



Government of the Republic of Malawi

**MINISTRY OF EDUCATION, SCIENCE AND
TECHNOLOGY**

**Malawi Education Sector Improvement
Project (MESIP)**

**RESETTLEMENT POLICY
FRAMEWORK**

August 2015

Ministry of Education, Science
and Technology
P/Bag 325
Lilongwe 3
[MALAWI](#)

Acknowledgement

This document has been prepared with assistance and inputs from a number of people. The Government of Republic of Malawi wishes to extend its sincere gratitude to all those who contributed their invaluable time and information in the preparation process.

**Lilongwe, Malawi
August 2015.**

Table of Contents

ACRONYMS.....	v
DEFINITION OF SELECTED TERMS USED.....	vi
EXECUTIVE SUMMARY	viii
1.1 Justification for Resettlement Policy Framework.....	viii
1.2 Aim and Objectives of Resettlement Policy Framework	ix
1.3 Guiding Principles on Resettlement Issues.....	x
1.4 Grievance Redress Mechanisms on Resettlement Activities.....	xii
1.5 Organization of the Framework.....	xii
CHAPTER ONE.....	1
BACKGROUND ON MESIP PROJECT AND RESETTLEMENT POLICY	1
FRAMEWORK	1
1.1 Introduction.....	1
1.2 Justification for Resettlement Policy Framework for Sub Projects Under MESIP	2
1.3 Aim and Objectives of Resettlement Policy Framework	2
1.4 Potential Users of the Resettlement Policy Framework	3
1.5 Stakeholder Consultations and Participation	3
CHAPTER TWO.....	5
DESCRIPTION OF MESIP AND LINKAGES TO	5
RESETTLEMENT	5
2.1 Project Components.....	5
2.2 Generic Project Cycle and Linkages to Resettlement Issues	7
2.3 An Overview of Land Uses in Malawi	8
2.4 Land Tenure Regimes in Malawi	9
2.5 Brief Description of Land Acquisition Approaches for Community Driven Sub-Projects.....	10
2.6 Description of Potential Socio-Economic Impacts of Resettlements	10
CHAPTER THREE.....	12
POLICY AND LEGAL FRAMEWORK ON RESETTLEMENT IN MALAWI	12
3.1 Review of Policies and Laws on Resettlement in Malawi	12
3.1.2 The Constitution of Republic of Malawi	12
3.1.3 The Malawi National Land Policy.....	12
3.1.4 Land Act	12
3.1.5 Land Acquisition Act.....	13
3.1.6 Town and Country Planning Act	13
3.1.7 Public Roads Act	13
3.1.8 Water Resources Act	13
3.1.9 Forest Act.....	14
3.1.10 Environment Management Act, 1996.....	14
3.2 Policies of the World Bank on Resettlement.....	14
3.3 Comparison and Gaps between Policies of World Bank and Malawi on Resettlement.....	15
3.4 Appropriate Measures for Addressing Identified Gaps between the Policies in Implementation	16
CHAPTER FOUR	17
GUIDING PRINCIPLES ON RESETTLEMENT ACTIVITIES WITHIN MALAWI.....	17
EDUCATION SECTOR IMPROVEMENT PROJECT	17
4.1 Guiding Principles on Resettlement	17
4.2 Estimation of Displaced Persons and Cut – Off Date.....	18

4.3	Methods of Valuation of Assets	19
4.4	Limitations of the Existing Valuation Methods on Assets	21
4.5	Eligibility Criteria for Compensations for Project Affected People.....	22
4.6	Entitlements for Compensations.....	22
4.7	Approach and Procedures for Delivery of Compensations	23
4.8	Grievance Redress Mechanisms on Resettlement Activities.....	17
CHAPTER FIVE		19
THE RESETTLEMENT SCREENING FOR SUB PROJECTS UNDER MALAWI.....		19
EDUCATION SECTOR IMPROVEMENT PROJECT		19
5.1	The Screening Process	19
5.1.1	Screening of the Sites by Village Development Committee	20
5.1.2	Desk Appraisal of the Proposed Site and Project	20
5.1.3	Field Appraisal of the Proposed Site and the Project	20
5.2	Preparation of Resettlement Action Plan for Selected Sub Projects	20
5.3	Monitoring of Resettlement Activities	22
CHAPTER SIX.....		37
INSTITUTIONAL ARRANGEMENTS AND CAPACITY BUILDING ON		37
RESETTLEMENT		37
6.1	Institutional Arrangements	37
6.2	Definition of Responsibilities of Stakeholders	38
6.3	Capacity Building for Management of Resettlement Activities.....	40
6.4	Budget Estimates	41
6.5	Capacity Building Plan for Frontline Staff in Resettlement Activities	42
REFERENCES		38

FIGURES

Fig.1.	Project Cycle Related to Resettlement	8
Fig 2:	Diagrammatic Flow of the Screening Process	19
Fig 3:	Diagrammatic Arrangements of Key Institutions in Resettlement Activities	37

TABLES

Table 1:	Summary of Main Social and Economic Impacts from Resettlement Activities	11
Table 2:	Outline of Selected Differences on Management of Resettlement between World Bank Policy on Resettlement (OP 4.12) and Laws of.....	15
Table 3:	Entitlements for Project Affected Persons	24
Table 4:	Proposed Monitoring Plan of Resettlement Activities at Community Level	29
Table 5:	Indicative Budget for Resettlement Activities at Community, Local Authority and National Levels.....	41
Table 6:	Cost Estimate for Training of Extension Workers in Social and Environmental Safeguards (MK)	42

ACRONYMS

ADC	Area Development Committee
AEC	Area Executive Committee
DC	District Commissioner
DEC	District Executive Committee
DLO	District Lands Officer
DP	Displaced Person
DPD	Director of Planning and Development
EDO	Environmental District Officer
GoM	Government of Malawi
GPE	Global Partnership on Education
LA	Local Authority
LDF	Local Development Fund
MESIP	Malawi Education Sector Improvement Project
M&EO	Monitoring and Evaluation Officer
MDGS	Malawi Development and Growth Strategy
MEPD	Ministry of Economic Planning and Development
MLGRD	Ministry of Local Government and Rural Development
MLH	Ministry of Lands and Housing
MoF	Ministry of Finance
PAP	Project Affected People
RAP	Resettlement Action Plan
RPF	Resettlement Policy Framework
VDC	Village Development Committee

DEFINITION OF SELECTED TERMS USED

- **Census:** means a field survey carried out to identify and determined the number of project affected persons or displaced persons in accordance with procedures including criteria for eligibility for compensation, resettlement and other measures, emanating from consultations with affected communities and the local chiefs.
- **Compensation:** means the payment in kind, cash or other assets given in exchange for the taking of land including fixed assets thereon, in whole or in part.
- **Cut – off – date:** means date of commencement/completion of the census of project affected people within the project area boundaries.
- **Displaced persons:** means persons who, for reasons of the involuntary taking or voluntary contribution of their land and other assets under the project result in direct economic and or social adverse impacts, regardless of whether or not the said Displaced Persons physically relocate.
- **Involuntary Resettlement:** means the involuntary taking of land resulting in direct or indirect economic and social impacts caused by loss of benefits from use of such land; relocation or loss of shelter; loss of assets or access to assets; or loss of income sources or means of livelihood, whether or not the displaced persons have moved to another location.
- **Involuntary Land Acquisition:** means the taking of land by government or other government agencies for compensation for purposes of a public project against the will of the landowner. The landowner may be left with the right to negotiate the amount of compensation proposed. This includes land or assets for which the owner enjoys uncontested customary rights.
- **Land:** refers to agricultural and non-agricultural land and any structures thereon or underneath whether temporary or permanent and which may be required for the project.
- **Land acquisition:** means the taking of or alienation of land, buildings or other assets thereon for purposes of a Project.
- **Resettlement Policy Framework:** A statement of the policy, principles, institutional arrangements and procedures that the Government will follow in a project involving resettlement.
- **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 displaced persons to improve their living standards, income earning capacity and production levels, or at least maintain them at pre-project levels.
- **Replacement cost:** means replacement of assets with an amount sufficient to replace lost assets and cover related transaction costs. In terms of land, this may be categorized as follows.
- **Replacement cost for land:** means the pre-project or pre-displacement, whichever is higher market value of land of equal productive potential or use located in the vicinity of the

affected land, plus the costs of preparing the land to levels similar to those of the affected land; and any registration and transfer taxes;

- **Replacement cost for houses and other structures:** means the prevailing cost of replacing affected structures, in an area and quality similar to or better than that of the affected structures. Such costs shall also include transporting building materials to the construction site; labour and contractors' fees; and registration costs.
- **Resettlement Assistance:** means the measures to ensure that displaced persons who may require to be physically relocated are provided with assistance during relocation, such as moving allowances, residential housing or rentals whichever is feasible and as required, for ease of resettlement
- **Voluntary Land Contribution:** means a process by which an individual or communal owner agrees to provide land or property for project-related activities. Voluntary contribution is an act of informed consent, made with prior knowledge of other options available and their consequences, including the right not to contribute or transfer the land. It must be obtained without undue coercion or duress. Voluntary Land Contribution may be of two types. These are voluntary land contribution for compensation and voluntary land contribution without compensation.

EXECUTIVE SUMMARY

1.0 Introduction

The Government of Malawi with funding from the Global Partnership for Education (GPE) is embarking on the implementation of the Malawi Education Sector Improvement Project (MESIP). The overall Project Development Objective (PDO) is to support implementation of Malawi's Education Sector Implementation Plan II (2014-2018) to achieve its goals for improving learning outcomes and enhancing internal efficiency and equity for primary education.

The proposed project's primary focus is on improving learning outcomes, equity and efficiency in Malawi's primary education system. It will consist of three operational components to support improvement of student learning and strengthening of education system management. A fourth component will support project implementation. Specifically, this component will support the establishment of a Project Management Team (PMT) that will be responsible for overall coordination, integration, planning, monitoring and evaluation, financial management, procurement, safeguards, capacity building in the project.

The MESIP project will be implemented in all education districts in Malawi. The Second Component of the Project; *Improving School Physical Facilities*, aims at (i) improving the learning environment (ii) improving the quality of primary education facilities; (iii) reducing the pupil-classroom ratios and ensure that newly constructed classrooms are prioritized for lower grades. Under improving the learning environment, the project will finance construction of classrooms in existing schools and support the construction of new schools to reduce the Classroom Pupil Ratio and reducing the distance travelled by students in remote or highly populated catchment areas. Under improving the quality of primary education facilities, the project will support the construction of water and sanitation facilities plus providing classrooms' furniture for the newly constructed classrooms. The project will ensure that newly constructed classrooms are prioritized for lower grades

The Local Development Fund (LDF) will be used in the construction of classrooms primarily at existing school sites. The choice of new school sites will be selected according to the following guidelines; (i) Immediate need of classrooms according to student enrolment; (ii) readiness of Government to provide teachers to these classrooms; and (iii) capacity at the school and community level to assist with day-to-day supervision of civil works.

The MESIP project has triggered two of the World Bank Operational Policies, namely; Environmental Assessment (OP/BP 4.01) and (OP/BP 4.12) Involuntary Resettlement. This RPF covers the Involuntary Resettlement (OP 4.12) while the Environmental Assessment (OP 4.01) is covered under the Environmental and Social Management Framework.

1.1 Justification for Resettlement Policy Framework

The need for Resettlement Policy Framework emanates from two observations that indicate potential risks of some of the sub projects in triggering resettlement in one way or the other. The first

observation is that sub projects to be funded from MESIP would include construction and rehabilitation of classrooms. The construction of these public infrastructures may require land acquisition for the additional components entailing land tenure and access changes within the community's settings.

The second observation is that the specific locations of construction sites within the communities are not known at the moment as land sites would be selected at a later stage by the village development committees (VDC) themselves. In this context, the implementation of new set of sub projects within high density poor communities would likely displace some households from their land and also disturb community wide livelihood systems.

