement and maintenance of unpaved rural roads* to improve market access of the most productive agricultural areas through the improvement and sustainable maintenance of feeder roads.

The scope of the road improvement and maintenance will be expanded from five to ten Districts, and 780 kilometers of roads will be improved. In addition, the Project will strengthen the capacity of the implementing bodies including Local Authorities and local contractors in the target districts. Rural roads maintenance systems will be established by rolling out the existing "maintenance clubs" methodology which employs groups from the community to carry out the work (a 40% participation of women will be encouraged). Resettlement costs will arise when the need for compensation for any land, crops or buildings that are identified for appropriation through the social and environmental screening process. Compensation will be defined in the Resettlement Action Plans (RAPs) that will be prepared for roads where the need for resettlement is triggered. GoM will finance the maintenance of the rehabilitated rural roads and compensation payments under RAPs.

Description of sub-components

The four programme components have sub-components as follows:

Component 1: Institutional Development and Capacity Building in Preparation of a SWAp in Agriculture

The objective of this component is to strengthen capacities of MoAFS to prepare for and implement the Agricultural Development Programme and its main objectives of food security and agriculture led economic growth.

Activities under this component will build upon the initiatives already underway, to reassess the capacities of the MoAFS. These include a Common Services Assessment (CSA) under the leadership of the Office of the President and Cabinet (OPC) and the MoAFS Core Function Analysis (CFA). The project will provide resources for MoAFS institutional development and capacity building.

To support a SWAp, capacities need to be strengthened to:

- a. evaluate trade-offs in investment priorities and define a credible investment program;
- b. translate broad ASWAp-SP objectives and results into annual work plans;
- c. coordinate a wide range of necessary investments and encourage more actors to align their efforts;

- d. consolidate annual work plans and budgets for the sector
- e. track a range of different funding sources/budgets, initially along separate but complementary reporting systems;
- f. implement procurement in an efficient and timely manner;
- g. monitor outputs and outcomes in an effective and timely manner, based on the ASWAp-SP targets and the MGDS and ;
- h. plan and manage human and financial resources.

Sub-component 1.1: ASWAp-SP Management and Coordination Support to strengthen the MoAFS leadership and management of the SWAp:

This sub-component will support the functioning and operation of the ASWAp-Secretariat; and support the reform of MoAFS to improve coordination and joint programming in the sector:

- A Secretariat would be set up as an interim office for three years, until systems are sufficiently established to be absorbed within MoAFS permanent structures.
- A Change Management Team from within the Government, managed by the Secretariat and reporting to the PS will facilitate the transformation process to improve efficiency and effectiveness in the MoAFS to implement the ASWAp-SP.
- Leadership and management skills training will be conducted for key senior staff, to strengthen ownership, build effective teams and strengthen synergies across departments and;
- ASWAp-SP orientation for key stakeholders from both the GoM and Non State Actors will be conducted to outline the principles and procedures under the ASWAp-SP.

Sub-component 1.2: Planning, monitoring and evaluation

This sub-component will strengthen the capacities of the Department of Planning, Agricultural Development Divisions (ADDs) and districts agricultural offices to engage in more effective:

- Agricultural sector planning options to maximize the returns on public investment;
- Strategic medium-term investment planning to assess different investment choices;
- Annual work and budget planning at sector, district, ADD and central levels; focusing more on sector planning and less on project preparation;
- Coordinated district-level agricultural sector planning;
- Development of a monitoring and evaluation system for ASWAp-SP and;
- Agricultural data collection and analysis to help guide investments and monitor the outputs and outcomes of the ASWAp-SP.

Sub-component 1.3: Technical systems and skills development.

Based on the outcomes of the CFA and the ASWAp-SP investment priorities, the project will provide financial resources for MoAFS to address institutional development and capacity building of its technical departments by:

- Institutional development and technical systems strengthening, for higher performance and sustainability of the research and technical support systems. The technical assistance will also support the national coordination team for strengthening the implementation of Component 2; and

- Selective diploma and degree training to resolve key gaps in technical expertise.

Sub-component 1.4: Administrative systems development.

The project will support MoAFS in addressing priority professional and administrative skill gaps through training, equipment and technical assistance in:

- Financial management to build accounting functions to streamline Government and donor procedures, and reporting mechanisms; develop a strategic financial management plan including comprehensive use of government systems such as Integrated Financial Management Information System (IFMIS), and relevant capacity building;
- Human resources management, development of human resources plan, annual performance management plans, and assessment tools;
- Building standardized procurement systems, following the GoM law. Developing comprehensive timely procurement plans, a user friendly handbook and procurement monitoring system, and training for procurement professionals and;
- Administration, coordinated transport, improved inventory and asset management systems, maintenance etc.

Sub-component 1.5: Land administration capacity strengthening

The AF will support the strengthening of existing land administration structures at district, regional and national level of the Ministry of Lands, Housing and Urban Development (MoLHUD). The project will provide training to technical staff in surveying, physical planning and valuations and registration. It will procure the required equipment (GPSs, mapping and GIS software, etc.) for field staff, as well as satellite imagery to undertake a comprehensive study of land availability in the country.

Component 2: Sustainable Food Security

The objective of this component is sustainable improvement of national and household food security. The component is to support the implementation of three priority agendas outlined in the ASWAp-SP investment framework for enhancement of national food security. These are:

- maize productivity growth;
- sustainable land management and;
- the application of new tools in market based risk management.

This effort will strengthen the development of the SWAp by assuring achievement of early gains from the coordinated investment plan. These initiatives also illustrate the value of multi-partner collaboration in the implementation of ASWAp-SP work plans.

The maize productivity growth agenda is designed to increase the payoffs underlying the Agricultural Input Supply Programme (AISP). Current investments provide subsidized fertilizer to approximately 1.5 million maize producing smallholder farmers. The project will help these farmers attain higher rates of fertilizer use efficiency (grain produced per unit of nutrient applied). The project will also encourage these farmers to try new maize (and complementary crop) varieties.

The farmers will be encouraged to test and adopt conservation farming practices to increase levels of organic matter in the soil, minimize soil disturbance and encourage crop rotations. The productivity gains achieved will be strengthened by improving strategies to reduce post-harvest losses and control the greater grain borer. Multiple strategies will be tested for improving the efficiency of technology transfer.

The project will support national efforts to stabilize food supplies through the application of four market based risk management initiatives including micro weather insurance, macro weather insurance, price hedging and warehouse receipts. This effort will largely seek to institutionalize pilot initiatives supported with small amounts of Bank funding during the past two years.

Each of these sustainable production and market based risk management initiatives will contribute to Malawi's adaptation to climate change.

Sub-component 2.1: Sustainable productivity growth initiative (SPGI).

The objective of this sub-component is a sustainable increase of the land, water and nutrient use efficiency in maize based smallholder production systems. This contributes to the achievement of two major ASWAp-SP outcomes of the doubling of maize productivity and the doubling of area under sustainable land management. The main strategy is to speed up the transfer of technologies that are already in existence or simply need to be modified in small ways to fit the demands and resource constraints of smallholder cropping systems. This includes technologies known regionally and internationally. Speeding the use of improved technologies in smallholder maize based cropping systems requires:

- increased exposure of smallholders to the available technology options;
- assistance in experimenting with these options in their own fields;
- an incentive in the establishment of sustainable land management technologies and;
- farmers' feedback to prioritize future research activities.

The sub-component will: (i) promote the uptake of technologies for sustainable productivity growth in rain-fed maize-based systems; and (ii) strengthen the capacity of the agricultural research, extension and technical services.

To improve resource use efficiency in maize based cropping systems, the project will support the promotion of:

(a) Use of improved technology options which will include:

- encouraging 100,000 farmers to adopt and test new maize varieties and complementary crops. Preferences and technical performances will be fed back to national crop breeding programs, seed companies and retailers to adjust seed market offer;
- providing advice to farmers on improved crop nutrient and fertilizer management to achieve productivity gains from the fertilizer being distributed through the AISP. 100,000 smallholder farmers receiving AISP fertilizer coupons will be encouraged to test and help refine fertilizer use recommendations in different agro-ecological zones and soil types;
- encouraging improved post-harvest pest control technologies, to minimize post-harvest crop damage by pests.

(b) adoption of a range of conservation farming practices to improve soil organic matter levels and water infiltration and reduce soil erosion.

Approximately 55,000 farmers will be encouraged to experiment with their preferred practices and adopt sustainable land and water management practices. Participating farmers would be given a supplementary “sustainable land management” voucher, for fertilizer and intercropping leguminous seeds to boost the initial two seasons’ organic matter build-up.

This sub-component will also strengthen agricultural research, technical and extension services, emphasizing participatory approaches and stronger partnerships among actors. The project will test and evaluate alternative strategies for achieving synergies in:

- leadership and strengthened coordination of technical service providers at national and district level;
- farmer groups and associations empowerment to strengthen their organizations and select 7,500 lead farmers;
- strengthening information flows, including various types of ICT material, researcher-led and farmer-led experimentation, farmer to farmer dissemination supported by lead farmers, and strengthened agricultural ‘Information Resource Centres’ at district (28) and EPA (187) level;
- improving the mobility of technical services and related investments required for improved communication systems;
- upgrading research and technical facilities, essential for increasing rates of technology transfer and adoption (including facilities for breeder and foundation seed production seed certification, soil and plant analysis – laboratory, maize post-harvest loss and food safety assessment, and inter-departmental teamwork on crop modelling and response farming, linked to weather conditions)
- supporting continuous in-service training programs in alternative/participative extension methodologies and selected priority technical subjects reflected in the annual work plans will be supported. Extension, research and technical services will be supported at national district and EPA levels.

Sub-component 2.2: Strengthening market based agricultural risk management strategies.

Pilot initiatives have been launched relating to use of weather derivatives and crop insurance linked with rainfall indices (weather insurance), price hedging and warehouse receipts. The project will institutionalize the use of these tools as a key component of national risk management systems and:

- develop rainfall-index based early warning models, upgrade the national network of rainfall stations and associated data feed and analysis capabilities and integrate the data into national early warning systems;
- provide training in the mechanics of weather derivatives and analytical procedures for evaluating investment in macro-weather insurance. The World Bank is expected to intermediate the purchase of the derivatives contract and DFID and the EU have expressed willingness to pay this premium;
- provide funding to enhance rainfall based crop models (for crops included in the pilot activities over the 2005/06, 2006/07 and 2007/08 seasons) to provided insurance backed agricultural credit to more than 1700 groundnut farmers and for a limited set of crops that may be added over the next five years;
- strengthen the capacity of the government to evaluate and implement supply/price hedging agreements similar to the South African Commodity Exchange (SAFEX) agreement for the supply and price of maize supported by the World Bank in 2005; and

- strengthen training on commodity risk management to increase awareness of these tools and improve the sustainability of these investments.

Subcomponent 2.3: Improve legume crop production and marketing

The project will introduce a clear objective of diversification by focusing primarily on legumes production, mainly groundnut, pigeon pea and soya bean. First of all, the project will help expand the existing legume seeds multiplication scheme in association with research, producer organizations and private seed growing companies. But the objective is also to look beyond FISP requirements and the food security/ nutrition approach adopted so far, to start addressing key issues and bottlenecks of the whole supply chain, from production, to storage and processing, and to marketing on domestic and neighboring markets.

Subcomponent 2.4: Improve the agricultural business environment and promote agribusiness partnerships.

The project will contribute to improving the agricultural business environment and promote agribusiness partnerships to encourage private investments in agriculture and support of agricultural diversification, a more market oriented agriculture and integration into agricultural value chains and regional markets. Under the leadership of the Ministry of Industry and Trade (MoIT), the project will finance studies and training required to facilitate legal and regulatory reforms to the business environment and to foster public private dialogue and interagency coordination with respect to private investments in agriculture and agribusiness development. Using a matching grant mechanism, the project will help identify and prepare public-private investments for agricultural growth and diversification, especially in new subsectors like horticulture, livestock and fisheries. Finally, this subcomponent will develop a pilot experience of providing agri-business oriented extension services to farmer groups, with a focus on the farm households that have been relocated under the CBRLDP.

Component 3: Project Coordination

The objective of this component is to manage and use resources in accordance with the project's objectives and procedures. The project will follow government procedures for planning, reporting, and monitoring of activities, and will use existing institutions and working groups for its management and supervision as follows:

- The Project's Steering Committee will be the ASWAp-SP Executive Management Committee (EMC) (chaired by the Principal Secretary of MoAFS) which will provide overall guidance regarding ASWAp-SP implementation. The EMC will endorse the project's annual work plans and budgets. Each of the two components of the ASWAp-SP will have separate Implementation Committees, which will have decision making responsibility regarding project management:
- The ASWAp-SP Management Working Group will oversee Component 1 (Institution development and capacity building in preparation of a SWAp). Membership of this group includes directors of MoAFS, and representatives of other Ministries involved in the ASWAp-SP, as well as donor representatives. This group is chaired by the ASWAp-Secretariat Coordinator, who will provide leadership for this component.
- Component 2 (sustainable food security) will be managed by a team formed by the CAETS, the Director of Planning, the Directors of Research, Extension, Crops, Land Resources Use, and Planning, and the ASWAp-Secretariat Coordinator. The CAETS will chair this group, and will provide leadership for this component.

The Coordinator of the ASWAp-Secretariat will be the overall manager of the project. An experienced nationally recruited ASWAp-SP Project Management Adviser will ensure that project work plans, financial management and procurement operations are done in line with

World Bank requirements. This Adviser will work closely with the various departments at central level in order to prepare the project annual work plan and budget and subsequent technical, financial and procurement reports. The duration of this post will be limited to the first three years of the project, while the Ministry reporting systems are strengthened in order to prepare technical and financial reports as per WB requirements on a routine basis.