1.2 Aim and Objectives of Resettlement Policy Framework

The aim of Resettlement Policy Framework (RPF) is to provide a process to be used in identifying individuals to be impacted by project activities as well as the type and magnitude of impact and outline the process for preparing a Resettlement Action Plan. The RPF includes methods for identifying processes for monitoring and evaluating resettlement impacts in planning in implementation of sub projects to be funded from Malawi Education Sector Improvement Project:

The specific objectives of the RPF are to:

- Establish the MESIP resettlement and compensation principles and implementation arrangements;
- Describe the legal and institutional framework underlying Malawian approaches for resettlement, compensation and rehabilitation;
- Compare the Malawian laws and the World Bank Operational Policy for Resettlement (OP 4.12) and identify the gaps.
- Define the eligibility criteria for identification of project affected persons (PAPs) and entitlements, considering Malawian laws and the World Bank OP 4.12.;
- Describe the process for RAP preparation;
- Describe methods of valuing affected assets for purpose of compensations
- Describe the consultation procedures and participatory approaches involving PAPs and other key stakeholders; and
- Provide procedures for filing grievances and resolving disputes.
- Outline budget estimates and funding arrangements for resettlement

When a Resettlement Action Plan (RAP) is required, it will be prepared in accordance with guidance provided in this RPF, including Detailed Asset Inventory and Measurement and socioeconomic Surveys, Identification (Census) of project affected person (PAPs)/displaced persons, and Public Consultation and Disclosure Procedures.

1.3 THE RPF GUIDING PRINCIPLES UNDER MESIP

1. **Principle 1:** Activities Eligible for Funding under MESIP Project shall be those Proposed in Suitable Sites for construction, sites where the implementation of a project **would not bring** about involuntary resettlement, involuntary physical dislocation, eviction of squatters, loss of land (whether ownership is recognized by customary land tenure or land titles, impact on cultivations and property, loss of access to property, loss of access to natural resources and other economic resources. In case of resettlement compensation will follow the principle that the affected people can restore their standard of living or at least restore them to the pre-displacement levels (principle number 5).
2. **Principle 2:** Involuntary resettlement and land acquisition will be avoided where feasible, or minimized, where it cannot be eliminated. Where resettlement, including impact on assets, is unavoidable, the communities must consider various alternatives, in order to minimize impacts to the extent possible.
3. **Principle 3:** This RPF applies to all PAPs regardless of the total number affected, the severity of the impact and whether or not they have legal title to the land. Informal or customary tenure is to be treated in the same manner as formal, legal titles.
4. **Principle 4:** Genuine Consultation and Participation Must Take Place PAPs will be meaningfully consulted and will participate in planning and implementing of the resettlement activities.
5. **Principle 5:** Resettlement as social development. PAPs will be assisted in their efforts to ideally improve their livelihoods and standards of living or at least to restore them, in real terms, to pre-displacement levels or levels prevailing prior to the beginning of the project implementation, whichever is higher.
6. **Principle 6:** Measures to address resettlement shall ensure that project affected peoples are informed about their options and rights pertaining to resettlement, are included in the consultation process and given the opportunity to participate in the selection of technically and economically feasible alternatives. They will also be provided prompt and effective compensation at full replacement cost for losses of assets and access attributable to the project investments.
7. **Principle 7:** All PAPs will be identified and recorded as early as possible and a pre-resettlement data based will be established in order to protect those affected by the project and prevent an influx of illegal encroachers, squatters, and other non-residents who will wish to take advantage of such benefit.
8. **Principle 8:** Particular attention will be paid to the needs of vulnerable groups among those displaced; especially those below the poverty line, the landless, the elderly, women and

children, orphans, marginalized groups and the ethnic minorities or other displaced persons who may not be protected through the Malawian law. The objective is to provide whatever additional assistance may be necessary to restore pre-project living standards.

9. **Principle 9: Setting up of Accessible Grievance Redress Mechanisms:** The communities accessing funding from MESIP programme will put in place user friendly and cost effective mechanisms for addressing complaints from project affected persons. The mechanisms will include use of local grievance redress mechanisms administered by local village heads, traditional authorities as well use of formal courts under the Judiciary. The use of local traditional courts administered by village headmen, group village headmen and traditional authorities will allow project-affected people to access such services without going long distance.

10. **Principle 10:***The implementation of individual RAPs (or voluntary land contributions in the case where there is no RAP and resettlement is handled at the community level) must be completed prior to the implementation of the investments under MESIP.*

Furthermore, this RPF applies to other activities resulting in involuntary resettlement, that in the judgment of the Bank are a) directly and significantly related to MESIP investments; b) necessary to achieve its objectives as set forth in the project documents; and c) carried out, or planned to be carried out, at the same time as the project.

Investments under MESIP will avoid or at least minimize involuntary resettlement to the extent possible. However, where it is unavoidable, appropriate measures to mitigate adverse impacts will be carefully planned and implemented following the general framework outlined in this document.

Institutional Framework on Resettlement

Resettlement exercises have been a traditional responsibility of the Ministry of Lands and Housing (particularly the Department of Lands and Valuation), the District Commissioner, Traditional Authorities (T/A) and village head men as stipulated within various government policies and laws such as Land Acquisition Act, The Chiefs Act and Malawi National Land Policy. However, today because of the multi – dimensional nature of resettlement activities, successful implementation of resettlement depend on collaboration of different stakeholders, at local level (village/area level), district level and national level. In this regard, cases of resettlements within activities to be funded from MESIP will be undertaken as a shared responsibility among the communities, the local authorities and central government ministries. Key central government ministries will be: The Ministry of Lands and Housing, Ministry of Agriculture and Food Security, Ministry of Local Government and Rural Development, Ministry of Environmental and Climate Change management and the Local Development Fund technical Support Team (LDF TST). The central government ministries will provide policy leadership in areas of mainstreaming and annual monitoring of resettlement planning in the LDF and the MESIP PMT. The local authorities will coordinate implementation of Resettlement Action Plans (RAP) and considerations of resettlement issues within the implementation processes. Specific tasks will include screening and appraisal of the projects on

resettlement issues before funding of the projects. In addition, local authorities will monitor and provide necessary technical assistance to management of resettlement activities to be done by the communities.

Consultation

The preparation of this RPF has followed an extensive consultation process with various stakeholders at local authority and National levels. Consultations were done with the Ministry of Environment and Climate Change Management, Ministry of Lands, Housing and Urban Development, Ministry of Education and the Local Authorities.

1.4 Grievance Redress Mechanisms on Resettlement Activities

Impacts on people generate a number of challenges and complaints especially to those affected people moved from one place to another. Examples of possible complaints include: objections to use of someone's land, encroachment on private land, theft of properties and marginalization in distribution of material assistance. Examples of grievances: include dissatisfaction with amount of compensation and dissatisfaction with size and nature of land replacement. Such grievances are likely to crop up in one way or another in implementation of activities to be funded from the MESIP

Negotiation and agreement by consensus between the community and affected persons will provide the first avenue to resolve grievances expressed by the individuals on resettlement issues. This is because the implementation of activities will be community driven, and in addition, the operations of the infrastructure will be community owned. Nevertheless local assembles will facilitate the communities to address all resettlement related grievances during the identification and appraisal of sites. In this context, proper channels of grievance redress mechanisms will be put in place, and the project affected people sensitized to make use of them. These channels will be in line with norms and culture of the communities, laws of the country, and acceptable to World Bank standards. The process of grievance redress mechanisms will initially be handled by informal courts led by traditional leaders (village headmen, traditional authorities) which operate within the community settings themselves. However, in events where some aggrieved parties are not satisfied by decisions made at village headmen and traditional authority levels, the cases will be referred for review and re-consideration by to District Commissioner, formal courts within the judiciary and the Malawi Police Service. The Malawi Police Service would be involved in reports of cases of criminal in nature.

1.5 Organization of the Framework

The Resettlement Policy Framework has been organized into six chapters as follows:

Chapter One provides background information, rationale for the Resettlement Policy Framework, aim and objectives of the framework and potential users.

Chapter Two highlights the scope of MESIP and linkages to resettlement activities, an overview of land tenure classes, and extent of existing land uses in Malawi, general procedures of land

acquisition. The chapter also outlines selected general socio – economic impacts from resettlement exercises.

Chapter Three provides an overview of policies and laws governing resettlement in Malawi, a review of World Bank policies on resettlements related to projects. The chapter also outlines differences between policies and laws of Malawi Government and the World Bank policies on resettlement. The chapter includes suggestions of addressing the gaps in policies in context of management of resettlements related to sub projects to be funded from the Project

Chapter Four outlines the guiding principles on handling resettlements activities within activities under MESIP. Chapter outlines eligibility criteria for compensations, determination of cut-off date, methodologies of valuation of land and assets for purpose of compensations, procedures for delivery of compensations to project affected people and mechanisms for addressing grievances in course of resettlement activities.

Chapter Five outlines resettlement screening process. The screening process details steps to follow in verifying compliance to resettlement issues by the communities. The chapter describes steps in preparation of Resettlement Action Plan, details of the contents of the Resettlement Action Plan, and the suggested technical people to prepare the plan. The chapter has also outlined how a Resettlement Action Plan has to be reviewed, and approved within the government institutional framework. The chapter has also outlined a monitoring plan for resettlement activities at local level. Selected local indicators, means of verifications, frequency of monitoring and monitoring authorities are suggested in the plan.

Chapter Six describes responsibilities of main institutions to be involved in planning, implementation and monitoring of resettlement activities. The chapter outlines specific roles of the communities, local authorities and central government ministries and assesses the gaps in capacities of these institutions. The chapter has included recommendations for capacity building activities in order to address existing gaps in management of resettlement activities within districts. The chapter also provides indicative budgets for land acquisition and compensation purposes in implementation of project activities that may involve resettlement. In addition, annual nominal budgets have been prepared for resettlement related activities and services at both district assembly level and national level.

CHAPTER ONE

BACKGROUND ON MESIP PROJECT AND RESETTLEMENT POLICY FRAMEWORK

1.1 Introduction

Experience shows that involuntary resettlement if unmitigated, often gives rise to severe economic, social, and environmental risks. These have resulted into, among others, productive systems being dismantled, people facing impoverishment when their productive assets or income sources are lost, people being relocated to environments where their productive skills may be less applicable and competition for resources greater; community institutions and social networks being weakened; kin groups being dispersed, cultural identity, traditional authority, and the potential for mutual help being diminished or lost¹.

The Government of Malawi with funding from the Global Partnership on Education (GPE) is embarking on the implementation of the Malawi Education Sector Improvement Project (MESIP). The overall Project Development Objective (PDO) is to support implementation of Malawi's Education Sector Implementation Plan II (2014-2018) to achieve its goals for improving learning outcomes and enhancing internal efficiency and equity for primary education.

The proposed project's primary focus is on improving learning outcomes, equity and efficiency in Malawi's primary education system. It will consist of three operational components to support improving of student learning and strengthening of education system management. A fourth component will support project implementation. Specifically, this component will support the establishment of a Project Management Team (PMT) that will be responsible for overall coordination, integration, planning, monitoring and evaluation, financial management, procurement, safeguards, capacity building in the project.

The MESIP project will be implemented in all education districts in Malawi. The Second Component of the Project; *Improving School Physical Facilities*, aims at (i) improving the learning environment (ii) improving the quality of primary education facilities; (iii) reducing the pupil-classroom ratios and ensure that newly constructed classrooms are prioritized for lower grades. Under improving the learning environment, the project will finance construction of classrooms in existing schools and support the construction of new schools to reduce the Classroom Pupil Ratio and reducing the distance travelled by students in remote or highly populated catchment areas. Under improving the quality of primary education facilities, the project will support the construction of water and sanitation facilities plus providing classrooms' furniture for the newly constructed classrooms. The project will ensure that newly constructed classrooms are prioritized for lower grades

The Local Development Fund (LDF) will be used in the construction of classrooms primarily at existing school sites. The choice of new school sites will be selected according to the following

¹Source: World Bank Operational Manual Handbook

guidelines; (i) Immediate need of classrooms according to student enrolment; (ii) readiness of Government to provide teachers to these classrooms; and (iii) capacity at the school and community level to assist with day-to-day supervision of civil works.