The specialist advisers (who will be attached to line departments as required under Component 1 and 2) will fulfil a dual role. Initially they will provide short term support to their line departments in order to prepare ASWAp-SP documents and reports (work-plans, financial, and procurement reports). They will also provide longer term capacity building of the departments in order to plan for and implement the ASWAp-SP, and later a fully-fledged SWAp. Each adviser will report to his/her line manager. This will ensure that the advisers are integrated in the staff structure of the relevant Ministry's departments so as to allow for on-the-job training of colleagues and strengthening of government systems, procedures and processes. The ASWAp-Secretariat Coordinator will be responsible for the achievement of project objectives and results, and will rely on the various department directors to provide their plans and reports on a timely basis. The budget for Component 3 will include the salary of the Project Management adviser, provision for short term consultancies as well as operating expenses, including one vehicle.

Component 4 - Improvement and maintenance of unpaved rural roads:

The inclusion of a rural roads component within the ASWAp Support Project was strongly supported by the MoAFS. The importance of access to bring in agricultural inputs and export harvests was recognized and provided the logic behind the introduction of the component. There are two sub-component areas to be financed by the IDA AF and, subject to the approval of DFID, also by the MDTF, and are in two categories: (i) improvement and maintenance of unpaved rural roads, and (ii) implementation support.

Sub-component 4.1 Improvement and maintenance works on rural roads

The sub-component will be concentrated in areas with proven agricultural potential with the aim of providing networks of roads that will allow the transport of inputs and produce between farmers' fields and main roads throughout the entire year. The improvement works will include rehabilitation of unpaved roads, spot-improvements, and surfacing using low-volume sealed road techniques, selected to provide the requisite levels of access. It is anticipated that with the funding available from IDA, a total of 550 km of road will be improved. Maintenance systems will be established by rolling out the existing 'maintenance clubs' methodology which employs groups from the community to carry out the work.

Identification of Roads to be Improved

The precise locations and types of the ASWAp-SP road component activities are not yet known as the roads that will benefit from improvement will be identified during project implementation. The Ministry of Agriculture and Food Security has identified Chikwawa, Chitipa, Salima, Mwanza and Ntcheu as the districts under AF1. The AF2 will add five new Districts: Karonga, Kasungu, Machinga, Nsanje and Phalombe. Selection criteria for these districts include: i) potential to produce at least one cash crop as an alternative to tobacco, ii) reasonable proximity to major towns or agro-processing facilities, and iii) favourable environment for agricultural production, and iv) accessibility to inputs.

Areas that are important for agricultural production within these districts will be identified by the MoAFS, and the selection of individual roads will then take place. Secondary, tertiary and district roads will be prioritised by the Roads Authority and their Regional Engineers using an existing methodology based on a multi-criteria process. Interventions on Community Roads

will be identified using the current district planning process. The Roads Authority will work with the local assemblies to ensure that the results of these two processes are compatible and together contribute to improving access to areas of agricultural production.

The programme is designed so that the improvements carried out on individual roads are chosen to match the access needs of the area that is served by the road. Where the levels of motorized traffic justify it, roads will be rehabilitated to gravel standard for their entire length. In some cases, where traffic is particularly high or there are steep inclines, the provision of a bituminous sealed surface may be appropriate. On many roads the majority of expected traffic will be non-motorized: bicycles or ox carts with low levels of vehicles. In order to maximize the numbers of project beneficiaries, a spot-improvement approach designed to provide year round access will be adopted on roads where traffic volumes are low.

Improvement and Maintenance Works on Unpaved Rural Roads

The improvement works will include rehabilitation and the spot-improvement of unpaved roads, and surfacing using low-volume sealed road techniques, the balance between the activities being selected to provide the requisite levels of access for the target area. Maintenance systems will be established by rolling out the existing 'maintenance clubs' methodology which employs groups from the community to carry out the work and the establishment of maintenance camps on a pilot basis.

a) Rehabilitation

Selected unpaved roads in the targeted districts will be rehabilitated to gravel standard. Roads that have many closely-spaced critical sections along their length or that pass through mountainous terrain would also be considered for rehabilitation provided that there was a prospect of an increase in traffic.

b) Spot Improvement

Spot-improvement works will be carried out to make critical sections of unpaved rural road in the targeted districts accessible for normal vehicles. Activities will focus on ensuring that the road is passable for its entire length throughout the year rather than being in good condition throughout. Works will include the construction of small bridges, culverts and earth drains and raising the level of the road, as appropriate, at the critical sections.

c) Upgrading to Paved Standard

As sources of naturally-occurring gravel become scarcer and the cost of maintaining unpaved roads rises, it is becoming increasingly attractive to provide a bituminous seal to protect the road surface. Whilst the cost of bituminous pavements constructed using conventional design methods and specifications is difficult to justify economically for roads that carry low levels of traffic, there is a growing volume of successful experience in the use of less costly standards - low-volume sealing. It has been found that pavements constructed in Malawi over the last 20 years using these methods have performed well, and are appropriate for roads that carry relatively low volumes of traffic. Low volume sealing will be applied to selected sections of road where there are significant levels of traffic, or steep gradients.

d) Maintenance of Rehabilitated Roads

This will involve the maintenance of the rehabilitated roads after completion of the works to keep them in good condition using appropriate systems. Government will be expected to make available resources for maintenance through the Roads Fund Administration. The maintenance activities will involve the communities to the maximum extent possible through usage of the following systems:

- i. Maintenance Clubs will undertake performance-based contracts for the maintenance of the previously rehabilitated unpaved roads. This system has been developed and used under the Income Generating Public Works Programme (IGPWP) and has proved to be effective. The establishment of this maintenance system begins with the sensitisation by the Village Development Committee, RA's Engineer or Road Supervisor and technical staff from the District Council of the villagers located along previously rehabilitated roads. Community members identified by the local leader are grouped into clubs with each member being responsible for maintaining one kilometre of road. Preference is given to those who participated in the rehabilitation of the road, and it is a requirement that they must live alongside the road. A Contract Agreement between the club and the District Council is drawn up and signed by the club management. The management is elected by the club members and consists of a chairperson, secretary and treasurer.
- ii. Maintenance Camps: The use of maintenance camps will be explored on a pilot basis. This methodology has been used in Zimbabwe and Mozambique. A contractor is procured on a Term Contract basis and is assigned to a specific network which he is required to keep in a maintainable condition.

Employment is a key factor in promoting development as it provides community members with an additional source of income. Rehabilitation and maintenance works will be implemented using labour-based methods wherever practicable. These methods have been well tried in Malawi and have been found to be appropriate for the construction of rural roads. The proportion of funds for road investment that is spent on purchasing and operating large construction equipment is reduced, and spent instead on the payment of labour. Although these techniques do require some equipment such as tractors, trailers and tipper trucks, these are items that are commonly available and their maintenance in-country is relatively straightforward.

Other related activities in the roads component will include consulting services for detailed design and preparation of bidding documents, consulting services for supervision of construction works, consulting services for the preparation of EIAs and RAPs, where applicable, and capacity building for the parties involved in the execution of the component.

Proposed project administration and management strategy for the improvement of unpaved rural roads

a) Ministry of Transport and Public Works (MTPW)

The implementation of the roads component will be the responsibility of the Ministry of Transport and Public Works. The MTPW will be responsible for the provision of policy direction, overall project coordination and liaison with the MoAFS related to the road component and oversight of the executing agencies. In accordance with the institutional framework for the sector, the MTPW delegates its powers for the management of the road network to the Roads Authority (RA) and the Ministry of Local Government and Rural Development through the Local Assemblies.

b) The Roads Authority (RA)

The Roads Authority will be responsible for implementing the roads component of the project. The Procurement Section of the RA will co-ordinate the procurement activities for the project that will be carried out by the Maintenance Department and Local Assemblies. Environmental and social management work will be done in coordination with the Ministry of

Mines, Natural Resources and Environment; the Ministry of Lands, Physical Planning and Surveys, and Local Assemblies to ensure that all land and environment related concerns are incorporated. The RFA Finance Department, through the Senior Accountant, will be responsible for the financial management and reporting for the road component of the project, in line with the new Public Finance Management Act (PFMA).

c) Ministry of Local Government and Rural Development

This Ministry will be responsible (through the Local Assemblies) for ensuring co-ordination of project activities at the district level. The Local Assemblies will be involved in identifying priority areas for development within the districts, in particular in the case of Community Roads. They will be responsible for maintaining rural roads. The Local Assemblies will ensure that adverse environmental and social impacts are managed and /or mitigated through the active participation in the ISP implementation. The District Environmental Officers and District Environmental Sub-committees including other district personnel will spearhead environmental screening and environmental management functions of the ASWAp-SP as appropriate.

Sub-component 4.2 Implementation support

Activities identified are the strengthening of the capacity of the implementing bodies including Local Authorities and local contractors in five target districts, consultancies for design and supervision, project management and compensation for resettlement. It is expected that the costs of maintenance activities and compensation will be met by government.

2.2 PROJECT COMPONENTS LIKELY TO TRIGGER LAND ACQUISITION AND RESETTLEMENT

The ASWAp-SP Component 4 - Improvement and maintenance of unpaved rural roads is the only component likely to affect land that is currently used for other purposes, particularly by the local communities.

On the other hand, the precise types and locations of the planned rural road improvements and activities introduced under the Additional Financing are not known at this time. Therefore, the ASWAp-SP has prepared an Environmental and Social Management Framework (ESMF) which outlines an environmental and social screening process. The ESMF will ensure that potential negative environmental and social impacts are identified, assessed and appropriately mitigated.

Where new land has to be acquired for the ASWAp-SP, there will be need for the preparation of procedures and principles for land acquisition, resettlement and compensation, where appropriate. This RPF is prepared to ensure effective preparation and implementation of the land acquisition, resettlement and compensation process and RAPs for the ASWAp-SP.

CHAPTER 3: PRINCIPLES AND OBJECTIVES GOVERNING LAND ACQUISITION AND RESETTLEMENT

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

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

These and other principles are articulated in this Chapter which highlights the relevant policies and legislation. The Chapter starts with defining categories of land in Malawi.

3.1 CATEGORIES OF LAND IN MALAWI

In January 2003, after receiving submissions from various stakeholders (including the ministry responsible for land matters), the Law Commission, pursuant to section 133(b) of the Constitution, empanelled a special Law Commission on the Review of Land – related laws.

The Malawi National Land Policy and the recommendations of the Special Law Commission differ, in some aspects, with what is contained in the existing legislation:

The Land Act does not define land. However, other Acts such as the Local Land Boards Act, Cap. 59:02 define land to include land covered with water, all things growing on land, buildings and other things permanently fixed to land. The special Law Commission is of the opinion that the definition is inadequate and proposes that there should be a provision in the Land Act which should define land as “the material of the earth regardless of the ingredients of which it is composed, whether soil, rock or other substance, including the surfaces covered with water, all things growing on that surface, buildings, other things permanently affixed to the land and free or occupied space for an indefinite distance upwards as well as downwards, subject to limitations upon the airspace imposed, and rights in the use of airspace granted, by law.”

The Land Act classifies land into three categories:

Public Land is defined as “all land which is occupied, used or acquired by the Government and any other land not being customary or private land and includes:

- a) Any land which reverts to the Government on the termination, surrender or falling in of any freehold or leasehold title under which any parcel of land concerned is held; and
- b) Notwithstanding the revocation of the existing orders, any land which was immediately before the coming into operations of this Act not Public land within the meaning of the existing orders.”

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

Under section 8 of the Act it is provided that all public land is vested in perpetuity in the President, while the Constitution in section 207 provides that all land is vested in the Republic. The special Law Commission has recommended an amendment to the section so that it reflects what is contained in the Constitution;

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

The special Law Commission recommends that the definition of private land should be “all land which is owned, held or occupied under a freehold title, a leasehold title or *as a customary estate* and is registered as such under the Registered Land Act or any other written law.”;

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

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

The special Law Commission recommends an extension to the definition as follows: “customary land means all land that falls within the jurisdiction of a recognized Traditional Authority and is held, occupied or used under the customary law of the area.”

Government Land The Malawi National Land Policy has introduced another category of land as Government land and the Special Law Commission recommends that Government land be defined as land acquired and privately owned by the Government and dedicated to a specified national use or made available for private uses at the discretion of Government.”

3.2 EXISTING POLICIES, LEGISLATION AND PRACTICES

The RPF draws its strength from legal instruments that exist in Malawi; broadly the Land Act and the Land Policy. These and other legislative instruments provide the basis and the legal platform for the conduct of land acquisition, compensation and resettlement of persons that have to be moved to pave way for development projects. The legislation and policies directly relevant to the ASWAp-SP are as follows:

3.2.1 The constitution of the Republic of Malawi, (1994)

The Constitution of the Republic of Malawi states that:

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

3.2.2 Land Policy (2002)

Malawi does not have a standalone written policy which guides land acquisition, resettlement,

loss of assets and impact on livelihood. However the Malawi National Land Policy has a few sections which briefly make reference to matters relating to land acquisition. The Malawi National Land Policy specifies the necessity of having provisions in the land law that would give the Government the opportunity to acquire any piece of land required for public services following guidelines such as –

- a) clearly spelling out or specifying the purposes for which Government may require land in order to prevent possible abuse of the power of eminent domain;
- b) revocation of leasehold rights granted on Government land to be used to enforce the implementation of expressed and implied development conditions and would be used as an alternative instrument for releasing Government land for development;
- c) payment of compensation in the event of the repossession of a leasehold interest on Government land to be limited to the negotiated value of unexhausted improvements made by the leaseholder and permanently attached to the land; and
- d) no compensation to be paid for the land when the private user rights granted as a result of the lease is terminated.

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

The Malawi National Land Policy emphatically dispels the popular notion that customary land has no value and stipulates that compensation valuation for customary land, at the time of acquisition by the Government, should be based on the open market value of the land and all improvements on the land.

The Malawi National Land Policy notes that the inadequacy of compensation is always a direct result of excluding certain items or qualities from the factors considered when determining value and delays in payment of compensation.

According to Section 4.11 the land policy ensures that security of land tenure can be guaranteed on an equitable basis to all citizens in accordance with the following:

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

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

3.2.3 The Environment Management Act, 1996 (Cap. 62:01)

The Environment Management Act (EMA) provides the basic legal and administrative framework for environmental planning and management including environmental impact assessment for development projects. The EMA provides for the protection, conservation, and sound management of the environment for sustainable utilisation of natural resources.