The MESIP project has triggered two of the World Bank Operational Policies, namely; Environmental Assessment (OP/BP 4.01) and (OP/BP 4.12) Involuntary Resettlement. This RPF covers the while Involuntary Resettlement (OP 4.12) while the Environmental Assessment (OP 4.01) is covered under the ESMF.

This Resettlement Policy Framework (RPF) has been prepared for community based sub projects under Malawi Education Sector Improvement Project. The Resettlement Policy Framework has been prepared in compliance with OP4.12- Involuntary Resettlement.

1.2 Justification for Resettlement Policy Framework for Sub Projects Under MESIP

The purpose of the Resettlement Policy Framework (RPF) is to guide in addressing land acquisition and resettlement issues for sub projects to be funded by the Malawi Education Sector Improvement Project. The need for Resettlement Policy Framework emanates from two observations that indicate that the implementation and management of some of the activities would trigger resettlement in one way or the other:

- (a) Activities to be funded from MESIP would be across the country, in both poor urban and rural poor community settings. These will include construction of classrooms and water points. The implementation and indeed construction of this public infrastructure may require formal land acquisition for the new facilities entailing land tenure and access changes within the community's settings.
- (b) The specific locations of sub projects within the communities are not known at the moment as land sites would be selected at a later stage by the village development committees (VDC) themselves. However, the implementation and indeed construction of new classrooms within poor communities may displace some households from their homesteads and also disturb livelihoods bases.

1.3 Aim and Objectives of Resettlement Policy Framework

The aim of Resettlement Policy Framework (RPF) is to provide a process to be used in identifying individuals to be impacted by project activities as well as the type and magnitude of impact and outline the process for preparing a Resettlement Action Plan. The RPF includes methods for identifying processes for monitoring and evaluating resettlement impacts in planning and implementation of sub projects to be funded from the Malawi Education Sector Improvement Project. Specific objectives of the Resettlement Policy Framework are as follows:

- (a) Establish the MESIP resettlement and compensation principles and implementation arrangements;
- (b) Describe the legal and institutional framework underlying Malawian approaches for resettlement, compensation and rehabilitation;

- (c) Compare the Malawian laws and the World Bank Operational Policy for Resettlement (OP 4.12) and identify the gaps.
- (d) Define the eligibility criteria for identification of project affected persons (PAPs) and entitlements, considering Malawian laws and the World Bank OP 4.12.;
- (e) Describe the process for RAP preparation;
- (f) Describe methods of valuing affected assets for purpose of compensations
- (g) Describe the consultation procedures and participatory approaches involving PAPs and other key stakeholders; and
- (h) Provide procedures for filing grievances and resolving disputes.
- (i) Outline budget estimates and funding arrangements for resettlement

1.4 Potential Users of the Resettlement Policy Framework

The Resettlement Policy Framework has been prepared as a strategic guide on impact planning for sub projects to be funded from the Project. It outlines policies, procedures, screening criteria for impacts, and legal and administrative framework on resettlement and compensations to project affected persons in course of the programme. Main potential users of this manual are staff involved in the planning and management of Malawi Education Sector Improvement Project. These include staff of Local Development Fund TST, national sector level staff, District Commissioners (DC), District Executive Committees (DEC), staff of local authorities and village development committee (VDC), Area Development Committees (ADC) and Area Executive Committees (AEC).

1.5 Stakeholder Consultations and Participation

The preparation of this RPF has followed an extensive consultation process with various stakeholders at local authority and National levels. Consultations were done with the Ministry of Environment and Climate Change Management, Ministry of Lands, Housing and Urban Development, Ministry of Education and the Local Authorities.

Some of the Key issues that were raised during consultations included

- The need for front line staff (extension workers) to undergo training on environmental and social safeguards prior to project implementation. Front line staff training will help with project monitoring and reporting which was noted to be lacking in the implementation of environmental and social safeguards.
- Funds for environmental and social safeguards implementation should be set aside for each construction activity, because environmental and social issues are not prioritized in projects and get little or no money for implementation of the safeguards.
- The need for annual refresher courses to improve the skills of safeguards implementers both at district and community level in order to address the skills gaps and improve implementation and compliance of safeguard measures.

The locations of activities to be funded under MESIP are yet to be determined. An assessment of the potential sites will likely be carried out using funds from the Royal Norwegian Embassy, once the PAD had been finalized -As such further public consultations and participation will be undertaken during activities screening. Moreover, since this is not a one-stop process, but rather an interactive one, consultation will be done throughout project implementation, involving all key stakeholders, particularly women, the poor, and the most vulnerable groups of the beneficiary communities.

CHAPTER TWO

DESCRIPTION OF MESIP AND LINKAGES TO RESETTLEMENT

The Government of Malawi with funding from the Global Partnership of Education will be embarking on the implementation of the Malawi Education Sector Improvement Project (MESIP). The Project Development Objective (PDO) is to improve accountability and quality of education service delivery in primary school. The Project will help to among others: (i) improve the learning environment and quality of primary education service delivery in early grade levels with an emphasis on improved accountability and functioning at the school level and (ii) improve the efficacy of interventions for cost-effective improvement on learning outcomes. The achievement of the PDO will contribute to a higher level objective of improving learning in the primary education sub-sector in Malawi.

2.1 Project Components

The proposed project's primary focus is on improving learning outcomes, equity and efficiency in Malawi's primary education system. It will consist of two components to support improved student learning and strengthened education system management. A third component will support project implementation.

Component 1: Performance-Based School Improvement Grants for Improving Promotion and Retention

This component will be a pilot to increase learner promotion rates and to improve school performance through strengthened school management, accountability for results and incentivizing adherence to MoEST central policy directives. It will assist in implementation of the ESIP II reforms set out under Policy 3, which seeks to Increase Internal Efficiency of Primary Education through reduction of repetition rates from the current 22% to a mandated cap of 10% per class, thereby improving on the promotion rates between standards 1 to 4. It builds on the previous two school grant programs, based on enrolments, initiated by development partners and implemented through the previous projects of the World Bank and institutionalized by MoEST.

Under this component a 'performance-based' element will be developed and introduced as additional³ to the funding formula for the school improvement grants program currently in use. The new funding formula will be piloted some of the schools that are targeted under Component 3 of this program which seeks to change School level management and Teacher Behaviours' through a School Leadership Program. The

The interventions to be provided under this component (in close coordination with relevant departments including Basic Education) will include (i) TA on developing the guidelines, manuals and trainings on the performance-based school improvement grants; (ii) capacity building for performance-based school improvement planning with enhanced participation of the community stakeholders; (iii) enhanced financing linked to schools' provision of remedial education, adherence to a circular on lower repetition, and double-shifting and achievement of other management and accountability milestones; (iv) monitoring of pilot results.

The objective is not to encourage automatic promotion but to encourage schools to invest in quality enhancement strategies⁴ with the PSIP grant that they receive from government 50% of which should be used for quality and relevance. It will also encourage schools to adopt other strategies aimed at reducing repetition some which have been specified in the ESIP II such as increasing teaching time, and provision remedial teaching using the resources allocated from the PSIP, reduction of class size; strengthen

continuous assessment of learners in order to identify learner weaknesses and design appropriate interventions. Since the whole school will benefit from the additional resources reduction of repetition and increasing promotion rates requires the participation of all school level stakeholders. This component requires that the school head teachers, the teachers, the SMC, the PTA, the mother groups and the learners themselves to focus on ensuring improved attendance by both learners and teachers that learning. They therefore have a role to play in improving attendance, creating school environments that are conducive to learning and promote learning achievement for the learners in order to justify promotion from Std1 to Std 4.

The use of the resources allocated to the schools for achieving the set targets under the pilot will be at the discretion of the school

Component 2: Improving School Physical Facilities

The objectives are to: (i) improvement of the learning environment (ii) improve the quality of primary education facilities; (iii) To reduce the pupil-classroom ratios and ensure that newly constructed classrooms are prioritized for lower grades

- (i) Improving the learning environment the project will finance construction of classrooms in existing schools and support the construction of new schools to reduce the CSR plus reducing the distance travelled for students in remote or highly populated catchment areas.
- (ii) Improve the quality of primary education facilities by including the construction of water and sanitation facilities plus providing classrooms' furniture for the newly constructed classrooms
- (iii) To reduce the pupil-classroom ratios and ensure that newly constructed classrooms are prioritized for lower grades

Under this component, the project support will finance civil works and school furniture. The LDF approach on classroom construction will take place primarily at existing school sites while the choice of new school sites will be selected according to the following guidelines:

(i) Immediate need of classrooms according to student enrolment; (ii) readiness of Government to provide teachers to these classrooms; and (iii) capacity at the school and community level to assist with day-to-day supervision of civil works

The project aims to construct 1200 classrooms to alleviate the rising student-to-classroom ratio in the short and medium term, as enrollments continue to rise. These classrooms will be built according to specific design standards currently under development by the MoEST and UNICEF (minimum package to include 2 classrooms, latrines with washing facilities, drinking water facility and furniture).

To achieve this target in the available four years of project implementation, the Government will utilize the LDF modality through its large-scale implementation capacity but with enhancing some quality requirements in terms of execution using small-scale contractors, supervision and designs. Also by empowering the communities to manage and procure services of contractors plus site supervisors. The LDF training manual to fine-tune for the construction works.

Component 3: Improving learning outcomes at the School Level

This component will consist of two sub-components: 3.1: Improving learning outcomes at the school level and 3.1 System Development through policy, legal and capacity building activities.

Component 3.1: Improving learning outcomes at the school level (US\$5 million)

International assessments of Math scores for developed and developing countries suggest that international differences in student performance are strongly related to institutional factors, such as centralized distribution of resources or level of school autonomy, as opposed to differences in the levels of resources put into the system. Malawi is not much different from other countries at its level of per

capita income in terms of progress on pupil learning. Current rates of institutional progress mean that it would take an unacceptably long time for Malawian children to master the basic competencies in reading and Mathematics needed to be relevant in the labour market.