The Environmental Affairs Department is mandated to administer Environmental Impact Assessment under section 9 of the EMA. The guidelines for prescribed projects (projects for which Environmental Impact Assessment is mandatory) are provided for in section 24 of the EMA.

For the ASWAp-SP, the ESMF has been prepared to guide the process of environmental and social screening, impact assessment and preparation of environmental management plans. This RPF is prepared to guide the process of land acquisition and compensation for the PAPs. Both these frameworks are intended to supplement the EMA.

3.2.4 Town and Country Planning Act, 1988 (Cap 23.01)

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

- (a) in section 61, that no general right to compensation shall accrue in respect of any action, decision or plan taken or made under the Act that does not involve or amount to a taking or deprivation of property.

The special Law Commission is of the view that the provision is unconstitutional in the light of section 28(2) and section 44(4) of the Constitution and recommends a deletion of the provision;

- (b) section 63, that the Minister has power to acquire land on his own motion or on request from a responsible authority. The special Law Commission is of the view that this power should vest in the responsible authority;

- (c) section 65, that compensation shall be assessed by the Minister in accordance with the Second Schedule¹ to the Act. Further under subsection (6) of the section it is provided that an assessment of compensation by the Minister shall be final and shall not be subject to any appeal or review by any court. This subsection (6) is unconstitutional. The special Law Commission recommends deletion and substitution as follows:

“(6) A person aggrieved by an assessment of compensation made by a responsible authority under this section may appeal to the High Court within thirty (30) days from the date of the assessment”;

3.2.5 The Land Act, 1965 (Cap. 57:01)

The Land Act, 1965 provides the administrative legal mechanism for land resources management, delivery and acquisition. The Act defines land into the three categories of public land, customary land and private land.

Section 20 provides that *“in the event that the lessee surrenders the lease, such lessee shall be*

entitled to compensation in respect of the improvements effected upon the premises and such compensation is determined by the Minister". To avoid abuse of power the special Law Commission recommends that determination of compensation should be based on the unexhausted value of improvements.

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

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

3.2.6 The Monuments and Relics Act

The Act stipulates the proper management and conservation of monuments that are of importance both nationally and locally. It also provides for proper preservation of monuments in the event that there is a change in the use or development of land. This gives room for the authorities for monuments and relics to protect monuments under the provisions of the Land Act or the Lands Acquisition Act. The ASWAp-SP will have to be implemented in such a way that any acquisition, resettlement and compensation conform to section 18 of this Act.

3.2.7 Public Roads Act, 1962, (69:02)

The Act provides for the management of road projects in such a way that the different stakeholders involved, especially the local communities, are not adversely affected by the road projects. The Act also requires the processing of land acquisition, resettlement, and compensation issues in accordance with the provisions of the Land Act, for proper implementation of public roads projects.

Part two, Sections 44 to 50 of the Public Roads Act deal with compensation matters, for cases where land is required for the construction of new roads, temporary use for diversion during construction and rehabilitation works.

Section 44 states that "the owner or occupier of land "is entitled to compensation whenever his land or property has been affected by road construction works. The Act requires that the market value of the land and improvement on the land, at the time of valuation, shall be the basis for calculating compensation. However, the payment should be made before the land or property is acquired.

Section 47(1) gives powers to the owners of the land, affected by road construction, to present their claim in writing to the highway authority, stating the amount and basis of the claim.

In practice, not many people (particularly those in the rural areas) would be aware of such provisions. Hence ASWAp-SP has to adequately sensitize people in the areas proposed for development projects; and to conduct a census rather than wait for affected parties to submit claims.

Section 45 (1) (a) states that an occupier of customary land shall be entitled to reasonable

compensation, in respect of disturbance, after consultations with the chief of the area. The section also states that replacement land, given to PAPs, should be equally as fit for cultivation as the land of which he has been deprived.

Section 44 (2) (b) says that compensation for private land shall be based on the loss or damage faced by the claimant, arising from the damage to or destruction of his interest on the land, on top of other considerations. It is clear, from the two sections above, that the two sections 45 (1) (a) and 44 (2) (b) of the Act offer different values of compensation for private and customary land.

Section 46 of Act provides guidance on matters to be considered when assessing compensation as follows:

- (a) The market value of the land at the time of valuation;
- (b) Damage sustained at the valuation date;
- (c) Incidentals resulting from the change of residence or place of business; and
- (d) Any increase in the value of the land at the valuation date likely to accrue from the construction of the road.

Section 45 (2) (a) of the Act states that no compensation shall be paid in respect of improvements effected after the land was designated as a road reserve

The problem with this provision is that:

- (a) Where there is an existing, road people (especially in rural areas) have no way of telling where the road reserve ends although this may be technically defined in the Public Roads Act; and
- (b) Where a road does not exist on the ground, it may not be obvious to the people where the road will pass, although this may be indicated on physical development plans.

Hence it is highly recommended that ASWAp-SP follows the land acquisition and compensation procedures recommended in this RPF to conform to the internationally acceptable best practices.

3.2.8 Lands Acquisition Act, 1971 (Cap 58:04)

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

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

In section 5 of the Act, the Minister is required, to serve notice on people whose land is to be acquired. In the notice, to be published in the government gazette, the PAPs are given a period of two months, within which they have to submit their claims on the land. This ideally means

that no claim will be entertained after expiry of the two months, from the date the notice was published in the gazette. The implication is that a person who may not be aware of this requirement and who does not submit an application may not be compensated for the loss.

Under section 6, there is provision that the notice given may include a directive to yield up possession of the land within a specified period which should not be less than two months from date of service of the notice, however if there is urgency, such a period may be shorter. The special Law Commission recommends an insertion into the provision that the yielding up should only be after payment of compensation.

In Section 9, the Act provides for payment of fair compensation for any land acquired by the minister. The compensation can be paid as a lump sum or by instalments. *Section 10* says that assessment for fair compensation shall take into account the following:

- a) amount of money the person paid when acquiring the land;
- b) value of improvements to the land; and
- c) appreciation in the value of the land since the date of acquisition.

The Act gives power to the minister, responsible for land matters, to calculate the compensation, which is not subject to an appeal or review by any court. The Act is silent on any additional assistance to be given to PAPs to ensure that their standard of living in the new place is not worse than it was in their original homes. The Act does not lay the principles to be followed when people are displaced.

Giving absolute power to the minister, without any option to appeal on compensation calculation, deviates from the international practice, which requires that a grievance mechanism be established, to facilitate claims against unfair compensation.

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

3.2.9 The Forestry Act

The Act provides for the management of indigenous forests on public, customary, and private land. Section 46(a) states that no person shall cut, take, fell, destroy, uproot, collect and remove forest produce from a forest reserve, customary land, public land and protected forest area unless duly authorised to do so. In accordance with this section therefore, construction of infrastructure services in areas that are protected by the Forest Act will not be allowed.

3.3 THE WORLD BANK'S SAFEGUARD POLICY OP 4.12

The World Bank has put in place the following policy objectives relating to involuntary resettlement:

- (a) Involuntary resettlement should be avoided where feasible, or minimized, exploring all viable alternative project designs;
- (b) Resettlement activities should be conceived and executed as sustainable development programs, providing sufficient investment resources to enable the persons displaced by the project to share in project benefits. Displaced persons should be meaningfully

consulted and should have opportunities to participate in planning and implementing resettlement programs; and

- (c) Displaced persons should be assisted in their efforts to improve their livelihoods and standards of living or at least to restore them, in real terms, to pre-displacement levels or to levels prevailing prior to the beginning of project implementation; whichever is higher.

The bank has provided the following guiding principles in order to achieve the objectives provided:

- (a) Preparation of a resettlement policy framework and resettlement action plan that ensures that displaced people are :
- Informed about their options and rights pertaining to resettlement;
 - Consulted on, offered choices among, and provided with technically and economically feasible resettlement alternatives;
 - Provided prompt and effective compensation at full replacement cost for losses of assets attributable directly to the project;
 - Provided assistance (such as moving allowances) during relocation;
 - Provided with residential housing, or housing sites, or, as required, agricultural sites for which a combination of productive potential, locational advantages, and other factors are at least equivalent to the advantages of the old site;
 - Offered support after displacement, for a transition period, based on a reasonable estimate of the time likely to be needed to restore their livelihood and standards of living;
 - Provided with development assistance, in addition to compensation such as land preparation, credit facilities, training, or job opportunities; and
 - Provided with an opportunity to resolve disputes through a grievance resolution mechanism.

The policy also advocates that:

- Particular attention should be paid to the needs of vulnerable groups among those displaced, especially those below the poverty line, the landless, the elderly, women and children, indigenous peoples, ethnic minorities, or other displaced persons who may not be protected through national land compensation legislation;
- Implementation of resettlement activities should be linked to the implementation of the investment component of the project to ensure that displacement or restriction of access does not occur before necessary measures for resettlement are in place. These measures include provision of compensation and of other assistance required for relocation, prior to displacement, and preparation and provision of resettlement sites with adequate facilities, where required. In particular, taking of land and related assets may take place only after compensation has been paid and, where applicable, resettlement sites and moving allowances have been provided to the displaced persons;
- Displaced persons and their communities, and any host communities receiving them, are provided timely and relevant information, consulted on resettlement options, and offered opportunities to participate in planning, implementing, and

monitoring resettlement. Appropriate and accessible grievance mechanisms are established for these groups;

- In new resettlement sites or host communities, infrastructure and public services are provided as necessary to improve, restore, or maintain accessibility and levels of service for the displaced persons and host communities. Alternative or similar resources are provided to compensate for the loss of access to community resources (such as fishing areas, grazing areas, fuel, or fodder); and
- Patterns of community organization appropriate to the new circumstances are based on choices made by the displaced persons. To the extent possible, the existing social and cultural institutions of resettlers and any host communities are preserved and resettlers' preferences with respect to relocating in pre-existing communities and groups are honoured.

The policy also sets the following guiding principles on which to base the criteria for determining eligibility for compensation, resettlement and rehabilitation assistance measures for PAPs:

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

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

Persons covered under sub-paragraph (iii) above are to be provided with compensation for the improvements on the land. In addition, they have to be given the necessary assistance, for example, to relocate to a new area, to satisfy the provisions set out in this ASWAp-SP, if they occupy the project area prior to the established cut-off date. The IFC guidelines also promote this concept and encourage payment of compensation on improvements and provision of assistance to people without recognized rights to land.

Communities including districts, towns, wards and villages permanently losing land, resources and/or access to assets shall be eligible for compensation. Compensation to communities will include for public toilets, market places, car parks and health posts or other

appropriate compensation chosen by the community. Compensation measures shall ensure that pre-resettlement socio-economic status of the communities are restored or improved.

3.4 GAPS BETWEEN MALAWI LEGISLATION AND WORLD BANK O.P.4.12

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

- (a) The World Bank advocates payment of compensation for “illegal occupants” of land (e.g. for those persons who develop in road reserves, etc.). The Malawi legislation does not;
- (b) The World Bank O.P.4.12 makes no distinction on the categories of land when considering compensation after land acquisition. In the case of Malawi legislation the current value of customary land, is regarded as arbitrarily lower than private land. However this discrepancy has already been recognized as pointed out in the Malawi National Land Policy; and
- (c) The World Bank prefers land for land compensation whilst in the Malawi legislation this does not clearly come out although customary law practices preferred this.

The table below compares the Malawian legal framework and OP 4.12. Where there is a difference between OP 4.12 and Malawian law, the former shall prevail.

Comparison of Malawi's Legal Framework and the World Bank Operational Policy 4.12

Category of PAPs/Type of Land	Malawi Legislation		World Bank Provision
	Name of Legislation Law	The Provision	
Land owner/occupier of land	Public Roads Act Cap. 69:02	For private land, cash compensation based on loss or damage (suffered by the claimant); arising from damage to or destruction of improvements on land.	Owners of permanent buildings are entitled to in-land compensation at full replacement cost including labour and relation expenses, prior to displacement. Entitlement to compensation for crops. May be entitled to replacement land and income must be restored to at least pro-project levels.
Land owner/occupier of land	Public Roads Act Cap. 69:02	For customary land, PAPs are entitled to reasonable compensation in respect of disturbance. May include compensation for other disturbance as follows- Land for land where available. When land is not available reasonable cash compensation in respect to improvements and other disturbances such as- (i) where he moves his residence or place of business; If no alternative land is available to him and if the land remaining available to him for agricultural purposes is not an economic unit; where alternative land given to him is likely to involve a loss in terms of money, materials or work.	World Bank generally recommends land for land compensation. Other compensation is supposed to be at replacement cost. In the case of owners of temporary buildings, they are entitled to in-land compensation or cash compensation at full replacement cost including labour and relocation expenses, prior to displacement.
Land owner/occupier	Public Roads Act Cap. 69:02	S.44 No compensation for any improvements on land in road reserve.	Persons are entitled to compensation regardless of the legal or illegal recognition of their occupancy.

		No compensation for squatters unless they occupy the land uninterrupted for a period of over 7 years.	Persons are entitled to compensation regardless of the legal or illegal recognition of their occupancy. In the case of owners of temporary buildings, they are entitled to in-land compensation or cash compensation at full replacement cost including labour and relocation expenses, prior to displacement.
Land owner/occupier	Lands Acquisition Act Cap. 58:04	S.10 Compensation agreed to between the parties or the Minister to assess fair compensation taking into account- (a) the amounts paid by the person when acquiring the land; (b) value of unexhausted improvements to the land made at the expense of the person entitled to the land; and (c) any other appreciation in the value of the land since acquired by the claimant. (d) Compensation not to exceed market value.	Owners of permanent buildings are entitled to in-land compensation at full replacement cost including labour and relation expenses, prior to displacement.
Land owner/occupier	Land Act, Cap. 57	Reasonable cash compensation to the affected persons for loss of land.	Owners of permanent buildings are entitled to in-land compensation at full replacement cost including labour and relation expenses, prior to displacement.
Land owner/occupier	Customary Law Practices	Land for land compensation	- World Bank generally recommends land for land compensation. Other compensation is supposed to be at replacement cost. - Owners of permanent buildings are entitled to in-land compensation at full replacement cost including labour and relation expenses, prior to displacement

3.5 BRIDGING THE GAPS

The underlying principle in this Framework is that compensation should be made following the Constitutional provisions and where these provisions are not adequate; the World Bank's Operational Policies should be applied. Compensation should be fair and equitable and the PAPs should not, in any way, be placed in a worse position socially and economically, than their position before their land was acquired for the ASWAp-SP roads component.

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

- (a) Compensation for customary land, at the time of acquisition by Government, should be based on the open market value of the land and all permanent improvements on the land as it is provided for in the Malawi National Land Policy;
- (b) Compensation payments should be paid to all categories of PAPs, including illegal occupants provided they satisfy the conditions set out in this RPF; and
- (c) Compensation in form of land for land, for those that have been displaced, should be a preferred option. Compensation for all other loss and property should be paid as well in line with the provisions of this Framework.

Appendix 4.1 provides a matrix for comparison between the Malawian Legislation and the World Bank OP 4.12 with regard to compensation. The higher of the two provisions in the matrix should be applied to ensure that PAPs are adequately compensated for loss incurred through the process of displacement. It is to be noted, however that more comprehensive details should be provided in the preparation of the RAPs. In view of the foregoing, all land acquisitions by the ASWAp-SP should be done in line with this RPF and should be subject to the Laws of Malawi and the Bank's OP4.12.

CHAPTER 4: LAND ACQUISITION AND OBJECTIVES OF RESETTLEMENT PREPARATION AND IMPLEMENTATION

4.1 LAND ACQUISITION PRACTICES

4.1.1 Previous and Current Land Acquisition Practices

Generally in the past in the rural areas when Government wanted to build schools, health centres, etc. the beneficiary community coordinated by the traditional leaders would provide the land. The affected persons would be allocated alternative land.

Where the development involves matters such as road construction or such other development which goes beyond the rural community, the procedures laid down in the Public Roads Act or the Land Acquisition Act would be followed.

There is a new trend growing that even for the development at rural community level, PAPs expect compensation from the executing agencies of the development project, including from Government.

4.1.2 Proposed Land Acquisition Mechanism

This RPF for the proposed roads component of the AWAp-SP advocates for all measures to minimize the impacts of physical and economic displacement of people. Therefore where involuntary acquisition of land is unavoidable the Constitutional provisions contained in sections 28 and 44(4) should be the guiding principles and further the ASWAp-SP shall:

- (a) Initially endeavour to utilize available freehold or public land;
- (b) Seek voluntarily donated land, sufficient for the purposes of the project;
- (c) Negotiate acquisition of land suitable for implementation of the project activities using agreed compensation plans; and
- (d) As a last resort only, acquire land through involuntary means following the procedure outlined below:
 - Where the suitable land for a specific project has been identified by a competent authority, the competent authority shall initiate negotiations with the affected persons including the traditional leaders of the area, the owner or occupier of the land and the District Commissioner or his due representatives;
 - There shall be close coordination and cooperation, among public institutions and other relevant stakeholders, whenever necessary, in order to use the various expertise and experiences in the implementation of the project;
 - The implementing agency (in this case the Roads Authority), in consultation with the developer, shall prepare Resettlement Action Plans (RAP) that comply with the provisions of this RPF for implementation of land acquisition, resettlement and compensation.

- The Government or the implementing agency shall serve notice on the PAPs, clearly explaining the purpose of the acquisition, the area of land required and the owner's or occupier's right to compensation in accordance with the existing legislation and policies;
- In the case of customary land, the competent authority shall ascertain from the traditional leaders, the persons who have rights over the affected land for positive identification and compensation to correct persons;
- In the case of private land, the competent authority shall ascertain the correct registered owner of the land from the Lands Registry;
- The competent authority shall commission a survey on the land to be acquired. Thereafter a RAP shall be prepared and certified accurately showing:
 - (i) The land to be acquired;
 - (ii) Names of owners or occupiers of the land, as far as they as they can be ascertained. In the case of customary land, the name of the person who is the holder of the right over the land as ascertained by the traditional leaders and other bona fide local residents;
 - (iii) Names of the traditional and community leaders or representatives to assist in the process of land acquisition and resettlement;
 - (iv) The estimated magnitude of impacts relative to the need for resettlement or compensation and valuation of assets for the compensation;
 - (v) Financial records to be maintained by the competent authority, District Assemblies and Ministry of Economic Planning and Development to permit calculation of the final cost of resettlement and compensation per person or household. Each person receiving compensation will have a dossier containing:
 - The person's detailed identification information, including name, date and place of birth, next of kin, marital status etc;
 - Number of persons she or he claims as household or homestead dependants;
 - The amount of land available to the person or household when the dossier is opened;
 - Assets – including structures, resources, crops, etc.; and
 - Socio-economic status.

Each time land is used or acquired by the competent authority, there is need to update the dossier in order to determine if the person or household/homestead is being affected to the point of economic non-viability and eligibility for compensation or resettlement or its alternatives.

The dossiers will provide the foundation for monitoring and evaluation, as well as documentation of compensation agreed to, received and signed for;

- (vi) Additional information will be required for individual's eligibility for resettlement or compensation. This information will include:
 - Level of income and of production;
 - Inventory of material assets and any improvements made on the land; and
 - Debts.
- (vii) Proposed compensation offers and draft agreements to be signed by the affected persons and the developer;
- (viii) Details of alternative land (if applicable) inclusive of ancillary support services such as transport for physical resettlement, provision of housing, provision of crop starter packs and food support or any other relevant assistance that may be required;
- (ix) Details of resettlement after-care and assistance, where appropriate;
- (x) Available employment opportunities for the PAPs to participate in the project activities; and
- (xi) Mechanisms for monitoring and evaluation.

Copies of the RAP will require to be cleared by the World Bank and to be deposited with the office of the District Commissioner or the Chief Executive, as the case may be, of the District Assembly and with the Traditional leaders of the area affected.

The land acquisition and compensation procedures shall ensure that persons affected either physically or economically by the Project, maintain or improve their livelihood.

4.1.3 Voluntary Land Contribution with Compensation

Voluntary land contribution with compensation refers to a case whereby individual or communal owners agree to provide land for project-related activities, for negotiated compensation in return. The calculation for compensation due to PAPs shall be done in accordance with the applicable legislation and policies and as shown in the entitlement matrix as presented in Appendix 4.1

4.1.4 Voluntary Land Contribution without Compensation

This refers to a situation where individual or communal owners choose to voluntarily contribute their land for use in a project without seeking compensation. Where such donation of land occurs, arrangements should be made to ascertain that:

- (a) The land is indeed being given voluntarily and that there is sufficient evidence and documentation to support this;

- (b) The donor is the legitimate owner of such land or pieces of land;
- (c) The donor is fully informed of the nature of the project and implications and consequences of donating the land; and
- (d) If there is any person using the land, the person is entitled to compensation.

The competent authority however should ensure that the following requirements are fulfilled:

- An assessment is carried out to ascertain that the affected person does not suffer substantial loss, affecting his or her economic viability as a result of the donation;
- In the case of customary land, confirmation in writing has been made by traditional leaders and any beneficiary owners that the land is free of claims or encumbrances from third parties; and
- Deeds of donation are submitted, duly executed and witnessed by a person authorized under the Oaths and Affirmations Act and declarations as required by the Lands Acquisition Act.

Any voluntary contribution of land without compensation should be accompanied by a consent form, which should contain the name(s) of the land donor(s) and details of the contribution, including the type, size, location, specified period of use, etc., as appropriate. The form should be signed by the land donor(s), including the male and female heads of the household involved or any person who has rights over the land.

4.1.5 Involuntary Acquisition of Land

Involuntary acquisition of land and assets thereon and consequent resettlement of persons should, unless absolutely necessary, be avoided.

Where involuntary land acquisition, resettlement, loss of assets and impact on livelihood is unavoidable then it shall be minimized to the greatest extent possible.

Any plans for involuntary acquisition of land and other assets; and the provision of compensation thereof shall be done in consultation with the affected persons, District Commissioner and Traditional Leaders; and in a manner that ensures minimum disturbance.

The PAPs shall participate throughout the various stages of planning and implementation of the land acquisition, compensation and resettlement plans and processes.

Prior to the preparation of the Resettlement Action Plans, the persons to be displaced shall be informed of the provisions of this Framework and their entitlements at public meetings.

The relevant legislation such as the Public Roads Act and Lands Acquisition Act set out in detail the procedures for acquisition of land by Government for public purposes.

4.2 OBJECTIVES OF RESETTLEMENT PREPARATION AND IMPLEMENTATION

Resettlement of persons affects all parties including the implementing persons and institutions, the displaced, the host communities and the dependents of both the displaced persons as well as the host communities. People are usually unwilling to move from a location where they have lived for a long time; and to leave the acquaintances that they have developed over that period. Therefore in order to effectively implement the resettlement and compensation activities, there is need to carefully and tactfully prepare for the resettlement process.

The objectives of resettlement preparation and implementation are to:

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

CHAPTER 5: PREPARING AND APPROVING RESETTLEMENT PLANS

The screening process, developed in this framework is consistent with the Bank's safeguard operational policy OP 4.12, for Involuntary Resettlement. This policy requires that all Bank-financed operations are screened for potential impacts, and that the required compensation work is carried out on the basis of the screening results. The framework therefore, while adopting and adapting some of the local experiences and the provisions of local legislation, is based on the World Bank's Operational Policy (OP 4.12) on involuntary resettlement, which emphasizes the following principles:

- Avoiding or minimizing involuntary land acquisition, resettlement, loss of assets and impact on livelihood where feasible; and exploring all viable alternatives before resorting to involuntary resettlement.
- Where involuntary resettlement and land acquisition, resettlement, loss of assets and impact on livelihood is unavoidable, assistance and sufficient resources should be provided to the PAPs with the view to maintaining and/or improving their standards of living, earning capacities and production levels.
- Encouraging community participation in planning and implementing land acquisition, compensation and/or resettlement; and provision of assistance to PAPs, regardless of the legality of their land rights or their title to land.

The project activities under the ASWAp-SP will involve the spot improvement, rehabilitation and sealing of secondary, tertiary, district and community roads. Routine maintenance works will be carried out on the rehabilitated roads.

These activities may require land acquisition, resettlement or may lead to loss of assets and impact on livelihood. They may also lead to people's denial or restriction of access to land and natural resources, services and social amenities. In this case, resettlement action plans, consistent with OP 4.12 and this RPF, must be prepared. This Chapter presents the screening processes for sites for the proposed project activities under the new rural roads component of the ASWAp-SP.

5.1 THE SCREENING PROCES FOR SITES FOR PROPOSED PROJECT ACTIVITIES

Once project roads are selected by the Roads Authority (RA) and Local Councils (LC); and approved by the MTPW and MoAFS, land acquisition and resettlement must start with the screening process, which includes identification and analysis of possible and alternative sites for project implementation.

The screening process should also include, among other things, a baseline study and census to determine the level of impact to PAPs assets; and to establish the cut-off date. The screening criteria for sites for the ASWAp-SP activities are provided in Appendices 5.1 and 5.2.

The screening process is a very important component of several activities that contribute to the preparation of the RAPs; or the abbreviated resettlement action plans (ARAPs). Preparation and submission of the RAPs or ARAPs to the relevant authorities comprises of the following steps:

Step 1

The relevant Ministries (Ministries of Transport and Public Infrastructure; Agriculture, Irrigation and Water Development; and Natural Resources, Energy and Environment) will prepare the project activities, to be undertaken in the targeted districts, for the rehabilitation or improvement of the proposed roads. The project activities should be approved by the MTPW and MoAFS.

Step 2

A Project Management Team (PMT), represented by all the sectors in the ASWp-SP must be appointed by the District Councils. As far as possible the structures already existing at the District level must be used. Efforts should be made to ensure that the PMT is composed of at least 40 per cent by women.

Step 3

Using participatory methods, the Roads Authority Regional Engineers (as proposed in the implementation arrangements for the project) in consultation with PMT and the VDC within the local boundary area will identify the required piece of land, using the screening criteria given in Appendix 5.1. At this stage the cut off date will be established.

Step 4

The PMT will request its service providers to carry out a socio economic survey, a census; and to collect other information about the land and the area. This will be done to identify the potential PAPs (focusing on the individual household and vulnerable groups) and; to calculate their incomes, and assets, as the first step in the preparation of the RAP's or the ARAPs.

Step 5

On completion of the socio-economic survey and the baseline census, the PMT will identify a service provider to carry out valuation of the affected assets and determine compensation values.

Step 6

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

For construction activities that do not have any resettlement issues and do not trigger OP4.12, the provisions of this RPF do not apply and therefore the PMT should refer to the ESMF. Approved compensation costs that do not entail resettlement can be effected at this time.

For construction activities that require resettlement, the screening process for resettlement sites presented in 5.2 below will apply.

5.2 SCREENING PROCESS FOR RESETTLEMENT SITES

Having identified the project sites; and having established the cut off date for the activities for which compensation and resettlement cannot be avoided, OP4.12 and the Lands Acquisition Act and other relevant legislation shall apply. However, the ASWAp - SP activities are not expected to require resettlement of people to new sites.

Step 1

The PMT in consultation with the VDC will notify the PAPs about the project activities; and the impending compensation and resettlement.

Step 2

The Roads Authority will request for suitable land, for resettlement from Traditional Authority.

Step 3

RA, PMT, VDC, PAPs and the local community will assess the identified land for suitability, using criteria given in Appendix 5.2.

Step 4

Where it is determined that the site is suitable, based on the screening criteria, the screening process shall continue at Step 6 below.

Step 5

If the site does not meet the screening criteria in Appendix 5.2, go to step 2 and repeat the process.