The component 3.1 proposes a set of carefully selected interventions in key reform areas suggested by ESIP II to create the necessary conditions to improve learning at the classroom level. These interventions will follow a phased-in design with rigorous M&E to see how these interventions can best function, in a cost-effective manner, within the current institutional framework of Malawi's education sector. Targeted areas for these phased in interventions include School Leadership Program to change School level management and Teacher Behaviours, The core intervention being designed here is "School Leadership Training Program" to revitalize learning environment in schools, and *School Level Data Collection and Usage, where data collection process will be automated to generate school-level reports to be disseminated to the Head Teachers s/Teachers/SMC members and DEMs on a quarterly basis.*

Sub-component 3.2: System Development through Policy, Legal and Capacity building

This component will support the on-going efforts to refine policies, rules, laws and bi-laws in support of the ESIP II Action Plan and required capacity building activities. This

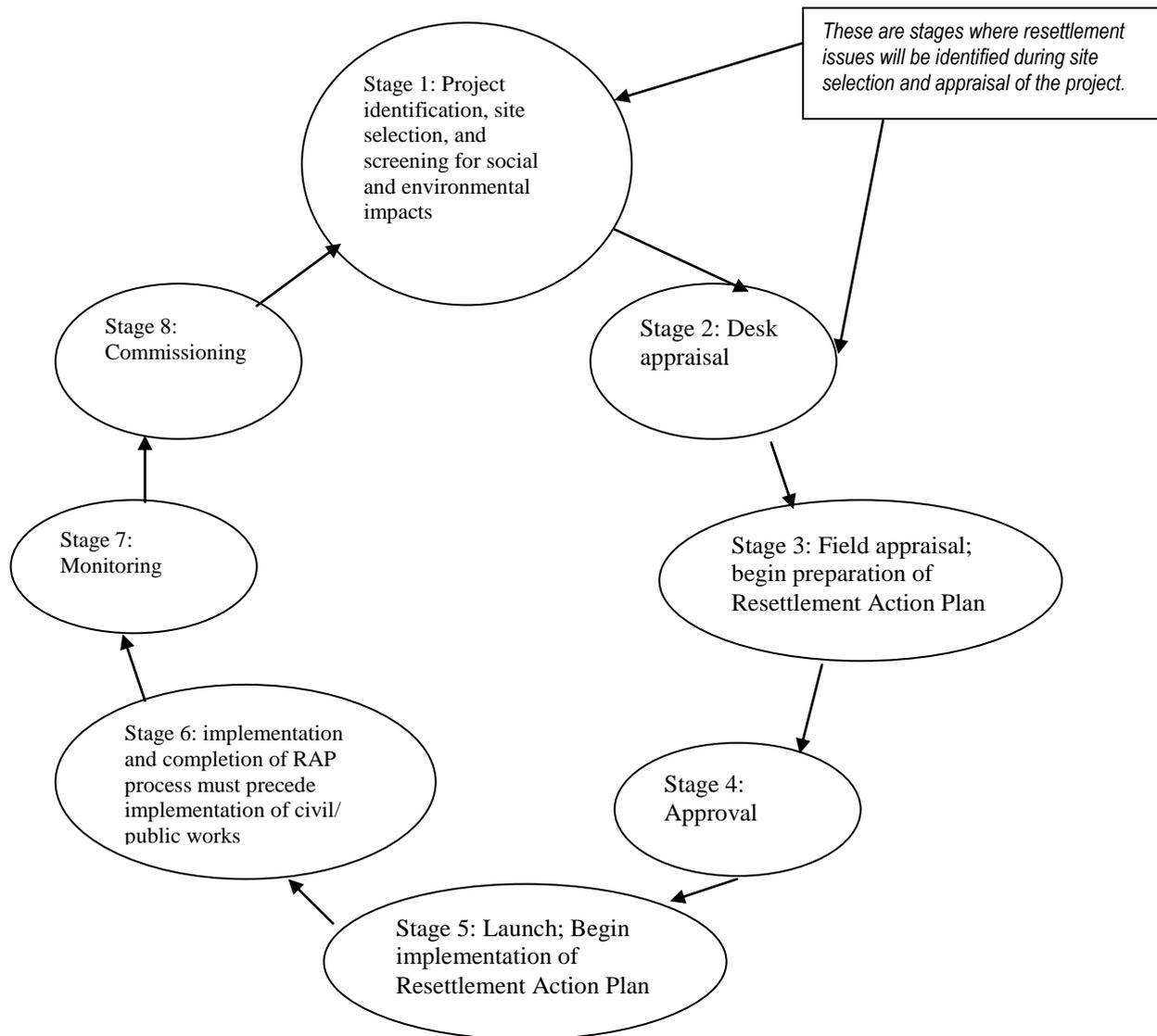
Component 4: Project Management and Coordination (US\$ 4.4million).

This component will support a Project Management Unit (PMU) that will oversee the coordination of project. In particular, this component will ensure that all funds flow outside of government structures, to the extent possible, and fiduciary management are handled through a separate entity responsible for project management and implementation. This component will finance the establishment and functioning of a PMU and capacity building of the MoEST's financial management, internal audit and procurement units. This sub-component will also include capacity building at the national, district and local (i.e. school, community) levels to support project implementation and development of a communications strategy and plan.

2.2 Generic Project Cycle and Linkages to Resettlement Issues

The generic project cycle of activities to be funded from MESIP has eight sub steps. These steps are outlined in the diagrammatic flow of the project cycle below here.

Fig. 1: Project Cycle Related to Resettlement



Identification of resettlement issues will be done during project identification and site selection process in stage 1. It is at this stage that the community will have to conduct resettlement screening and work out necessary compensatory measures before the project can be appraised by the District Executive Committee (DEC).

2.3 An Overview of Land Uses in Malawi

Malawi is a relatively small country with one of the highest population density in Southern Africa. The country has an estimated population of 14 million people against land size of about 9.5 million hectares. The average population density is 148 persons per square kilometre. However, the southern half of the country has an average population density of about 350 persons per square kilometre. About 85% of the population live in rural areas and depend on small holder farming while only 15% of the population live in towns where as much as 75% of the urban population live in poor peri – urban and informal settlements.

Agriculture is the main stay of Malawi’s economy, accounting about 40% of gross domestic product and about 85% of export revenue. Small holder farming occupies about 4.5 million hectares while

estates occupy about 1.2 million hectares of rural land. Some studies indicate that as much as 55% of the smallholder farmers have less than half of a hectare of cultivable land. As a result of this constraint, most rural households face difficulties in producing enough output for food and cash throughout the year. Poverty levels are estimated at 60% and 65% of populations in rural and urban areas respectively. The MESIP project is designed to address such levels of poverty in the country

2.4 Land Tenure Regimes in Malawi

Malawi embraces the capitalistic ideals with regard to land ownership. There are six distinct land tenure classes existing in Malawi. The implementation of the countrywide MESIP programme would likely involve land access to any one of the classes. Furthermore, cases of construction of new facilities within selected sites could trigger land tenure and access changes. The description and extents of the classes of land in Malawi are as follows:

(i) Customary Land

This is land held in trust for all people of Malawi by the State President, who delegates his authority to traditional chiefs. This constitutes about 75% of the total 9.5 million hectares of the land. The land is commonly held and distributed to the people by local chiefs. Although each person has recognised ownership to a piece of land, he or she cannot trade on it as the land can be reassigned to other people in case the chiefs deem it fit. A coherent system in the distribution of land exists in both patrilineal and matrilineal societies. This system has allowed smallholder agriculture to survive without access to bank loans.

(ii) Leasehold Land

This is part of private land that is leased by individuals or other legal residents. The lease period varies according to type of use that someone has applied for. Currently these fall into three groups of 3 to 21 years old leases for agricultural uses, 33 to 99 years old for property and infrastructure developments, and over 99 year lease for those who would wish to sublease to tenants of 99 years. About 8% of the land in Malawi is in this category.

(iii) Registered Land

This is grouped into two classes called customary registered and adjudicated land. The first exists in Lilongwe District only. This land is registered in the family leader name with all family names in that area registered including the size of their land holdings. Their implicit freehold status as the families can trade in its holding by leasing out or selling bits of it with groups consent. Loans can therefore be obtained on strength of their certificates to the land.

The second class is a simplified leasehold system, which allows owners to have certificates for their pieces of land based on survey and registration number. This is common in the urban areas, but has been applied in rural areas for agricultural, commercial and residential uses.

(iv) Freehold Land

This is land, which has been granted to persons for perpetuity. The government has no specific control on transactions except on planning permission on uses. This lease is now limited to Malawian citizenship only. It is difficult to enforce conservation measures on this land because of the exclusivity, which the persons enjoy.

(v) Government Land

The land which is owned and used by government for public utilities, schools, hospitals, government offices and other properties, markets, government farms and other public goods throughout the country.

(vi) Public Land

Land managed by agencies of the government and traditional leaders in trusts for the people of Malawi, openly used or accessible to the public at large. This includes catchment areas, protected forest reserves, national parks, game reserves, dambos (flood plains), community forests, river Lines, flood plains, wet lands, military sites and others.

2.5 Brief Description of Land Acquisition Approaches for Community Driven Sub-Projects

Specific steps followed in identification, appraisal and assessment of land for a sub project are outlined in chapter four. Upon identification of the specific land area to be acquired, the village development committee will initiate negotiations with the village heads, and/or occupier(s) or users of customary land, registered proprietor or their representatives. Inter-department cooperation will be utilized wherever necessary to tap on the expertise and experiences of the various stakeholder institutions.

- (a) The District Commissioner in consultations with the district sector line officials prepare actions plans for implementation of land acquisition and resettlement that comply with the provisions of the framework.
- (b) Project Affected Persons are then served with a notice with a clear explanation of the purpose of the acquisition, the area of land required and the owner's right to compensation in accordance with the existing laws.

In the case of customary land, District Commissioner/Chief Executive ascertains from the village head, the land register or whichever is applicable in order to determine the person or persons who have the right over that land as well as those using the land. And in the case of freehold land the Ministry of Lands, Housing and Urban Development shall ascertain the registered owner or owners as well as those using the land of the freehold land to be acquired from the land registers.

The District Commissioner/Chief Executive commissions a survey on such land to be acquired. Thereafter a plan is prepared and certified to be accurate showing:

- (i) Land to be acquired;
- (ii) Names of the owners and occupiers of that land as far as they can be ascertained; or
- (iii) in the case of customary land the name of the land owner who is the holder of the right over the land as ascertained by the local chief and other bonafide local residents ; and
- (iv) Names of any person using the land but not the owner.

A copy of such plan shall be deposited in the office of the District Commissioner/Chief Executive and another at the premises of the local chiefs. It should be highlighted that in case some project affected persons have objections to the proposed land acquisition and resettlement, their objections have to be done in writing to District Commissioner for or Commissioner for Lands and Valuation within 21 working days after the public notice. Alternatively, formal complaint can be lodged via traditional authority.

2.6 Description of Potential Socio-Economic Impacts of Resettlements

Resettlement within context of implementation of community driven projects encompasses land acquisition and relocation of existing people from the existing homesteads, impact on assets even if

affected person does not need to relocate, restricted access to (natural resources) national parks or legally designated protected areas, and negative impacts on livelihood. Such resettlement exercise undertaken whether within rural communities or urban setting trigger a number of negative externalities on the affected people. In general, some impacts emanate from the consequences of losses of access to their settlement sites, others from losses of physical assets and loss of access to their traditional productive assets. Furthermore some impacts arise from loss of social cohesion and relations. Examples of potential socio- economic impacts from such sources are outlined below here:

Table 1: Summary of Main Social and Economic Impacts from Resettlement Activities

Category of losses	Social and economic impacts
Displacement from land	<ul style="list-style-type: none"> • Landlessness • Loss of productive resource for agriculture and other businesses
Loss of residential property and homestead	<ul style="list-style-type: none"> • Landlessness, homelessness • Impoverishment of people • Disturbance of house production systems • Loss of sources of income • Loss of or weakening of community system and social networks. • Loss of access to ancestral sites, graveyards • Loss of access to social amenities such as hospitals and schools. • Loss of traditional authority.
Loss of assets or access to assets	<ul style="list-style-type: none"> • Impoverishment • Loss of sources of income • Loss of employment opportunities (self – employment)
Loss of income sources or means of livelihood	<ul style="list-style-type: none"> • Impoverishment • Loss of self – employment opportunities • Disruption of attainment of services such as schools, health services resulting in further impoverishment, malnourishment
Loss of identity and cultural survival	<ul style="list-style-type: none"> • Alienation of persons from their tribal society • Lack of access to community support
Loss of access or proximity to social amenities e.g. water sources, (e.g. boreholes), schools, hospitals and clinics, markets	<ul style="list-style-type: none"> • Impoverishment. • Loss of sources of income • Increased time to access resources. • Loss or shortage of time for other activities. • Increase in waterborne diseases
Blockage of footpaths/pathways	<ul style="list-style-type: none"> • Increase in travel distance due to longer route
Loss of grazing land	<ul style="list-style-type: none"> • Difficulties in rearing livestock
Blockage of access to public water bodies	<ul style="list-style-type: none"> • Difficulties in collection of water for domestic uses • Difficulties in collection of water for irrigation

CHAPTER THREE

POLICY AND LEGAL FRAMEWORK ON RESETTLEMENT IN MALAWI

3.1 Review of Policies and Laws on Resettlement in Malawi

Policy and legal framework on resettlement in Malawi is drawn from various government policies and pieces of legislation. In addition to a review of the Constitution of Republic of Malawi, other key government policies and pieces of legislation considered here include: Malawi National Land Policy, Land Act, Land Acquisition Act, The Public Roads Act, The Town and Country Planning Act, The Water Resources Act and the Forestry Act and Environmental Management Act. The following paragraphs highlight some resettlement related requirements which need to be complied with by local communities in the planning of activities to be funded from the MESIP

3.1.2 The Constitution of Republic of Malawi

The Constitution of the Republic of Malawi guarantees land as a basic resource for social and economic benefit for all Malawians. It affirms equitable access of land and ownership of property. The constitution also sets a benchmark on the issue of land acquisition. It provides in section 28(2) that “No person shall be arbitrarily deprived of property” and in section 44(4) that “Expropriation of property shall be permissible only when done for public utility and only when there has been adequate notification and appropriate compensation provided that there shall always be a right to appeal to a court of law”. In regard to these facts, it will be necessary for the community to provide adequate land to displaced persons. The Constitution of Republic of Malawi further guarantees security of tenure of land and free enjoyment of legally acquired property rights in any part of the country. The implication of this provision to resettlements related to sub projects funded from MESIP is that communities will have to pay out fair and adequate compensation to land owners in event of the need to acquire persons’ land for construction of community infrastructures such as new schools, new health centre and new water mains.