Step 6

Where it is determined that the site is suitable for resettlement, the ASWAp – SP will prepare, or procure consultancy services for the preparation of RAPs and ARAPs as the case may be for each parcel of land that is proposed for compensation and resettlement. The format and main contents of the RAPs and ARAPs are presented in Appendix 5.3 and 5.4

Where the impacts on the entire displaced population are minor, (i.e. affected people are not physically displaced and less than 10% of their productive assets are lost); or fewer than 200 people are displaced, the Bank may approve the preparation of an ARAP.

The World Bank OP 4.12 article 25 and Annex A provides the basic requirements and contents of the RAP. Where any element is not relevant to the PMT's circumstances, it should be noted in the RAP.

Step 7

The PMT should forward the RAP's or the ARAP's, together with the modified designs, to the respective District Assemblies for scrutiny and approval, in compliance with the applicable by-laws, sectoral requirements as well as the World Bank policy requirements.

The World Bank must provide final clearance and approval of the RAP's or ARAP's, which should be in compliance with the applicable by-laws, sectoral requirements as well as the World Bank Policy requirements.

5.3 PUBLIC CONSULTATION AND PARTICIPATION

Projects involving the community owe their success to community participation and involvement, from the planning stage to implementation. Hence public consultation and community participation shall be mandatory for all projects requiring land acquisition, compensation and resettlement for the ASWAp-SP road component 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 ASWAp-SP activities and structures. The affected persons must be made aware of:

- (a) Their options and rights pertaining to resettlement and compensation;
- (b) Specific technically and economically feasible options and alternatives for resettlement sites;
- (c) Process of and proposed dates for resettlement and compensation;
- (d) Effective compensation rates at full replacement cost for loss of 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 would 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 resettlement 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.

5.4 APPROVAL OF THE RESETTLEMENT ACTION PLANS

Once the RAPs have been prepared, they must be forwarded together with the socioeconomic surveys, to the District Councils for scrutiny and approval. Once satisfied with the RAPs, the District Councils will forward them, together with their recommendations, to the Ministry of Lands, Housing and Urban Development for their endorsement and approval. The World Bank will also have to endorse the RAPsto ensure compliance with the Bank's operating procedures.

CHAPTER 6: AFFECTED POPULATION AND LIKELY CATEGORIES

6.1 ESTIMATION OF AFFECTED POPULATION

For purposes of compensation and resettlement, it is very important that the correct numbers of displaced persons are established. This will ensure that all the affected persons are compensated for and therefore the number of complaints will be minimal. At the same time paying compensation to opportunists will be avoided.

The following are steps that need to be followed in order to determine actual numbers of people to be displaced:

- a) In close liaison with the Roads Authority, determine the alignment of the road in question and the extent of the works, taking every precaution to avoiding human settlements as much as possible.
- b) Clearly demarcate the recommended way leaves and road reserves as prescribed by the Roads Authority or as stipulated in the Town Planning Guidelines and Standards, in the case of road reserves.
- c) Demarcate the area of land the works will occupy.
- d) Carry out a physical count (census) of all the persons and assets falling within the demarcated area to be occupied by the works. This will give the actual numbers of affected persons and assets, on which calculations of compensation amounts will be based. The data on affected persons should be disaggregated into the likely categories of displaced persons as described in Section 5.3. This segregation will assist in identifying special needs of the different categories of the displaced persons.

Where an estimate is required for purposes of preparing budgets, and where carrying out actual head counts of the affected persons might not be practically feasible, use of the population density of a particular area, obtained from the National Statistics Office, to estimate the total number of persons to be affected may suffice. This will give a fair estimate of the total population to be displaced from an area demarcated for the road construction.

In both the two methods given above, it may be helpful to cross check the number of persons with the most recent national statistical records.

6.2 BENEFICIARIES ELIGIBILITY CRITERIA

The rural communities in Malawi still maintain strong extended family and interdependence ties and generally prefer to live in close proximity to one another. In general, rural families in Malawi live in sets that co-reside, sharing production, consumption and domestic farming services on a regular and continuous basis. Therefore it is necessary that efforts should be made to preserve their socio-cultural fabric and economic structures upon which they generally depend for survival.

Alignments of the proposed roads should avoid displacement of people or should endeavour to keep displacement of human settlement to a minimum. Therefore the widening of roads in

densely populated areas should be limited to the extent necessary for safety concerns. At the same time resettlement should endeavour to minimize disruption the socio-cultural fabric and economic dependence of the affected communities. Hence, unless otherwise preferred by the displaced communities and families through a participatory process, special effort should be made to resettle indigenous communities and families as entire communities. Where feasible, relocation of affected persons should be within the precincts of the existing settlements.

Identification of persons eligible for compensation and resettlement in a particular area will be on the following criteria:

- (a) person with homes, farmland, structures or other assets within the proposed road reserve or way leave of any infrastructure proposed for construction or rehabilitation;
- (b) persons dependent on displaced families or persons in (a) above. These may include any member of the household whether men, women, children, dependent relatives, friends and tenants;
- (c) vulnerable individuals who may be too old or ill to fend for themselves;
- (d) members of the household who cannot reside together because of cultural rules, but depend on one another for their livelihood;
- (e) members of the household who may not eat together but provide house keeping or reproductive services, critical to the family's maintenance; and
- (f) persons who may not live together with the rest of the displaced family, for reasons such as polygamy.

6.3 LIKELY CATEGORIES OF DISPLACED PERSONS

During the process of compensating and resettling the displaced, there is need to ensure fairness and equity among the beneficiaries with diversified needs. This entails making sure that the vulnerable and the voiceless are not left out. Therefore, for the purposes of this policy framework, the categories of persons likely to be affected include but are not limited to:

Unmarried Women or Female Headed Households

Unmarried women may depend on sons, brothers, any member of the family or property/business that might be displaced by this project. Resettlement and compensation considerations for the ASWAp-SP should allow for such persons.

The Elderly

Elderly persons usually depend on subsistence farming, often benefiting from assistance from family members for daily needs as well as cultivating their farms. The economic and social welfare of these people may be compromised, as their bread winner moves to a distant area due to resettlement by the ASWAp-SP. This group of people therefore, should be adequately compensated to ensure that their means of livelihood is promoted and maintained.

Aids Affected and Chronically ill Persons

In Malawi, high percentages of mostly poor people are either living with the HIV or are terminally ill with Aids. Some of these people are beneficiaries of assistance from

various health programmes. Resettlement may isolate these people from those that are taking care of them and from the health programmes that they are now able to access. In the assessment of affected persons for compensation and resettlement, under the proposed ASWAp-SP, the needs of this group of people should be given special consideration.

Orphans and Child Headed Households

The AIDS pandemic has created a large number of children without parents. These children may be divided into three categories. There are those children too young to go to school and those that are able to go to school. These two categories often depend on family members or relatives. The third category consists of children who, for some reason or another, cannot go to school but take care of their younger brothers and sisters. All these categories need some of assistance that will enable them earn a living. Some of these children depend on government health programmes and others engage in small business activities including begging from business enterprises and persons that might be displaced by this project. Resettlement and compensation should adequately provide for these various groups of children in form of paying for their rehabilitation. Where necessary this should include training in various useful vocational skills. Placing them in children's care homes or children's charities could also be one way of adequately compensating them.

Small-Scale Farmers

Small-scale farmers, when moved from places where they have been farming for several years, may find it difficult to open up new farms in an area that has thick vegetation, grass and trees. Labour costs for opening up new farms should be given to them through the Resettlement Action Plan. Prior to opening of new farms, the requirements of the environmental and social management framework must be satisfied.

People with Disabilities

People with disabilities may be attached to a particular service centre. Others may be too incapacitated to build a new home and start earning a living on their own. Their special needs should be adequately provided for.

Local leaders and District Assembly officials will verify eligibility of beneficiaries and assume responsibility of vacated lands.

The categories given above may not cover all types of affected persons. In addition, the categories are not mutually exclusive. It is important therefore that the ASWAp-SP activities should have well prepared and comprehensive resettlement and implementation action plans that would benefit all the categories of affected persons in a fair manner, through the following and other actions as may be appropriate:

- (a) Quick decisions and rapid action on the resettlement process to assist the affected persons timely;
- (b) Both individual and collective consultation;
- (c) The affected persons should be given the opportunity to participate or to work in the project activities;

- (d) Alternative subsistence farming plots should be identified and surveyed (following procedures and standards set forth by the authorities responsible for land, surveys and environment) and developed and made available to those losing land;
- (e) Compensation for loss of crops and trees should be determined at the time of re-location or construction and paid as soon as possible thereafter;
- (f) Transitional support, during construction and re-establishment, where appropriate, should be given to those moved from their land;
- (g) Resettlement should be aimed at improving their livelihood;
- (h) Monitoring of the resettlement process to ensure that resettlement and compensation is benefiting all the affected persons to improve their livelihoods, in comparison with the pre-resettlement conditions; and
- (i) Technical and financial assistance should be made available to them should they wish to open up income generating activities or to use the grievance mechanism described in Chapter 9.

CHAPTER 7: ASSET VALUATION METHODS AND ENTITLEMENTS

7.1 CURRENT ASSET VALUATION METHODS

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

The Ministry of Lands, Housing and Urban Development (MLHUD), uses Compensation schedules to determine values for loss of assets due to implementation of projects. Currently there are three types of compensation schedules based on type of assets affected. These schedules are used to determine compensation for:

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

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

7.1.1 Valuation of land

The MLHUD is responsible for carrying out the valuation of land. The owner is identified with the help of the Traditional Authority or village headman; or title documents are used as evidence or proof of ownership for leased assets.

Values for affected lands are determined by taking into account the surface area and location of the land. The market value of similar land, in the same location, is used to calculate the compensation value.

7.1.2 Valuation of physical assets

The MLHUD is responsible for carrying out the valuation of physical assets. The owner is identified with the help of the Traditional Authority or village headman; or title documents are used as evidence or proof of ownership for leased assets.

Values for affected buildings are determined by taking into account the construction materials used, floor /surface area covered, age and location of building or property. The market value of a similar building, in the same location is used to calculate the compensation value based on 'Open Market Value'.

7.1.3 Valuation of field crops and fruit/plantation trees

The procedure for valuing affected crops and fruit/plantation trees is based on pre-determined unit prices. The valuation takes into account the type of crop the yield level (high, medium or low yield variety), the expected yield and the produce unit price. The total value is arrived at by multiplying the yield (e.g. Kg/Ha) with the pre-determined produce unit price (Kwacha/Kg.) and the area of land (Ha).

7.1.4 Valuation for forest trees (indigenous and exotic species)

Trees (both indigenous and exotic) are valued depending on the type (species) of tree, measured diameter at breast-height (1.3m high) and "market price" in Kwacha per cubic

metre. The schedules were compiled with the assistance from the Ministry responsible for Agriculture (for field crops and fruit/plantation trees) and the Department of Forestry (for forest trees, indigenous and planted tree species).

7.2 PROBLEMS WITH THE CURRENT VALUATION SYSTEM, PRINCIPLES AND METHODS

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

- (a) loss of socio-economic benefits such as income generating opportunities is not included in the valuation;
- (b) Market prices used for field crops & fruit/plantation trees as well as forest trees are not always up to date and therefore the PAPs are unfairly compensated for them;
- (c) Valuation of field crops & fruit/plantation trees as well as the forest trees does not take into account the costs of developing new land to reach the same productive potential as the old piece of land;
- (d) Valuation for physical assets does not take into account the amount of money that would be required to put up similar physical structures. This results into the affected persons being unable to put up new structures that are equal to or better than the old ones;
- (e) Valuation methods do not provide for any assistance, for the transition period, to the affected persons;
- (f) The system has no consideration for gender and the disadvantaged groups, particularly widows, disabled persons, aged and school children;
- (g) The valuation does not take into account the costs of developing the new places where the affected persons may resettle;
- (h) The system does not consider the social problems PAPs may face in the new places;
- (i) The system does not assist PAPs to find new land for resettlement or farm development. However PAPs are given the choice between money or land options;
- (j) Calculation of compensation value of affected assets is done without the involvement of the PAPs;
- (k) Key stakeholders and experts from other Ministries such as Ministry responsible for agriculture and forestry are involved to contribute their expertise at the initial development of the pricing schedules. However, it takes a long time for the Ministry to update the price schedules;
- (l) The District Commissioners do not always consult the Ministry or PAPs when determining compensation values; and
- (m) PAPs are allowed to take away whatever they can from demolished structures.

7.3 RECOMMENDED VALUATION METHODS

The valuation methods being recommended for the ASWAp - SP are an improvement on the current methods. The following is a summary of the recommended methods.

7.3.1 General consideration

Compensation in kind should be preferred, if the loss amounts to more than 20% of the total loss of subsistence assets.

For cash payments, compensation will be calculated in Malawi Kwacha adjusted for inflation. For compensation in kind; items such as land, houses, other structures, building materials, seedlings, agricultural inputs and financial credits for equipment should be included. Assistance should include allowances for transfer, transportation and labour. An example of a schedule for preparing labour costs for activities on replacement land is given in Appendix 7.1. Table 7.2 gives an example of a schedule that can be used to determine monetary compensation for land use.

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. Cash lump sum payments have other disadvantages in that the recipient may use the funds for purposes other than for resettlement. These are some of the reasons why compensation in-kind would 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 Ministry of Transport and Public Infrastructure and respective district councils.

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

7.3.2 Valuation for physical assets

The MLHUD or a qualified private valuer will value all affected buildings, bare land and other structures based on current market prices. Compensation for the affected physical assets will be paid by replacing huts, houses, farm outbuildings, latrines and fences. Any homes lost will be rebuilt on the acquired replacement land. However, cash compensation should be available as a preferred option for structures such as extra buildings lost, that were not the main house or a house in which someone is living. The applicable replacement costs for construction materials will be used to calculate the values. Alternatively, compensation will be paid in-kind for the replacement cost without depreciation of the structure. The ASWAp-SP should survey and update construction material prices on an ongoing basis. Appendix 7.3 provides a typical schedule for calculation of compensation for buildings and structures.

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

Replacement values will be based on:

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

7.3.3 Valuation of Cultural Property and Sacred sites

. Cultural property and sacred sites include but are not restricted to altars, initiation centres, ritual sites, tombs and cemeteries. They also include such sites or places/features that are accepted by local laws including customary practice, tradition and culture as sacred

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

7.3.4 Valuation for field crops

The Ministry of Agriculture, Irrigation and Water Development shall take the lead in the valuation of field crops, vegetable gardens, and fruit/plantation trees affected by the project. Valuation will be done based on a combination of staple foods and cash crops. The unit price (Kwacha per Kilogram) of staple crop shall be taken as the highest market unit price over the past 3 years. This unit price of the commodity, multiplied by the yield (Kg/Ha), and multiplied by the total area (Ha) will give the compensation value for the crop. The yield (Kg/Ha) shall be the high yield for that particular crop variety as determined by the Ministry of Agriculture, Irrigation and Water Development (see Appendix 8.4 for an example of the schedule).

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

All agricultural labour activities are included for two reasons. The first reason is to ensure uniformity. All land labour will be compensated for at the same rate. Secondly, it is difficult to forecast when, during the growing season, a farmer might need to give up his/her land. Thus, the land compensation covers all investments that a farmer will make.

In certain cases, assistance may be provided to land users, in addition to compensation

payments. For instance, if a farmer is notified that his/her land is needed after the agriculturally critical date (critical date, may be different in different parts of the district) when he/she 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 he/she can pay for sowing, weeding and harvesting.

7.3.5 Valuation for vegetable gardens

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

7.3.6 Valuation for Fruit/plantation trees:

Trees are primarily important as a source of:

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

The valuation of fruit/plantation trees shall be based on the current compensation schedule that takes into account factors which include: type of fruit/plantation tree species, estimated average yield of a mature tree and unit price (MK/Kg). The unit price should be based on the current market price of the type of fruit grown and should be calculated according to the schedule given in Appendix 7.4.

Given their significance to the local subsistence economy, fruit trees will be compensated on a combined replacement value. Fruit trees such as mangoes and orange trees commonly used for commercial purposes will be compensated at replacement value based on historical production statistics. If households are resettled, they will be compensated for the labour invested in the trees they leave behind. This assumes that they will continue to own the trees left behind under customary rights. It is not uncommon for individuals to own trees in other villages in which they formally lived and, in some cases, to continue to harvest fruit from those trees for subsistence purposes and/or sale to traders. If a household/individual chooses to transfer ownership of the trees, transfer costs will be paid in addition to labour costs. The compensation rate will be based on information obtained from the socio-economic surveys. Based on this information, a compensation schedule for guava, mango and other trees can be developed, incorporating the following criteria:

- (a) Replace subsistence fruit (e.g. guava or mango) based on production yields;

- (b) Provide subsistence farmers with trees to extend the number of months of the year during which the fruits (e.g. guavas/mangoes) are produced and can be harvested as a supplemental source of food for their families during their "hunger season";
- (c) Provide farmers with the opportunity to derive alternative income from trees bearing more valuable fruits at off-season periods;
- (d) Provide cash payments to farmers to replace pre-project income derived from the sale of excess guava or mango production until replacement trees produce the equivalent (or more) in projected cash income.

No compensation will be paid for minor pruning of trees. Compensation for removal of limbs will be prorated on the basis of the number of square metres of surface area removed. The total surface area of the tree will be calculated using the following formula: $(1/2 \text{ diameter of canopy})^2 \times 3.14$.

The compensation schedule in Appendix 8.4 is based on providing a combination of new grafted and local trees to farmers, as well as cash payments to offset lost yearly income.

7.3.7 Valuation for forest trees

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

7.4 ENTITLEMENTS FOR COMPENSATION

Entitlements for compensation shall be based on ownership and the various categories of losses identified in the field consultations. The table below gives the entitlement matrix for various categories of PAPs. This matrix will be used in the settlement of claims for compensation to PAPs for the loss of assets where land is involuntarily taken. Unless otherwise indicated, payment of compensation and other entitlements and the extension of assistance will be given to PAPs.

Entitlement Matrix for Various Categories of PAPs

Category of PAP	Type of Loss	ENTITLEMENTS		
		Compensation for Loss of Structures	Compensation for Loss of land and other Assets	Compensation for Loss of Income/Livelihood
Property Owners (including those covered by customary law)	Loss of Land	Costs at full replacement value, taking into account market values for structures and materials	Land replacement at new site, plus land clearing by the project	-Cash compensation for crops/trees at replacement cost in scarce season -Allow sufficient time to harvest crops
	Loss of Structures Residential or Business	Compensation at full replacement value (not depreciated), taking into account market values for structures and materials.	(Fences block work, wire, and wood) Wells Stores Waste water facilities Connection to utilities Access roads	For lost income from rented property: Lump sum cash payment of agreed number of months of rental per tenant.

Category of PAP	Type of Loss	ENTITLEMENTS		
		Compensation for Loss of Structures	Compensation for Loss of land and other Assets	Compensation for Loss of Income/Livelihood
	Socio-economic and cultural identity			-Disturbance assistance, shifting and relocation costs -Rehabilitation assistance, skills training and other development activities to be provided in coordination with other government agencies; if the present means of livelihood is no longer viable and if the PAP will have to engage in a new unfamiliar income generating activity -Arrange for assistance from host communities
Residential Tenant: Business Tenant	Loss of rental accommodation	No loss of structure, no entitlement to housing at new site.	Replacement costs for non-movables.	-Disturbance assistance. -Transportation assistance, if relocating -Rental for 6 months
	-Loss of Premises	None	Replacement costs for non-movables if installation was agreed with owner.	None
	-Loss of business	Compensation at full replacement value (not depreciated) for any improvements made by tenant and agreed with owner, taking into account market values for structures and materials.	Replacement costs for non-movables if installation was agreed with owner.	For loss of business, payment of lost income at an agreed rate (say payment of six months of past year average turnover)

Category of PAP	Type of Loss	ENTITLEMENTS		
		Compensation for Loss of Structures	Compensation for Loss of land and other Assets	Compensation for Loss of Income/Livelihood
Encroachers (using Land)	Loss of shelter, assets and land for cultivation where applicable	Cash compensation for assets/improvements as identified by the census on the affected land.	Where possible assistance in securing other access to land for growing crops, subject to approval of local Authorities/communities	-Cash compensation for trees/crops at replacement cost in scarce season. -Allow for sufficient time to harvest crops -allow for sufficient time to relocate -For street vendors on right of ways allow possible access to other sites/locations
Squatters (living on Site)	Loss of Shelter	-Compensation at full replacement value for structure, taking into account market values for structures and materials -relocation to resettlement site, with payment of site rent.	None	-Payments in lieu of wages while rebuilding -Disturbance assistance -Transport assistance if relocating
Community	Public facilities	-Compensation at full replacement value for structure, taking into account market values for structures and materials	-Land replacement at new site, plus land clearing by the project -Waste facilities, connection to utilities and provision of access roads	-For loss of business, payment of lost income -Provision of alternative temporary facilities during construction, where appropriate.

Note: All payments to be made in Malawi Kwacha.

In dealing with compensation, preference shall be given to land based resettlement strategies for PAPs whose livelihoods are land-based. If land is not the preferred option for PAPs, the provision of land would adversely affect the sustainability of the project. Where sufficient land is not available at a reasonable price, non-land based options based on opportunities for employment or self re-employment should be provided in addition to cash compensation for land and other assets lost. However the lack of land shall be documented and justified. Cash compensation would have to take account of market values for the land.

In addition to these entitlements, households who are found in difficult situations and are at greater risk of impoverishment (i.e. vulnerable groups, Section 4.3) as identified by the census will be provided with appropriate assistance by the ASWAp-SP through the PMT. PMT shall furnish the Roads Authority with the necessary information. Assistance may be in form of food, temporary accommodation and employment in project activities. The assistance is meant to help them cope with the displacement caused by the project.

The items covered in this chapter are only representative of some of the common items that may be compensated for. It is hoped that the PMT with the assistance from the Roads Authority, and other experts in the specific fields will be able to determine compensation values for items that are not covered here

7.5 VALIDITY OF THE CALCULATED VALUES

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

CHAPTER 8: PROCEDURES FOR DELIVERY OF COMPENSATION

Delivery of compensation must be conducted systematically, to facilitate maximum efficiency and effectiveness. The following activities, which are covered in detail in the subsequent sections, should be carried out in tandem, leading to payment of compensation packages:

1. Public consultation
2. Notification of land resource holders
3. Establishment and maintenance of database of affected assets
4. Agreement on compensation amounts and preparation of contracts
5. Community compensation payments

The compensation process would be in accordance with the RPF and would be delivered paying attention to above activities and as follows:

8.1 PUBLIC CONSULTATION AND PARTICIPATION

Public consultation must be the primary step as it fosters community cooperation, and dissolves any misconstrued view that project implementers are set out to commandeer their land, rather than seeing it as a development project. Public consultation and participation are essential because they provide an opportunity for informing the stakeholders about the proposed project. It creates a sense of ownership for the project, providing an opportunity for people to present their views and values and allowing consideration and discussion of sensitive social mitigation measures and trade-offs. Public consultation will thus afford the Potentially Affected Persons 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.

Public participation will be part of an ongoing process that would have started at the planning stage; and would have continued through the technical design inception and development, land selection and screening stages. This trend will ensure that all affected individuals and households are well informed and adequately involved in the entire process.

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

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

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

- Implementation of post-project community support activities

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

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

Consultation during the preparation of this RPF revealed that the Ministry of Lands, Housing and Urban Development has been involved in resettlement and compensation works where, in some cases, valuations have been done by multi- sector committees comprising representation from Local Government, Agriculture, and Department of Lands. It was learnt that in their assessment of compensation, pre-determined price lists were used for calculating the amounts to be paid for loss of trees, and crops.

During consultation, it became apparent however, that issues of resettlement and compensation have not been implemented in a coordinated manner. In many cases the appropriate ministries such as Ministry of Agriculture Irrigation and Water Development and the Department of Forestry are not consulted on issue regarding compensation for crops and for trees respectively. As a result old price lists, which have not been updated for inflation, were in use.

It was also noted that the affected persons are preferably given monetary compensation for loss of houses and other building structures. This has resulted in hardships for the affected persons who are often unable to construct houses of similar or better size and quality due to insufficient funds given as compensation. It was noted that the PAPs have not been given enough opportunity to express their views regarding compensation and resettlement.

Furthermore, there was very little or no effort directed to community sensitization measures to bring awareness of venereal and communicable diseases such HIV awareness; an area requiring particular attention to communities preparing to welcome an appreciable influx of visitors during project implementation.

The list of stakeholders consulted is given in Appendix 1.2.

8.2 NOTIFICATION OF LAND RESOURCE HOLDERS

Notification of land resource holders about the project must be the subsequent step in planning for delivery of compensation. It helps in identification of PAPs and their affected areas, essentially, focusing energies and resources only to PAPs. This reduces the degree of community resistance by clearing fears from some community members who may think they are affected.

The ASWAp - SP shall by public notice (through the Daily newspapers, Malawi Television, Malawi Broadcasting Corporation and other radio and TV stations, leaflets and flyers, public meetings and church announcements), notify the public of its intention to acquire land

earmarked for the project.

The Notice shall state:

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

Where there are clearly no identified land or property owners or users, the respective Regional Lands Authorities, District Administration and the Traditional Leaders will notify the community leaders and representatives to help to identify and locate the land users and owners. 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. In addition, representatives of traditional leaders, religious leaders, other elders and individuals who control pastoral routes, fishing areas, indigenous tress, and hunting areas will ascertain localities of these sensitive areas.

8.3 MAINTENANCE OF DATABASE OF AFFECTED HOLDINGS AND ASSETS

For each individual or household affected, officials of the Project Management Team will complete a compensation dossier containing necessary personal information on:

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

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

8.4 AGREEMENT ON COMPENSATION AND PREPARATION OF CONTRACTS

All types of compensation are to be clearly explained to the individual and households involved. This encourages transparent bilateral relations between PAPs and project implementers. The Project Management Team will draw up a contract listing all property and land being surrendered; and the types of compensation (cash and/or in-kind) selected and agreed upon. Those selecting in-kind compensation will sign an agreement form, which will be witnessed by the Village Development Committees' Representative. The compensation contract and the grievance redress mechanisms shall be read aloud in the presence of the affected party and the representative of the Regional Lands Authorities, District Administration and the Traditional Leaders, prior to signing.

8.5 COMMUNITY COMPENSATION PAYMENTS

Community compensation will be paid in-kind only for a community as a whole. This will be in the form of reconstruction of the facility to at least the same or better standard and as required by the planning regulation. Examples of community compensation include:

- a. School Building (public or religious);
- b. Public Toilets;
- c. Well or Pump;
- d. Market Place;
- e. Road
- f. Storage warehouse

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

All handing over of property such as land and buildings and compensation payments will be made in the presence of the affected party, the traditional leaders and their officials; and representatives of the local government administration.

8.6 GENERAL CONSIDERATIONS FOR DELIVERY AND MANAGEMENT OF COMPENSATION

Compensation shall be managed and delivered in the following manner:

- (a) By agreement between the Government and the landowner(s)/occupier;
- (b) The Government shall offer such sums deemed adequate as compensation;
- (c) Including replacement cost for lost assets, to that person; and the person may accept that amount as compensation payable to him or her;
- (d) Such sums will be disbursed to the District Commissioner (DC) for the district assembly in question to pay to the PAPs. The DC shall maintain a record of PAPs, their claims and entitlements. After payment of such sums, the DC shall document the name(s) of the PAPs, the amount of compensation and the records of how the compensation was arrived at;

- (e) By the court if there is no agreement. If the compensation payable is not agreed upon between the Government and the land owner/occupier, such compensation shall be determined by the courts of law;
- (f) A claim shall not be entertained after five years from the date of the cut off date; and/or 12 months after the execution of the purpose out of which the claim has arisen, in respect of any damage done to the land acquired;
- (g) Payment of compensation shall strictly be based on results of the census and shall be recorded in the register at the office of the District Assembly. A copy shall be kept by the Village Administrator for record purposes and future reference.