3.1.3 The Malawi National Land Policy

The Malawi National Land Policy focus on land as a basic resource common to all people of Malawi and for enhancement of socio – economic development. Section 4.11 affirms equitable access to land to all citizens of Malawi. The policy recognizes human settlement and agriculture as the major benefactor of land use sector. As such, the policy advocates for orderly resettlements of villages or households especially in rich agricultural zones. Furthermore the policy guarantees full legal protection to customary land tenure to the people of Malawi in order to enable the ordinary Malawians adequately participate in subsistence farming and socio-economic development activities. The Malawi National Land Policy also advocates for fair compensation on open market value to local people on all classes of land (whether held under customary land tenure or leasehold) in case such land is acquired for public interest or for development of public infrastructure. In reference to relocation of displaced people, the policy advocates adequate consultations with the affected people so that their interests are taken care of. Such provisions will have to be made in MESIP for consideration of acquisition of land for some selected public services such as new schools, earth dams and health centres.

3.1.4 Land Act

Land Act covers land tenure and land use quite comprehensively. Section 27 and 28 of the act guarantees landholders appropriate compensation in event of disturbance of or loss or damage to assets and interests. The Land Act also provides procedures of acquisition of one class of land to another. The process begins with appropriate notice to the existing lessee of the land.

3.1.5 Land Acquisition Act

This law covers procedures relating to the acquisition of land by either government or individuals or developers from any form of the land tenure systems in Malawi. The act makes provision for preliminary investigation, preliminary survey of the area and the procedure to be followed where land should be acquired. The procedure for land acquisition starts with issue of a formal notice to persons who have existing interests in the land. Such notices are issued under section 6 of this act. Sections 9 and 10 of the act covers the steps for assessment of land, crops, fruits and other landed properties and subsequent procedures for payments of the compensations to the displaced people. Section 11 to 14 outlines the necessary steps for land surveying and land transfer following notices in government gazette. The responsibility of identifying alternative land for those affected people rests with their village headman, their traditional authority and District Commissioner of the district. The District Commissioner assists in transportation and provisions of necessary services on new sites of resettlement.

3.1.6 Town and Country Planning Act

The Town and Country Planning Act, is a principal act for regulating land use planning and physical developments in Malawi. The aim of regulating land uses and location of physical developments is to enhance orderly spatial physical growth of human settlements activities. In addition the laws promotes orderly physical planning in order to enhance optimum use of land and service infrastructures, protect and conserve fragile environmental systems in space. These objectives are achieved by guiding physical developments, and controlling building uses in designated zones with regulated planning permissions. Section 40 basically prescribes environmental and socio-economic screening for medium to large-scale development projects before they can be granted planning permissions under this act. Normally this screening is undertaken by local authorities and developers of proposed large projects before they can be sanctioned under this act.

Sections 63 - 65 recognize the need of appropriate compensations to land owners in case of compulsory acquisition of land for public interest. Although the provisions indicate that compensation is at discretion of government, recent amendment to the sections have provided room for appeal to the high court by land owners in case they are aggrieved on amount of compensation on their assets.

It is expected that there will be no cases of compulsory acquisition of land on the project.

3.1.7 Public Roads Act

The public roads act covers the management of road reserves and streets. Land acquisition and resettlement issues are outlined in part II of the act. Section 44 provides assessment of compensations that can be paid under this act. The compensations cover surface and land rights of the owner or occupier of land. Section 45 provides for compensation for conversion of land into public use and the section states specifically that in case of customary land compensation is in respect to disturbance and injurious affection to people, section 49 and section 50 provide opportunities for land owners or occupiers to appeal to the High Court on grievances related to resettlement and compensations provided for in this act.

3.1.8 Water Resources Act

Water Resources Act is the principal statute that regulates water resource use, protection and conservation of land within catchment areas, along streams and rivers. The administration of these responsibilities rests with The Water Resources Board. This is a policy making body which advises the government as a whole on all matters regarding water resource protection, abstraction and conservation. Its role includes overseeing the processing of applications for water rights and monitoring water abstraction. Section 16 (1) outlines measures and restrictions to access to water, to

abstractions and interferences in water flows, to pollution of water in public water resources by people or companies. This provision recognises that dambo land is public land/common resource and that if some people or companies construct dams, earth dams will restrict other people from accessing fertile dambo land for irrigation and grazing animals. The Water Resources Board regulates the locations of dams in order to minimise risks and conflicts among users of dambo land and water resources. In case on construction of earth dams by communities, it is necessary that applications are made to the Water Resources Board prior to commencement.

3.1.9 Forest Act

The Forestry Act number 11 of 1997 affirms the role of Department of Forestry on control, protection and management of forest reserves and protected forest areas. In addition the act recognizes the need to promote participatory social forestry and empowerment of communities for conservation and management of trees within the country. In this regard the act encourages community involvement in woodlots and management of forest reserves through co-management approaches. Section 86 of Forestry Act has provided guidelines on values/rates for sale of both indigenous trees and exotic trees. These rates are gazetted, and are reviewed from time to time on need basis to reflect current values by senior government officials. The values are used so that those who are involved in forestry are paid reasonable compensations on their timber trees and fruit trees. In case the department has not reviewed the rates at the material time, the department of Forestry normally assigns an officer to value the trees for purpose of immediate sale or compensations. Normally, the valuation of people's trees are done based on species of trees, measured diameter of breast height and market price in kwacha per cubic metre.

3.1.10 Environment Management Act, 1996

The Environment Management Act enacted in 1996, outlines the EIA process to be followed in Malawi and requires that all project developers in both the public and private sectors comply with the process. The act sets out the powers, functions and duties of the Director of Environmental Affairs (DEA) and Environmental Affairs Department (EAD) in implementing the EIA process. The Act does not provide for an environmental and social screening process for those projects whose location and extent are not yet known at the inception and planning stage. However the EIA Guidelines of 1997 prescribe the types and sizes of projects, which should be subject to EIA. Some of the MASAF funded sub-projects may fall under the list of prescribed projects. Hence, EIA studies have to be conducted, before implementation of the project activities. Since the sub-project locations and the extent of sub-project activities are not exactly known at this time, an environmental and social screening framework is required.

3.2 Policies of the World Bank on Resettlement

World Bank policies on resettlement are outlined in Operational Policy (OP 4.12, and the overall objective of this safeguard is to avoid or minimize involuntary resettlement where feasible, exploring all viable alternative project designs. Further the policy advocates and encourages community participation in planning and implementing resettlement. More specifically, where resettlement is unavoidable, the policy stipulates criteria for eligibility to compensation, resettlement assistance and rehabilitation assistance measures to project affected persons on the following conditions:

- a. Those who have formal legal rights to land, including customary and traditional rights recognized under the legal laws or traditional practices of Malawi. This class of people includes those holding leasehold land, freehold land and land held within the family or passed through generations.

- b. Those who have no formal legal rights to land at the time of the census but have a claim to such land or assets provided that such claims are recognized under the legal or traditional laws of Malawi. This class of people includes foreigners and those that come from outside the community and given land by the local chief to settle.
- c. Those who have no legal right or claim to the land they are occupying prior to an established cut-off date (date of original census). This class of people includes squatters, pirates and those that settle at a place on semi-permanent basis, or those settling at a place without any formal grant or authority.

Project affected persons classified under paragraph 3.2(a) and 3.2 (b) shall be provided compensation, resettlement assistance and rehabilitation assistance for the land, building or fixed assets on the land and buildings taken, or impacted, by the project in accordance with the provisions of this framework if they occupy the project area prior to the cut-off date (date of commencement of the census). Project affected persons classified under paragraph 3.2 (c) shall be eligible for compensation for the assets but not land.

In addition the World Bank policy on resettlement stipulate those impacted persons who encroach on the project area after the cut-off date shall not be entitled to compensation, or any resettlement assistance or any other form of rehabilitation assistance.

3.3 Comparison and Gaps between Policies of World Bank and Malawi on Resettlement

Policies of the World Bank on resettlement and of Government of Republic of Malawi have a number of common aspects in management of resettlement. For example both policies emphasise on minimisation of the extent of resettlement. Secondly, the policies recommend considerations of fair and adequate compensations to project affected persons. However, there are some gaps that exist between the policies of World Bank and those of Government of Republic of Malawi. A detailed comparative analysis is provided in table 2. Some selected examples are as follows:

- (a) On aspect of compensations on assets to project affected people, the policies of World Bank on resettlement include illegally built structures of squatters as eligible for compensations on their assets. In case of Malawi, such claimants are not entitled to compensations.
- (b) On aspects on compensations on land, the policies of Government of Malawi consider the different intrinsic values associated with various classes of land (customary land, leasehold land, freehold land, public land). In such cases, rates for compensation on land vary from one site to another and from one class of land tenure to the other. World Bank policies do not distinguish such differential aspects of land classes and corresponding different market rates.
- (c) In cases of compensation of loss of land by project affected people, the World Bank policies prefers land for land compensation. In Malawi an option of land for land compensation is normally preferred in customary land transaction while option of land for money compensation is the preferred options in urban areas.
- (d) World Bank policies clearly stipulate resettlement as an upfront project – in that all issues of land acquisition and relocation of project affected people has to be done prior to commencement of the project on the acquired site. Malawi Government policies do not clearly spell out this approach and in practice; resettlement is treated as a separate exercise outside project planning and implementation process.

- (e) World Bank Policies clearly recommends for adequate resettlement assistance and rehabilitation assistance to relocated people as a way of restoring and enhancing socio – economic living standards. This is supposed to be undertaken within the first years of relocation on the new sites. Malawi legislation does not clearly define the extent of resettlement assistance to relocated people. Much of available support is normally left in hands of District Commissioner and local chiefs within the district and area of relocation of the project affected people.