8.7 INSTITUTIONAL ARRANGEMENT

The Ministry of Transport and Public Infrastructure (MTPW) will have the overall responsibility for coordinating and monitoring implementation of the RPF for the ASWAp-SP, through the Roads Authority.

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

The Roads Authority will ensure that the framework is publicly disseminated and that project staff have the requisite skills and knowledge and, where necessary, appropriate training to implement the framework should be provided.

The Project Management Team (PMT) will be responsible for the technical work at the local level. They will provide the assistance to carry out the socio-economic surveys and to determine the appropriate compensation amounts. They will also be party to the payment of compensation and to ensure that PAPs are adequately compensated for. The PMT will carry out the monitoring activities of the RPF.

At the District level, the PMT's in the target corridors shall take full responsibility for the implementation of the Framework in selected project sites. The PMT shall report to the DA on activities being undertaken and the progress or problems being encountered. The PMT will be assisted by the Village Development Committee.

The proposed organogram for the institutional arrangements is provided Figure 9.1 below.

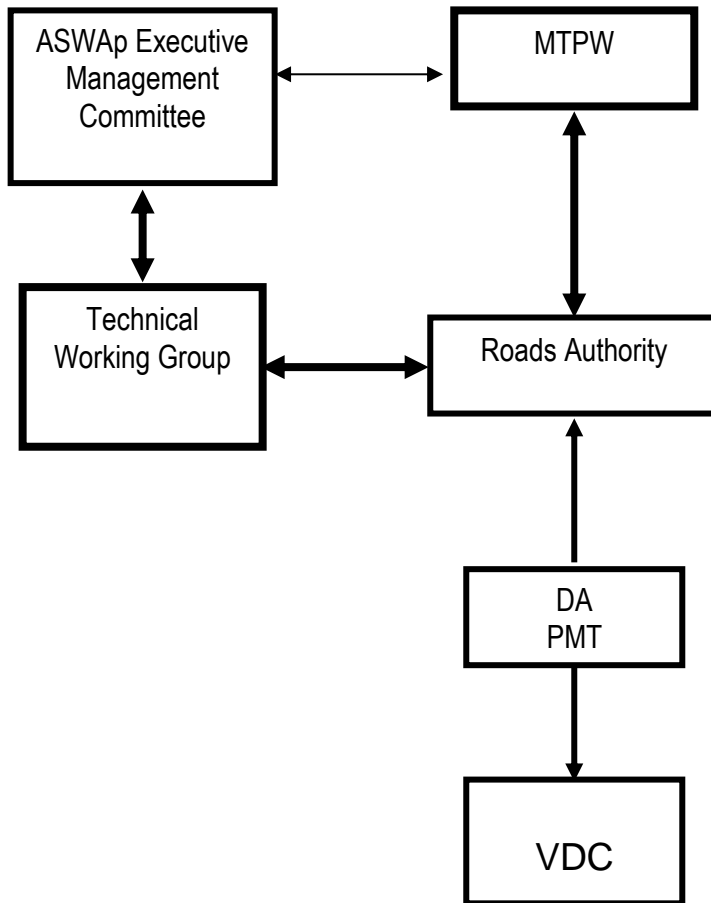


Figure 8.1: Institutional Arrangements for the Implementation of RPF

Legend:

- DA District Assembly
- MTPW Ministry of Transport & Public Works
- RA Roads Authority
- PMT Project Management Team
- VCD Village Development Committee

8.8 LAND ACQUISITION AND RESETTLEMENT IMPLEMENTATION PROCESS

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

The planning stage: during which an effective administrative and reporting system has to be set up. This stage will include desk studies of the of the ASWAp-SP

concept and objectives by all relevant stakeholders, alerting of all PAPs and Local Authorities on the necessity of land acquisition and resettlement, discussing the RPF to understand its implications and formation of the relevant implementing committees as well as briefing them on the planned activities;

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

Paying out compensation and implementing the resettlement activities which include signing agreements and paying out compensation, provision of starter packs as well as up-dating the database.

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

Post-resettlement activities that include after-care-assistance and carrying out monitoring and evaluation activities

Appendix 8.1 gives an example of a land acquisition and resettlement implementation plan.

8.9 LINKING RESETTLEMENT IMPLEMENTATION TO CIVIL WORKS

Displaced persons (DP) will need to be compensated, in accordance with this Resettlement Policy Framework, before any project activity is implemented.

For activities involving land acquisition or loss, 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 taken away only after compensation has been paid and resettlement sites and moving allowances have been provided to DPs. 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 Resettlement Action Plans (RAPs).

In the Implementation Schedule of each RAP, precise details on resettlement and compensation must be provided. Similarly, the ARAP section on Arrangements for Monitoring and Implementation must provide a schedule for details on resettlement and compensation. In both of these sections, the schedule for the implementation of activities, as agreed between the ASWAp - SP and DPs must include:

- Target dates for start and completion of civil works;
- Timetables for transfers of completed civil works to DPs;

- Dates of possession of land that DPs are using (this date must be after transfer date for completed civil works to DPs and for payments of all compensation) and;
- How these activities are linked to the implementation of the overall sub project.

When approving recommendations for resettlement during screening, affected DAs 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 should ensure that no affected persons would be displaced (economically or physically) due to civil works activity, before compensation is paid and before resettlement sites with adequate facilities are prepared and made available to the affected individual or homestead.

Once the resettlement plan is approved by EP & D, it should be sent to the affected DAs for final review and verification.

8.10 COMPLAINTS AND GRIEVANCES MECHANISMS

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

8.10.1 Objections

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

Therefore, all grievances concerning non-fulfilment of contracts, levels of compensation, or seizure of assets without compensation should be addressed to a local committee comprising traditional leaders of the affected area and representatives of the District Assembly.

All attempts should be made to settle, grievances amicably. Those seeking redress and wishing to state grievances would do so by notifying the local committee. The local committee will inform and consult with the implementing agency and the District Commissioner to determine validity of claims. If valid, the local committee will notify the complainant who will be assisted as appropriate. If the complainant's claim is rejected, the matter shall be brought before the District Commissioner for settlement. All the decisions regarding complaints should as far as possible be made within a full growing season after the complaint is lodged.

It has been noted that in the local communities, people take time to decide to complain when aggrieved. Therefore, the grievance procedures will give people up to the end of the next full agricultural season, after surrendering their assets, to allow for enough time to present their cases.

The grievance 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 the court for resolution.

Compensation and resettlement plans (contracts) will be legally binding, 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 most Malawians living in these areas, are used to and understand.

All objections to land acquisition shall be made in writing, to the implementing agency with copies to the Ministry of Economic Planning and Development within 20 days after the public notice; or through a formal complaint lodged via the Traditional Authority and District Assembly.

The traditional leaders and the local committee shall maintain records where grievances and complaints, including minutes of discussions, recommendations and resolutions made, will be recorded.

8.10.2 Consensus, Negotiations and Conflict Resolution

Consensus and negotiation 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 with minimal obstacles from PAPs.

However some projects have been known to stall due to delays in disbursement of compensation; or sometimes even after getting the compensation the PAPs do not get possession of the acquired land in time. Prior negotiations, between Government representatives and project beneficiaries, are therefore crucial to the success or failure of the project. As a guiding principle emphasis should be placed on simplicity and suitability of the conflict resolution mechanisms to the affected persons and the following should be noted:

- (a) Negotiation and agreement by consensus will provide the best avenue to resolving any grievances expressed by the individual land owners or households affected by community projects. These grievances shall be channelled through the traditional leaders;
- (b) The implementing agency should ensure that consensus is achieved freely by the main parties involved. The general public should be advised clearly by the implementing agency or the relevant government representative as to who is responsible for the process for handling grievances or compensation claims;
- (c) Grievances should be addressed during the verification and appraisal process. If a suitable solution is not found, the implementing agency 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 should be referred back to the community for discussion where the traditional leader and District Councils will readdress 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 with the MoAFS who shall refer them to the respective District Council, within 20 days of the verification meeting. Grievances that cannot be resolved at the district level shall be officially referred to the MoAFS. Where it becomes apparent that the conflict is irresolvable, MoAFS must inform the appellant of their right to pursue the matter in court.
- (f) During program implementation, ASWAp – SPAP and PAPs could potentially lie on diametrically opposing sides due to potential conflict of interest. It is thus recommended for the ASWAp - SP to be recused themselves from receiving, handling and ruling on disputes.

8.11 TIME FRAMES

The following key timeframes shall apply unless otherwise agreed between the Ministry of Transport and Public Works (MTPW) and the District Assemblies on behalf of recipient; provided however, that no agreement to waive the timeframes shall adversely affect the rights or interests of Project Affected Persons under this Framework:

- (a) The inventory shall be completed at most four months prior to the commencement of work.
- (b) The Resettlement Plan shall be submitted to MTPW for approval immediately after completion of inventory
- (c) Compensation, resettlement and rehabilitation activities shall only commence after the MTPW and the persons to be displaced have accepted the Resettlement Plan.
- (d) Civil works will not begin until all resettlement is complete

Comprehensive time frames shall be drawn up and agreed upon by all parties including affected persons.

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

Adequate time and attention should 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

8.12 MONITORING AND EVALUATION

In order to assess whether the goals of the resettlement and compensation plan are met, a monitoring plan will be required. This monitoring plan will indicate parameters to be monitored, institute monitoring milestones and provide resources including responsible persons or institutions, necessary to carry out the monitoring activities.

The arrangements for monitoring the resettlement and compensation activities would fit the overall monitoring programme of the entire ASWAp-SP, which would fall under the overall responsibility of the Ministry of Agriculture, Irrigation and Water Development. The ASWAp -SP will institute an administrative reporting system that:

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

Annual evaluations will be made in order to determine whether the PAPs have been paid in full and before implementation of the rural road component activities; and whether the PAPs enjoy the same or higher standard of living than before.

A number of objectively verifiable indicators (O V I'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 different RAPs or ARAPs will have to be developed to respond to specific site conditions. As a general guide, Appendix 8.2 provides a sample of land acquisition and resettlement process monitoring plan with indicators.

This framework is suggesting that where appropriate and where it is determined to be cost effective, the office of the District Assembly is structured to host the M&E component of the project/program. This would 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. Their reports would then be sent to the Roads Authority and to the PMT. The reports would become part of the official documents of the ASWAp-SP.

Independent monitoring can be arranged from time to time to validate the programme implementation. Independent monitoring of the compensation and resettlement activities can be done by NGO'S and EAD. Carrying out such independent monitoring will enhance the openness and transparency of the compensation and resettlement programme. The Ministry of Agriculture, Irrigation and Water Development would have to approve participation of NGO's in independent monitoring activities, depending on their requirements. Participation of would be funded by the NGO's themselves, using their own resources; unless under special funding and participation arrangements to be approved by the Ministry of Agriculture, Irrigation and Water Development.

8.13 BUDGETARY IMPLICATIONS AND FUNDING

Compensation and resettlement activities will be funded under the Government of Malawi's contribution to the project. Funding would be processed and effected by the Roads Fund Administration at the request of the ASWAp - SP. In general, the cost burden of compensation will be borne by the executing agencies as may be appropriate.

The estimate of the overall cost of resettlement and compensation would be determined during the socio-economic study. The Ministry of Transport and Public Infrastructure would have to finance the resettlement compensation because they are the parties who would be impacting on the livelihoods. Disbursements based on budgetary requirements, established by the RAPs in consultation with PAPs and local chiefs, will be made through the relevant District Administration.

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

The PMT will prepare the resettlement budget which will be financed through the administrative and financial management rules and manuals like any other activity eligible for payment under the ASWAp-SP. This budget will be subject to the approval by the Ministry of Transport and Public Infrastructure.

At this stage however, all that can be reasonably and meaningfully prepared is an indicative comprehensive budget, highlighting key elements that the budget must contain. Such an indicative comprehensive compensation budget is provided in Appendix 8.3

APPENDICES

APPENDIX 1.1 Categories of losses and their impacts on project affected persons

Loss Category	Social Impacts
Relocation	Impoverishment, disturbance of production systems, loss of sources of income, loss or weakening of community system and social networks, loss of access to social amenities such as hospitals and schools, water; dispersion of kin groups, loss of cultural identity and traditional authority, loss or reduction of potential for mutual help, emotional stress.
Loss of land (no relocation)	Impoverishment, loss of sources of income / livelihood, Loss of other assets or access to assets, increased time to access resources
Loss of other assets	Emotional stress, impoverishment, reduced sources of income, loss of social status
Loss of income / livelihood	Impoverishment, loss of access to basic needs of life, loss of self confidence and self esteem, emotional stress, loss of family stability.
Alienation due to neighbors being relocated	Impoverishment, weakening of community systems and social networks, loss of mutual help and community support , loss of traditional authority, Loss of identity and cultural survival, emotional stress
Hosting PAPs	Impoverishment, loss of sources of income, reduced time and access to resources such as hospitals and schools, water, increased time to access resources, Disruption of social fabric, increased crime, increase in diseases such as STDs and HIV/AIDS, Clash of cultural and religious beliefs and cultural norms