3.4 Appropriate Measures for Addressing Identified Gaps between the Policies in Implementation

Discrepancies between policies of the Bank and the Government will be dealt by focusing on policy aspects that positively favour the project-affected persons, and leave out those which negatively impact on the project affected persons. This recommendation is on the observation that the common position between World Bank Policy on Resettlement and the Constitution of Republic of Malawi on resettlement is the guarantee of fair and adequate compensation and adequate resettlement assistance for the project affected person. In this regard, suitable options to be adopted are as follows:

- (a) Compensations in form of land for land loss to those who have been displaced be made as a top priority. The option could come out as cost effective as the land acquisition process (which involves the project affected persons) may be much cheaper compared to acquisition of the same land by the government.
- (b) Compensations related to customary land acquisition should be made on open market values as opposed to previous practice of considering customary land as a free commodity.
- (c) Compensations should be paid to categories of project-affected people so long they are covered within the cut-off date. Some special project affected persons to be included are the squatters, pirates, vendors' stalls/hawkers.
- (d) No civil works should start prior to the compensation of the last PAP. This simply means that PAP should be considered first prior to the Bank allowing projects to jumpstart its implementation works.
- (e) Provisions of basic and social services (such as potable water, graded access roads, sanitation facilities, subsidised farm inputs, income generating activities) to project affected people within the new area of relocations. Such support would enhance the restoration of standards of living of the project-affected people.

Where there is a difference between Malawian law and the World Bank's Operational Policy 4.12 (Involuntary Resettlement), the latter shall prevail.

Table 2: Outline of Selected Differences on Management of Resettlement between World Bank Policy on Resettlement (OP 4.12) and Laws of Malawi and Measures for Addressing the Gaps

Type of Impact	Provisions from relevant Laws of Government of Malawi		World Bank Provision on the Aspects	Appropriate Measures for Addressing the Gaps.
	Name of Legislation	• Provision within Piece of Legislation in Malawi		
Physical Damage to land/assets	Public Roads Act (<i>chapter 69:02</i>)	<ul style="list-style-type: none"> • The law stipulates payment of cash compensation based on loss or damage or destruction to structures. No compensation on land. 	<ul style="list-style-type: none"> • The policy stipulates that land owners are entitled to compensation of land, compensation of building on replacement costs, expenses on labour • The policy stipulate that land owners are entitled to compensation for crops 	<ul style="list-style-type: none"> • Compensation of land for land to project affected persons. • Compensation of all structures at full replacement costs based on current market value prior to displacement • Compensations on crops and trees on current market values.
Loss of land/assets by owners/occupiers ²	Public Roads Act (<i>chapter 69:02</i>)	<ul style="list-style-type: none"> • The law stipulates that land owners are entitled to reasonable compensation offered by government on customary land • The law stipulates that land owners can be compensated for land to land if alternative land is available. • The law stipulates that land owners can be compensated for land to money if there is not alternative land or if the offered alternative land is not economically productive 	<ul style="list-style-type: none"> • The policy stipulates that the recommended option is compensation of land for loss of land when land is the primary source of livelihood for the PAP. Other losses to be compensated at replacement costs based on current market value. • The policy stipulates that temporary structures or buildings are entitled to land compensation or cash compensation at full replacement costs including labour and relocation expenses prior to physical displacement 	<ul style="list-style-type: none"> • Compensation of land for land to project affected persons whom livelihoods depend on land will be the first priority. • Compensation of money for land to project affected persons in cases of lack of alternative suitable land. • Compensation of all structures at full replacement costs and labour costs prior to physical displacement • Compensations on crops and trees based on current market values. • Resettlement assistance to project affected persons who are squatters.
Loss of land/assets and access by squatters	Public Roads Act (<i>chapter 69:02</i>)	<ul style="list-style-type: none"> • The law stipulates that no compensation to improvements on land within road reserves (section 44) • The law stipulates that no compensation to squatters unless they occupy the land continuously for a period of more than 7 years. 	<ul style="list-style-type: none"> • The policy stipulates that persons are entitled to compensation/assistance regardless of the legal status of their structures or occupation of the land; • The policy stipulates that owners of buildings built illegally are entitled to compensation at full replacement costs including labour costs prior to physical displacement. 	<ul style="list-style-type: none"> • Compensation of all structures at full replacement costs prior to physical displacement; • Compensations on crops and trees on current market values; • Compensation on labour costs based on current market rates.

²“Occupier” in relation to land means any person lawfully occupying such land; “owner” in relation to private land means a person (other than a mortgagee not in possession) entitled, with or without the consent of any other person to dispose of an interest in the land, and in relation to public or customary land means the Minister responsible for Land; (Public Roads Act(*chapter 69:02*))

Loss of land/assets and access by owners/occupiers and squatters	Land Acquisition Act (Chapter 57:04)	<ul style="list-style-type: none"> • The law stipulates that compensation be based on assessment done by government and agreed by parties. • The law stipulates that compensation given when land is acquired. • The law stipulates that compensation not to exceed market value. 	<ul style="list-style-type: none"> • The policy stipulates that owners of buildings built illegally are entitled to land compensation at full replacement costs including labour costs based on current prior to physical displacement. 	<ul style="list-style-type: none"> • Compensation of all structures at full replacement costs based on current market value prior to displacement
	Land Act (Chapter 57:01)	<ul style="list-style-type: none"> • The law stipulates that reasonable cash compensation be paid to affected persons for loss of land. 	<ul style="list-style-type: none"> • The policy stipulates that owners of buildings built illegally are entitled to land compensation at full replacement costs including labour costs based on current market value prior to physical displacement. 	<ul style="list-style-type: none"> • Compensation of structures at full replacement costs and labour costs based on current market value prior to the physical displacement.
	Customary Land Act	<ul style="list-style-type: none"> • The Act favours land for land compensations 	<ul style="list-style-type: none"> • The policy favours land for land compensations in cases of loss of land by project affected persons; • The policy stipulates that owners of buildings built illegally are entitled to land compensation at full replacement costs including labour costs based on current market value prior to physical displacement. 	<ul style="list-style-type: none"> • Compensation of land for land to project affected persons whose livelihood depend on land; • Compensation of structures at full replacement costs prior to the physical displacement of PAPs.

CHAPTER FOUR

GUIDING PRINCIPLES ON RESETTLEMENT ACTIVITIES WITHIN MALAWI EDUCATION SECTOR IMPROVEMENT PROJECT

4.1 THE RPF GUIDING PRINCIPLES UNDER MESIP

11. **Principle 1:** Activities Eligible for Funding under MESIP Project shall be those Proposed in Suitable Sites for construction, sites where the implementation of a project **would not bring** about involuntary resettlement, involuntary physical dislocation, eviction of squatters, loss of land (whether ownership is recognized by customary land tenure or land titles, impact on cultivations and property, loss of access to property, loss of access to natural resources and other economic resources. In case of resettlement compensation will follow the principle that the affected people can restore their standard of living or at least restore them to the pre-displacement levels (principle number 5).
12. **Principle 2:** Involuntary resettlement and land acquisition will be avoided where feasible, or minimized, where it cannot be eliminated: Where resettlement, including impact on assets, is unavoidable, the communities must consider various alternatives, in order to minimize impacts to the extent possible.
13. **Principle 3:** This RPF applies to all PAPs regardless of the total number affected, the severity of the impact and whether or not they have legal title to the land. Informal or customary tenure is to be treated in the same manner as formal, legal titles.
14. **Principle 4:** Genuine Consultation and Participation Must Take Place PAPs will be meaningfully consulted and will participate in planning and implementing of the resettlement activities.
15. **Principle 5:** Resettlement as social development. PAPs will be assisted in their efforts to ideally improve their livelihoods and standards of living or at least to restore them, in real terms, to pre-displacement levels or levels prevailing prior to the beginning of the project implementation, whichever is higher.
16. **Principle 6:** Measures to address resettlement shall ensure that project affected peoples are informed about their options and rights pertaining to resettlement, are included in the consultation process and given the opportunity to participate in the selection of technically and economically feasible alternatives. They will also be provided prompt and effective compensation at full replacement cost for losses of assets and access attributable to the project investments.
17. **Principle 7:** All PAPs will be identified and recorded as early as possible and a pre-resettlement data based will be established in order to protect those affected by the project and prevent an influx of illegal encroachers, squatters, and other non-residents who will wish to take advantage of such benefit.
18. **Principle 8:** Particular attention will be paid to the needs of vulnerable groups among those displaced; especially those below the poverty line, the landless, the elderly, women and children, orphans, marginalized groups and the ethnic minorities or other displaced

persons who may not be protected through the Malawian law. The objective is to provide whatever additional assistance may be necessary to restore pre-project living standards.

19. Principle 9: Setting up of Accessible Grievance Redress Mechanisms: The communities accessing funding from MESIP programme will put in place user friendly and cost effective mechanisms for addressing complaints from project affected persons. The mechanisms will include use of local grievance redress mechanisms administered by local village heads, traditional authorities as well use of formal courts under the Judiciary. The use of local traditional courts administered by village headmen, group village headmen and traditional authorities will allow project-affected people to access such services without going long distance.

20. Principle 10:*The implementation of individual RAPs or Voluntary Land Contributions must be completed prior to the implementation of the investments under MESIP.*

Furthermore, this RPF applies to other activities resulting in involuntary resettlement, that in the judgment of the Bank are a) directly and significantly related to MESIP investments; b) necessary to achieve its objectives as set forth in the project documents; and c) carried out, or planned to be carried out, at the same time as the project.

Investments under MESIP will avoid or at least minimize involuntary resettlement to the extent possible. However, where it is unavoidable, appropriate measures to mitigate adverse impacts will be carefully planned and implemented following the general framework outlined in this document.

4.2 Estimation of Displaced Persons and Cut – Off Date

In context of resettlement, cut-off date is normally the date when the census is taken to establish the exact number of affected people and the impact. Normally, the purpose of the exercise is to prepare pre-resettlement data and information regarding those to be impacted. The exercise involves rapid ‘census or head counts of the number of people and their properties within the site, and magnitude of impacts. All head of households who were not residents in the area prior to this cut-off date are normally not eligible for resettlement assistance and compensations. Normally the exercise is for preparation of database for drawing plans for compensations and resettlements. The steps to undertake appropriate estimation include the following tasks:

Step 1 Undertake site visit to proposed site

Assess patterns of structures, scope of activities and density of residential properties on site.

Step 2 Delineation of the proposed site

Set site boundaries

Step 3 Calculate the size of the area in hectares

Determine size of land that PAP would lose, be impacted, and which would be acquired and compensated for after negotiation.

Step 4 Carry out physical check and count of the houses and assets within demarcated site

Determine the number of residential premises of heads of households within the site to be acquired.

Step 5 Establish the average number of persons per house within the demarcated area

Determine the estimated number of PAP living in houses within the site. The figure can also be obtained from municipal authorities.

Step 6 Estimate the number of people to be impacted. Determined by multiplying the number of counted houses of heads of households (step 4) and the average number of persons per house (found in step 5).

However, in case the required estimate is for purpose of preparation of budget and other resources, and that head count of household heads is not feasible, it is advisable to use population density of persons and houses. Data for density of population and houses within the villages are prepared by National Statistics Office. Such data may be used in calculating the estimated number of displaced persons.

However, the officials will still require estimating the size of land (in hectares) which would be subject for calculation of the number of people to be impacted. In case of exercises during the implementation of sub projects to be funded from MESIP, the officials may obtain data on population and house density from the expected results of 2008 census data from National Statistical Office.

4.3 Methods of Valuation of Assets

In case the community wishes to implement an activity within a site where some people own the land and assets, there would be need for proper land acquisition and compensation of the assets. Land acquisition and compensation of the assets would depend on proper and fair valuation. In Malawi methods of valuation of assets (such as buildings, trees, fruit trees, crops, vegetables) for purpose of compensations are based on various pieces of legislations. These include Land Acquisition Act, Public Roads Act and Town and Country Planning Act. Generally, The Ministry of Lands and Housing (MLNR) coordinate the exercises. This starts with establishment of compensation schedules to determine values for loss of assets due to implementation of the projects for construction of roads, dams, health centre, earth dams, water schemes and other infrastructure. Currently there are three types of compensation schedules based on type of assets affected. These schedules are used to determine compensations for the following groups of assets:

- (a) Agriculture produce such as crops, fruit trees, plantation crops, flowers
- (b) Physical assets such as buildings, bare land and other structures
- (c) Trees such as indigenous and exotic trees

Each category of the assets has its own methods of valuation, and the exercises of valuation are based on appropriately established professional rates by relevant experts. The following paragraphs highlight the approaches to valuation of the assets.

(a) Valuation for Compensation of Agricultural Produce

This category covers crops, fruit trees, flowers and plantation crops. The valuation of people's crops and trees is undertaken by a team of relevant professional experts at assembly level and led by The District Commissioner (DC). Additional ones come from Ministry of Agriculture and Department of Forestry. A detailed inventory of items owned by individuals and their assets will be established. The calculations will be based on established compensation rates. The District Commissioner (DC) maintains schedules of

compensation rates for various types of crops and trees. After the exercise, The District Commissioner produces a schedule outlining names of household heads, spouses and dependants, list of their properties, values of their properties and total value of all properties assessed. This schedule is normally used for payment of the compensations to the affected people.

(b) Valuation of Physical Building/Structures and Land

This category covers valuation of land, building and related structures such as houses, toilets, kitchen, and bathrooms, temporary structures made of wood and metal and animal enclosures. A detailed inventory of household heads spouses and dependants and their properties is established. Department of Lands and Valuation in collaboration within District Commissioner calculate compensation amounts based on prevailing construction cost estimates for a given area. Qualified quantity surveyors in Department of Buildings normally prepare construction costs estimates. In big and permanent buildings, normally government uses the services of qualified valuation surveyors and quantity surveyors to determine the best replacement values of the affected structures. Normally compensation is paid based on these replacement cost estimates.

Valuation for compensation for loss of land is normally led by Department of Lands and Valuation. Department of Lands and Valuation collaboration with District Commissioner of the district of interest calculate compensation amounts based on prevailing market rates for a given area. In this case, those people who have interests in land (customary or leased) are compensated based on the market values established by land economy surveyors from Department of Lands and Valuation. Similarly when the government agency intends to acquire land for development or resettlement, as is in this case, the government will have to compensate the original owners of land on basis of commercial market prices.

(c) Valuation for compensation of forest trees

This category covers forest trees (both indigenous and exotic trees). The valuation of people's trees are done based on species of trees, measured diameter of breast height and market price in kwacha per cubic metre. The exercise is led by a team of relevant professional experts from Department of Forestry, assembly level and led by the District Commissioner (DC). A detailed inventory of household heads, spouses and dependants and their assets will be established. The calculations will be based on established compensation rates. Department of Forestry and the District Commissioner (DC) maintains schedules of compensation rates for various types of trees. After the exercise, The District Commissioner produces a schedule outlining names of household heads, list of trees lost, values of their properties and total value of all trees assessed. This schedule is normally used for payment of the compensations to the affected people.

(d) Rehabilitation Assistance

Rehabilitation assistance include interventions that are undertaken to assist Project Affected People to attain their pre-project living standards and incomes to level, other than payments of the replacement value of acquired property. This may be in form of trainings for livelihoods, enrolment on Public Works programme and or/Social Cash Transfer Programmes.

4.4 Limitations of the Existing Valuation Methods on Assets

The existing valuation methods have several limitations as some parameters were established many years ago. The consequences include under valuation of the assets and underpayment of compensations to project affected people. The limitations of the valuation methods stem from the following weaknesses:

- (a) The methods use old rates in valuation of replacement costs of buildings and structures in some local authorities in rural districts.
- (b) The rates for calculation of replacement costs for buildings do not include the labour costs, transport costs incurred in the re – erection of the houses and other structures.
- (c) The rates used for valuation of crops in some local authorities in rural districts tend to be old rates and not regularly reviewed by relevant authorities.
- (d) In most cases, key experts in some asset valuation are not involved as the actual fieldwork is dominated by officials from local authorities. Cases in points are valuation of trees and fruit trees are normally carried out by officials from District Commissioners Office based on old stipulated figures from Ministry of Agriculture and Department of Forestry. Such incidents lead to undervaluation of assets, as some officials cannot professionally adjust rates to realistic levels reflecting the field observations.
- (e) The methods do not explicitly stipulate resettlement assistance especially in identification of appropriate alternative land for relocation. The tasks of identification of alternative land are left in the hands of local leadership such as village headmen and traditional authorities of the area where the people stay. The District Commissioner is practically expected to oversee how people are assisted in relocation by their local leaders. Normally it is when serious difficulties crop up that the District Commissioner assists in identification of alternative land.

Some of the measures to be adopted in addressing the inadequacies outlined above include the following:

- a) Government authorities to ensure that local authorities which will be involved in valuation of land and assets have update rates of valuation of crops, trees and buildings structures.
- b) Government authorities will have to ensure that appropriate team of experts are constituted prior to commencement of preparation of resettlement action plans. The team should at least consist of well experienced personnel in land management, valuation, forestry, building foreman, quantity surveyor, agronomist and horticulturalist.
- c) Cases of compensations for loss of land should emphasise on compensations in form of alternative land to those people displaced. The option could come out as cost effective as the land acquisition process (which involves the project affected persons) may be much cheaper compared to acquisition of the same land by the government.
- d) Compensations related to customary land acquisition to be made on open market values as opposed to previous practice of considering customary land as a free commodity.

- e) Compensations should be paid to categories of project affected people so long they are covered within the cut-off date. Some special project affected persons to be included are the squatters, pirates, vendors' stalls/hawkers.
- f) Compensations should be paid in relations to labour inputs into gardens and maintenance of trees and crops within the immediate past year.
- g) Provisions of basic and social services (such as potable water, graded access roads, sanitation facilities, subsidised fertile, income generating activities) to project affected people within the new area of relocations. Such support would enhance the restoration of standards of living of the project affected people.

4.5 Eligibility Criteria for Compensations for Project Affected People

In cases of the need for resettlement in relation to implementation of sub projects in their chosen sites, the community will have to ensure that necessary compensations are taken care of and sorted out prior to submission of project for funding from MESIP .The procedures for determining eligibility for compensation, resettlement assistance and the actual displaced persons by the communities shall consider the following:

- (a) Those who have formal legal rights to land, including customary and traditional 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 through generations.
- (b) Those who have no formal legal rights to land at the time the census begins but have a claim to such land or assets provided that such claims are recognized under the laws of Malawi. This class of people includes those that come from outside the community and given land by the local chief to settle.
- (c) Those who have no legal right and/or claim to the land they are occupying. 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.

Impacted persons classified under paragraph (a) and (b) shall be provided compensation from the community for the land, building or fixed assets on the land and buildings taken by the project in accordance with the provisions of this framework if they occupy the project area prior to the cut-off date (date of commencement of the census). Impacted persons classified under paragraph 4.5(c) shall be eligible for assistance from the community for the assets but not land. Persons who encroach on the project area after the cut-off date shall not be entitled to compensation, or any resettlement assistance or any other form of rehabilitation assistance.

4.6 Entitlements for Compensations

Entitlements for compensation by project-affected persons from the local community shall be based on the criteria outlined in 4.5.0 and the various categories of losses identified in the desk studies and field consultations. The matrix in annex 2 will be used in the settlement of claims for compensation for lost assets of project affected persons based on the aforementioned principles in 4.5.0 above and legal framework where land is involuntarily taken. Unless otherwise indicated, payment of compensation and other entitlements and the extension of assistance will be given by

the local community to head of households and not individuals. Annex 2 provides details of entitlements to compensations to various potential categories of project-affected persons.

4.7 Approach and Procedures for Delivery of Compensations

Once valuation of land and asset impacts has been finalized, it is the responsibility of the extension workers and District Lands Officer to circulate to District Executive Committee for review and approval the compensation packages from the community to project affected people. The process of payment of compensations has to be speeded upon as to reduce risks of inflations and devaluation of the sums of the money. Normally the compensations have to be delivered to project affected persons before resettlement of the affected persons. The recommended procedures for the community to deliver compensation to project affected people are as follows:

(a) Delivery of compensation based on official valuations

This delivery mechanism is based on what the project offers (including community contribution) such sums deemed adequate as compensation to displaced person; and that person may accept that amount as compensation payable to him. Normally the sums are disbursed to the District Commissioners or Chief Executive Officer (CEO) for the community in question for payment to the displaced persons. Local village headmen, traditional authority and assembly shall maintain records of impacted persons, their claims and entitlements. After payment of such sums, assembly documents the name(s) of the impacted persons, the amount of compensation and the records of how the compensation was arrived at. A copy of such records shall be made available to the government and local chiefs.

(b) Delivery of Compensation based Values Arbitrated by Formal Courts

Normally this approach is based on the recommended figures for compensations from formal courts. Such incidents occur when some people appeal to courts for review of the compensation packages. What is decided by the courts can be used for compensation to project affected people.

It should be highlighted that in case some project affected persons have objections to land acquisition and resettlement, their objections have to be done in writing to District Commissioner or Commissioner for Lands and Valuation within 21 working days after the public notice; or formal complaint lodged via local village headmen and traditional authority. It should also be pointed out that normally claims are not entertained after five years from the date of the proclamation; and or 12 months after the execution of the purpose out of which the claim has arisen in respect of any damage done to the land acquired.

The entitlement matrix below explains the compensation for each kind of Project-Affected Person (PAP).

Table 3: Entitlements for Project Affected Persons

CATEGORY OF PROJECT-AFFECTED PERSONS	TYPE OF LOSS	ENTITLEMENTS FOR PROJECT-AFFECTED PERSONS		
		Compensation for Loss of Structure	Compensation for Loss of Land and Other Assets	Compensation for Loss of Home and Livelihoods
Property owners including those on customary land regulated by traditional authorities	Loss of land	<ul style="list-style-type: none"> • Cost at full replacement value based on current market value/rates 	<ul style="list-style-type: none"> • Land replacement at new site plus land clearing by the project. 	<ul style="list-style-type: none"> • Cash compensation for crops and trees at replacement values in scarce season based on current market value/rates • Allow sufficient time to harvest annual crops
	Loss of structures – residential premises or business	<ul style="list-style-type: none"> • Cost at full replacement value based on current market value/rates 	<ul style="list-style-type: none"> • Fence, brick work, wire and wood • Wells • Stores • Wastes water facilities • Connection to utilities • Access roads 	<ul style="list-style-type: none"> • Full compensation for the loss of home (structure) based on current market value/rates paid to the owner + Lump sum payment for loss of income from rented property based on number of months per tenant, • Renter (person renting) receives a financial assistance equivalent to minimum 3 months of rent + assistance to find a new rental house, and for relocation in new rental place.
	Socio-economic livelihood/identity	<ul style="list-style-type: none"> • None 	<ul style="list-style-type: none"> • None 	<ul style="list-style-type: none"> • Disturbance allowance, transportation cost for relocation • Rehabilitation assistance, skill training , cash transfer public works programme • Link the project affected communities to sub –finance loans and assistance.
Residential tenant Business tenant	Loss of rental accommodation	<ul style="list-style-type: none"> • Replacement of number of houses lost on the site based on current market value/rates 	<ul style="list-style-type: none"> • Replacement costs for non-movables 	<ul style="list-style-type: none"> • Disturbance assistance • Transportation assistance if relocating • Provision of rental fees for few months (at least 3 months) + assistance to find a new rental place;
Business tenant	Loss of premises	<ul style="list-style-type: none"> • None 	<ul style="list-style-type: none"> • Replacement costs for non-movables if installation was agreed with owners 	<ul style="list-style-type: none"> • None
	Loss of business	<ul style="list-style-type: none"> • None 	<ul style="list-style-type: none"> • None 	<ul style="list-style-type: none"> • Payment of lost income at an agreed rate (payment of six months of rent per year average turnover)
Vendors	Loss of hawkers	<ul style="list-style-type: none"> • Compensation at full replacement value for structure 	<ul style="list-style-type: none"> • None 	<ul style="list-style-type: none"> • Payment of lost income at an agreed rate (payment of six months of pas year average turnover)