APPENDIX 1.2 List of Persons and Institutions Consulted

NAME	POSITION	ADDRESS	Comment	DATE
Mr. Edgar Chihana	Director of Planning and Development	Mwanza District Council		17.01.2012
Mr. E. J. Mkomadzinja	District Road Supervisor	Mwanza District Council	Roads necessitating improvements include: Kunenekude, Thambani, Ngadziwe, Mwanza boarder market	17.01.2012
Mr. Shaba	District Crop Officer	Mwanza District Council	Potential alternative crops (suiting the climate of the region) to facilitate diversification in agricultural production: Tangerines-major cash crop, Sweet potatoes, Irish Potatoes, Pigeon peas, Avocado Pears	17.01.2012
Mr. Bonface Chimwaza	Environmental District Officer	Mwanza District Council	ASWAp-SP can benefit from the lessons of the Nacala rail project: Complaints by community members on failure of the project implementers to fully and fairly communicate the scope of the project prior to commencement. Recalcitrant and intransigent attitude by project implementers toward local members of the community ASWAP will to train local leaders and community Deteriorating bridges are threat. Attack by termites on timber. Concrete built bridges preferred	17.01.2012
			Potential impacts: Air pollution Deforestation	
Mr. Harawa	Director of Planning and Development	Chikhwawa District Council	Sensitization is very important for resettlement	19.01.12
Mr. Namakhwa	District Road Supervisor	Chikhwawa District Council	The roads are there but are in very bad state	19.01.12
Mr. A. Dickson	District Agricultural Development Officer	Chikhwawa District Council	Follow government laws in resettlement. Get consensus from chiefs.	19.01.12
Mr. P. G. Dulani	Director of Public Works	Chikhwawa District Council	Avoid compensation. Divert road if possible Cotton growing areas need roads most	19.01.12

APPENDIX 5.1 Screening Criteria for Sites for the ASWAp-SP Project Activities

During the screening for possible sites for new roads and other related structures, the Project Management Team (PMT) consisting of representative members of the Roads Authority and the MoAFS will request suitable and appropriate land from the Village Development Committee, in the area proposed for road construction or rehabilitation. Using participatory methods, the RA, PMT, VDC in consultation with the local communities within the project boundary area, will identify the required piece of land to allocate to the Project Management Team, using the following criteria:

1. The site owners and/or users, if any should be consulted and invited to participate in local meetings of the project activities.
2. The Project Management Team should secure legal title to the land for the project activities.
3. The site boundaries including way-leaves should be clearly marked, measured and recorded.
4. Natural or man-made features on the site (e.g. swamps, water pipes, gullies, bedrock, flood plains, graveyards, rock falls, steep cliffs, electricity pylons, etc) should be clearly recorded.
5. The site must conform to the local development plan for the area or district.
6. The site should not lead to either the physical displacement of people, loss of their shelter, loss of assets, loss of income sources or means of livelihood, or the loss, denial or restriction of people's access to economic resources. If it does impact on any one of these, another site should be chosen. If it is not possible to locate another suitable site, OP 4.12 is triggered; a RAP needs to be prepared and cleared by the World Bank consistent with the RPF so that those affected can be properly compensated.

APPENDIX 5.2 Screening Criteria for Sites for Resettlement of ASWAp-SP Project Affected Persons

1. The site should not be within an environmentally sensitive area
2. The resettlement area should be within reach of social services such as water supply, electricity, roads, hospitals, schools, etc.
3. As far as possible ensure that the PAPs are resettled within or close to their original settlement areas.
4. There should be a sustainable source of water within 1 km. of the site.
5. The site should be large enough to accommodate the Project Affected Persons including public and social services.
6. The site owners, users and PAPs should be consulted and invited to participate in the meetings and activities of the resettlement.
7. The Project Management Team should secure legal title to the land for resettlement.
8. The site boundaries including individual PAPs as well as public service land allocations should be clearly marked, measured and recorded.
9. There should not be any natural or man made features on the site (e.g. swamps, water pipes, gullies, bedrock, flood plains, graveyards, rock falls, steep cliffs, electricity pylons, etc) to obstruct construction or cause danger to people, animals or building structures.
10. The site must conform to the local development plan for the area or district.
11. The site for resettlement should not result in either physical displacement of people, loss of their shelter, loss of assets, loss of income sources or means of livelihood, or the loss, denial or restriction of people's access to economic resources.

APPENDIX 5.3 Main Contents of the Resettlement Action Plan

- 1) Description of the project
- 2) Potential impacts
- 3) Objectives
- 4) Socio-economic studies
- 5) Legal framework
- 6) Institutional framework
- 7) Eligibility
- 8) Valuation and compensation for losses
- 9) Resettlement measures
- 10) Site selection, site preparation and relocation
- 11) Housing infrastructure and social services
- 12) Environmental protection and management
- 13) Community participation
- 14) Integration with host population
- 15) Grievance procedures
- 16) Organizational responsibilities
- 17) Implementation schedule
- 18) Cost and budget
- 19) Monitoring and evaluation

APPENDIX 5.4 Contents for Abbreviated Resettlement Action Plan

- 1) Census of project affected persons and valuation of assets.
- 2) Description of compensation and other resettlement assistance to be provided.
- 3) Consultations with displaced people about acceptable alternatives
- 4) Institutional responsibility for implementation and procedures for grievance redress.
- 5) Arrangements for monitoring and implementation and,
- 6) A timetable and budget

APPENDIX 6.1: An example of a Schedule for Labour Costs for activities on Replacement Land

The following table presents an example of a compensation schedule for a one-hectare piece of land. The Malawian labor rates in Kwacha will need to be validated at the time payments are made.

Activity	Month Paid (may be different depending on climate zones)	Labor in Malawian Kwacha/ha (Daily Rate) x (Number of days)
Land Clearing	September/October	
Ploughing	November	
Sowing	December	
Weeding	January	
Harvesting	March/April	
Total		

APPENDIX 6.2 An Example of a Schedule to be used to Determine Monetary Compensation for Land Use

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

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

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

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

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

APPENDIX 6.3 Example of a schedule for Calculation of Compensation for Buildings

Structure	Material/Description	Unit	Quantity	Unit Cost (MK)	Total Cost(MK)
House	Raw or baked bricks	1000			
	Straw	Bundle			
	Tin roofing sheets	No.			
Kitchen	Open, closed	No.			
Stables/ sheds/pens	Cattle, goat, sheep, donkey, other	No.			
Coops	Chicken, duck, other	No.			
Fence	Straw	Bundle			
	Poles	No			
	Raw /baked bricks	1000			
	cement blocks	No			
Private bathing	Raw /baked bricks	1000			
	Straw	Bundle			
Latrine	Lump Sum	No.			
Open well	Internally lined with concrete rings and provided with a hand driven pump.	Sum			
Storage buildings	Cement/sand block walls with thatched roof on z-profiled metal sheets.	Sum			
Sun screen open huts/shades	Similar to those replaced, on thatched roof on wood poles.	Sum			

- Note : Buildings and structures will be replace by an equivalent structure or, on an exceptional basis cash and/or credit will be paid based on replacement costs
- : Replacement latrines will be similar to those currently operational and financed by the bank or other donor agencies at health centres, schools.
- : Detailed schedules will be different, based on the specific Census surveys

APPENDIX 6.4 Example for Calculating Compensation for Fruit Trees

Local Fruit Trees, e.g. Guava and Mangoes	
Estimated Avg. Fruit Yield (kg) of mature tree	800 to 1,300 kg/year
Estimated Yield used	Ten sacks (1, 000kg)/tree/year
Market Price: <ul style="list-style-type: none"> • Peak of harvest season (March/April) • End of season (late May) 	Malawi Kwacha/kg Malawi Kwacha/kg
Price used as basis of this estimate	80% height of season; 20% end of season
Years to Production	Six to seven
Years to Maximum Production	Twenty
Costs of Sapling	Malawi Kwacha, locally available
Grafted Fruit Trees, e.g. Mangoes	
Estimated Avg. Fruit Yield (kg) of Mature tree	800 to 1,300 kg/year
Estimated Yield used	Almost entire yield due to market value
Market Price, (varies according to variety) <ul style="list-style-type: none"> • Height of harvest season (June/September) 	Malawi Kwacha/kg
Price used as basis of this estimate	Price per fruit or sac (100kg) as quoted by grower
Years to Production	Four to five
Years to Maximum Production	Eight
Costs of Sapling	Malawi Kwacha, locally available.

Proposed schedule for fruit (e.g. Guava or Mango) trees cut down			
Average age of tree	Estimate age (yrs)	In kind replacement for local guava and mangoes	Credits/Financial support
Samplng Trees planted after project cut-off date in area will not be eligible for compensation	0-1	Deliver to farmer: -Choice of two guava or mango tress - (local and/or improved grafted) -Supplies: fencing to protect, tree, a bucket for watering and a spade	Malawi kwacha
Sapling/young tree	1-6	Deliver to farmer	Equivalent of x no.
First minor production 12-50 fruits occurs		-Choice of two guava or mango trees.	Malawi Kwacha in credits or other financial support for labor invested

about age 4-5		-(local and/or improved grafted) - Supplies: fencing to protect Tree, a bucket for watering, and a Spade	in planting, fencing, and watering, made in one payment.
Guava/Mango Trees Fruit Producing	6-30	Deliver to farmer: -Choice of two guava or mango trees -(local and/or improved grafted) - Supplies: fencing to protect Tree, a bucket for watering, and a Spade	Equivalent of X no. Malawi Kwacha in credits or other financial support for labour invested in planting, fencing, and watering, made in one payment. Equivalent of X no. Malawi Kwacha in credits or other financial support, representing eight years, (8 years x 10 sacks x Malawi Kwacha/sack) lost Income/subsistence until replacement trees begin production. This rate to be agreed by farmers. Total: Equivalent of X no. M in cash or Equivalent financial support to be paid in one instalment.
Mature Trees - Low or Non- Fruit Producing	30+	Same as for mature trees above	Same as above

No compensation will be paid for minor pruning of trees. Compensation for removal of limbs will be prorated on the basis of the number of square meters of surface area removed. The total surface area of the tree will be calculated using the following formula: $(1/2 \text{ diameter of canopy})^2 \times 3.14$.

APPENDIX 7.1 An Example of Land Acquisition and Resettlement Implementation Plan

Item No	STAGE OF WORK	KEY ACTIVITY	Time	Responsible Person/Institution	Monitoring Institution
1.0	Project Planning	Setting up an effective administrative reporting system		PMU	MEP&D
		ASWAp-SP concept/objectives studied and understood by key stakeholders		PMU	MEP&D
		Resettlement Policy Framework discussed with stakeholders		PMU	MEP&D
		Project authorities and stakeholders alerted on the necessity for land acquisition and resettlement.		PMU	MEP&D
		Formation of National District and Village implementation Committees		PMU	MEP&D
		Community involvement, sensitization and participation initiated		PMT	PMU
2.0	Land acquisition	Community involvement, sensitization and participation		DA/VDC.	PMU
		Screening of project sites indicating areas of possible resettlement		PMT	DA
		Prepare maps for the affected areas		DA/Min. of Lands	PMU
		Obtain land authorization		DA	PMU
		Demarcate authorized area to be affected		PMT./Min of Lands	PMU
		Set cut-off date		DA	PMU
3.0	Socio-economic Survey	Community involvement, sensitization and participation		PMT	PMU
		Identify affected persons, party or homestead and register their names in detail		D/A and PMT.	PMU
		Estimate the magnitude of the impacts relative to the need for resettlement and/or compensation		DA and VDC.	PMU/Lands
		Compile land register		PCU/VDC.	DA/PMU
		Carry out valuation of		PCU/VDC.	DA/Lands
		Create a database for comparative analysis at all levels of Government		PCU/DA/PMU	MEP&D
		Report any grievances that require resolution		PAPs/PMT	PMU
4	Resettlement	Community involvement, sensitization and participation		PMT/VDC.	PMU

	/compensation			
		Create fora for identifying social investment opportunities		PMT, DA PMU
		Identify social investment opportunities as part of the projects activities		PAPs/PMT, VDC. PMU
		Provide information about the valuation and negotiation process		DA/Lands PMU
		Prepare RAPs		PMT PMU
		Authorization of project and RAPs by MEP&D		PMU MEP&D
		Up-date database for comparative analysis at all levels of Government		PMT PMT
		Formulate compensation offers and obtain signed agreements with those affected		DA PMU
		Provide alternative land (if applicable) inclusive of ancillary support services such as transport, housing, crop starter packs and food support		PMU MEP&D
		Up-date database for comparative analysis at all levels of Government		PMU MEP&D
5	Post Resettlement Activities	Draw up a programme for after resettlement activities		PAPs, VDC, DA PMU
		Provide Resettlement After-care Assistance		PMT PMU
		Up-date database for comparative analysis at all levels of Government		PMT PMU
		Carry out monitoring activities		DA, PMU, PAPs MEP&D

APPENDIX 7.2: Example of Land Acquisition and Resettlement Process Monitoring Plan

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

		Trends in respiratory diseases
		Trend in HIV/AIDS statistics in comparison with pre-settlement statistics
		Mortality rates after resettlement compared with pre-settlement rates
		Number of PAPs with access to potable water compared with total PAPs
7	Productivity	Pre- project production versus present production (crop for crop, land for land).
		Post project production per affected household/homestead compared with pre-project income.
		Wildlife conservation and eco-tourism activity on acquired land as per plan,

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

APPENDIX 7.3 Contents of a Comprehensive Compensation Budget

#	Item	Costs (in MK)*	Assumptions
1	Compensation for loss of Land	/hectare	For land acquisition purposes, based on cost realized in projects involving similar issues in Malawi.
2	Compensation for loss of Crops	/hectare of farm lost	Includes costs of labor invested and cost of crop based on average of highest price of staple food crops as per methods described in Appendix 7.2 above
3	Compensation for loss of access to pastoralists	<i>N/a</i>	Those affected would be provided with shared access, or alternate routes (decision agreed through consultation and participation of all)
4	Compensation for loss of access to fishing resources.	Say, /fishmonger	Data provided from revised socio-economic study will determine market values of catch for fish.
5	Compensation for Buildings and Structures		This compensation would be in-kind. The new buildings would be built and then given to those affected. Cost based on basic housing needs for a family of ten, including house with four bedrooms, ventilated pit latrines, outside kitchen and
6	Compensation for Trees	/year/tree	Based on methods described in Appendix 7.4 above.
7	Cost of Relocation Assistance Expenses	/household	This cost is to facilitate transportation, etc.
8	Cost of Restoration of Individual Income	Say	Assumed to be higher than the GDP/capita.
9	Cost of Restoration of Household Income	Say	Through employment in Program Activities.
10	Cost of Training Farmers, pastoralists and other PAPs		This is a mitigation measure, which seeks to involve those affected by the project activities.

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