Encroachers using land (pirates)	Loss of land	<ul style="list-style-type: none"> • See below 	<ul style="list-style-type: none"> • None 	<ul style="list-style-type: none"> • Cash compensation for crops/trees at full replacement cost during scarce seasons based on current market value/rates • Permission of sufficient time for harvesting annual crops, fruits and timber trees
	Loss of structures/shelter	<ul style="list-style-type: none"> • Compensation at full replacement value for structure • Payment of site rent 	<ul style="list-style-type: none"> • None 	
Squatters – living on the site	Loss of shelter/structures	<ul style="list-style-type: none"> • Compensation at full replacement value for structure based on current market value/rates • Payment of site rent 	<ul style="list-style-type: none"> • None 	<ul style="list-style-type: none"> • Payment in lieu of wages while rebuilding • Provision of disturbance assistance • Provision of transport assistance in relocation to a site where they can legally reside • Right to salvage assets/materials
Community	Public facilities	<ul style="list-style-type: none"> • Compensation at full replacement value for structure based on current market value/rates • Payment of site rent 	<ul style="list-style-type: none"> • Replacement of land at new site plus clearing of the site. • Waste facilities, connection to utilities and provision of access roads. 	<ul style="list-style-type: none"> • Payment of lost income for business. • Establishment of temporary facilities during construction. Payments are processed by the Office of the President and Cabinet after assessment reports have been obtained from the Ministry of Lands and Housing

4.8 Grievance Redress Mechanisms on Resettlement Activities

Resettlement of people generates a number of challenges especially to those moved from one place to another. Examples of complaints include: objections to use of someone's land, encroachment on private land, theft of properties within the land, harassment of women, and marginalization in distribution of material assistance. And examples of grievances: include dissatisfaction with amount of compensation and, dissatisfaction with size and nature of land replacement. Such grievances are likely to crop up in one way or another in implementation of sub projects to be funded from the project. It should be pointed out that since the implementation of sub projects will be community based, negotiation and agreement by the affected party will provide the first avenue to iron out and resolve any grievances expressed by the individuals, the land owners or households whose land and properties might be affected. The communities will ensure that resettlement related grievances should be addressed during the identification and appraisal of sites.

In this context, proper channels of grievance redress mechanisms will be put in place, and the project affected people sensitised to make use of them. Normally, the channels have to be in line with norms of the communities as well as laws of the country. The process of grievance redress mechanisms will involve informal courts handled by traditional leaders (village headmen, traditional authorities). In some cases, when all the possibilities have been exhausted, and as a last resort, there may be need for the involvement of District Commissioner, formal courts within the judiciary and the Malawi Police Service. The Malawi Police Service would be involved in reports of cases of criminal in nature.

(a) Traditional Courts

Normally most complaints and grievances related to resettlements are those bordering on entitlement to compensations and land ownership disputes. When such cases crop out, the issues will be referred to a village head. The village head will organise a village tribunal to preside on the matter. Both parties in complaints/cases will be called to be heard. When one party is not satisfied with the decision at village headmen level, the complaint can be taken up to group village headmen. Similarly, that party not satisfied with decisions on complaints at that level, they can take the matter to traditional authorities (T/A) for hearings. In most cases/complaints of this nature are sorted out at traditional authority level. However those who are not satisfied they will be allowed to appeal to the District Commissioner (DC) of the district. Further appeals can be made to the central government. In this regard, the matter can be referred to one of the line ministries (Ministry of Lands and Valuation, Ministry of Local Government) on the matter of dispute which may give direction on the existing policy to be implemented.

(b) Formal Courts

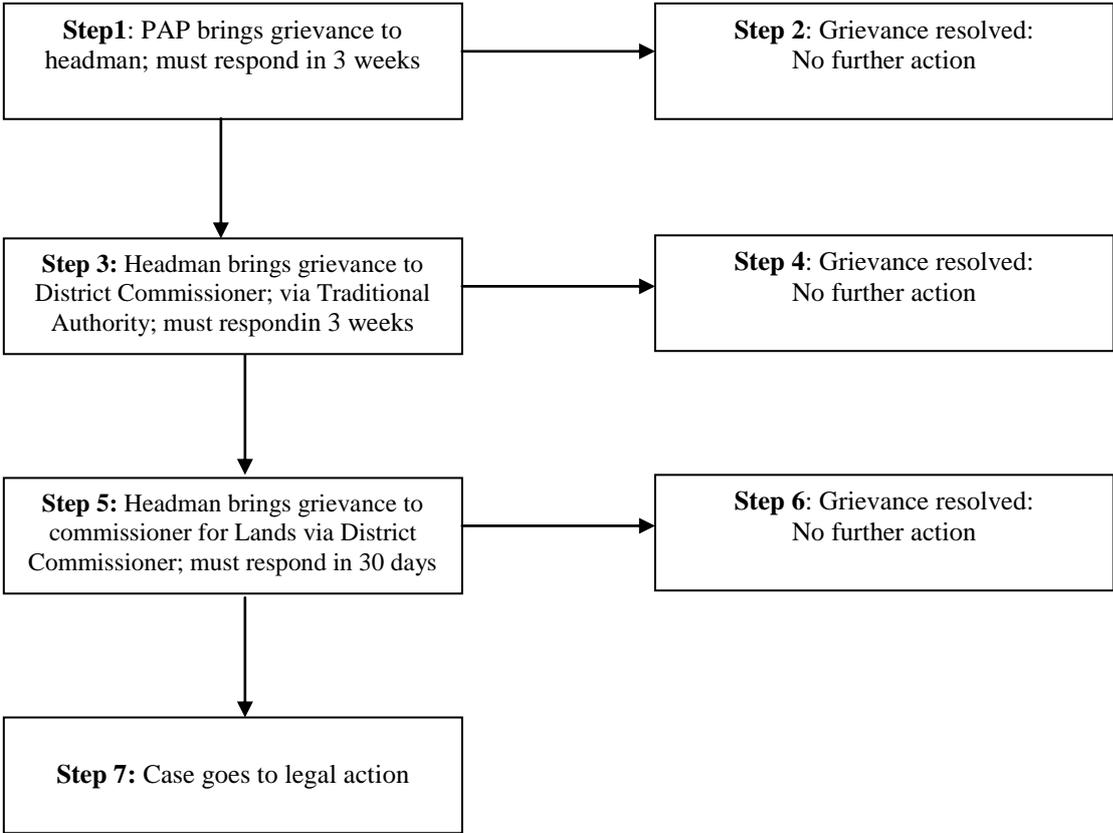
Formal courts include magistrates, High Court of Malawi and Supreme Court of Malawi. These courts handle both civil and criminal cases. In regard to complaints and cases during the proposed resettlements, households with complaints bordering on compensations and criminal cases will have opportunity to take cases to these courts for review and determination on course of action. Such cases may include review of amount of

compensations, cases of theft of valuable property as well as beating each other. Magistrate courts are located across the country and this would help project affected people to access the services of these magistrates in case such needs arise. However, where determinations are made for pay-outs, MESIP funds will not be used to pay for compensations. Appropriate departments in the Office of the President and Cabinet will be responsible for payment of such compensations as is the case with all development projects.

(c) The Malawi Police Service

It is also envisaged that in the course of implementation of sub projects funded from MESIP may not be spared of criminal and security complaints. If therefore issues regarding security or criminal occurrences that have a potential to endanger the life, or property of the people in the area then certainly this will have to be reported to the local police station. Malawi Police Services have stations, sub-stations and units across the country and it is anticipated that they would be able to handle most of cases of criminal in nature which may crop out in course of relocation and resettlement of the people in new sites.

GRIEVANCE REDRESS PROCEDURE



CHAPTER FIVE

THE RESETTLEMENT SCREENING FOR ACTIVITIES UNDER MALAWI EDUCATION SECTOR IMPROVEMENT PROJECT

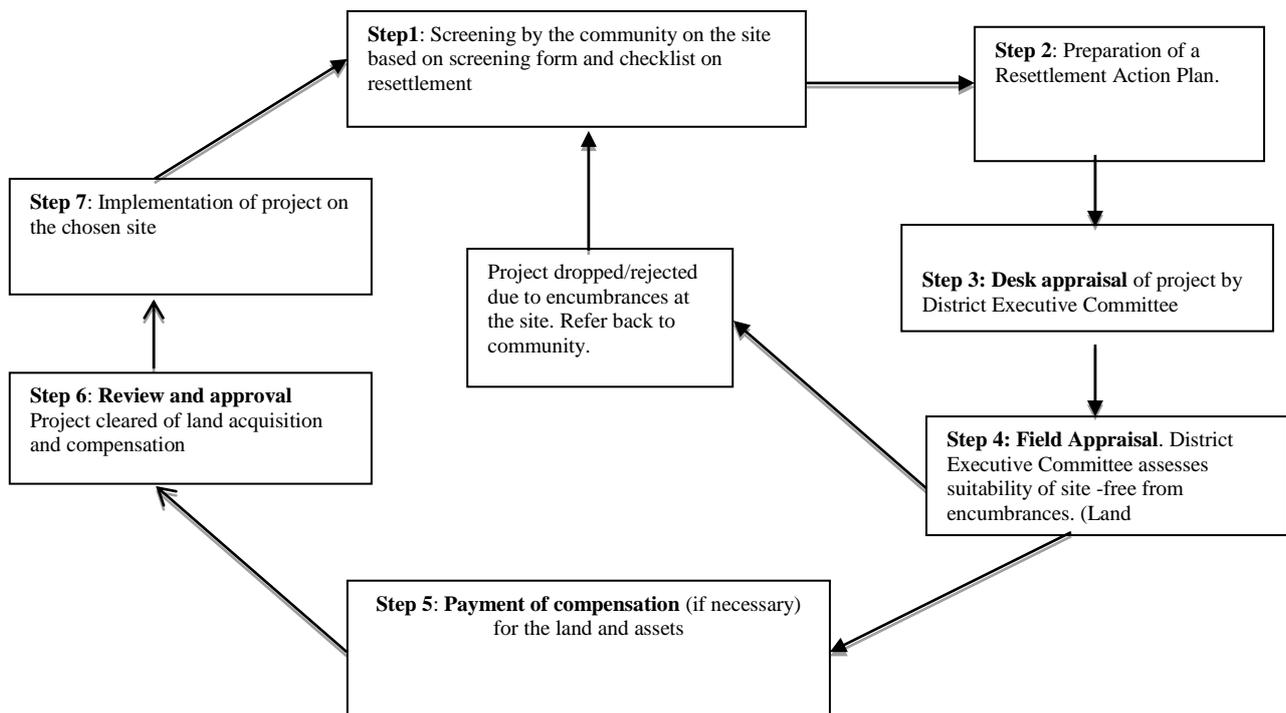
Resettlement screening process will consist of a series of appraisal activities prior to approval of the project activity. The exercise will be principally community based exercise and will be done through participatory approach by Village Development Committees/Area Development Committee (VDC/ADC) as well as the District Executive Committee (DEC) of a local Authority. The purpose would be to identify potential resettlement impacts from community projects from MESIP programme of their proposed project. The objectives of this screening process are:

- To guide communities in identification of appropriate sites for construction of various sub projects to be funded from MESIP within their villages.
- To guide communities in identification of measures for addressing resettlement issues (if they arise) prior to submission of the proposal.
- To monitor measures for addressing the social impacts from resettlement.

5.1 The Screening Process

Figure 5.1 outlines a diagrammatic flow of the proposed resettlement screening of activities to be funded from MESIP Project.

Fig.2: Diagrammatic Flow of the Screening Process



5.1.1 Screening of the Sites by Village Development Committee

This step will be the first step in the resettlement screening process, and it will be done by the Village Development Committee or Area Development Committees on the proposed site of the project. The committee would be assisted by extension workers from the relevant sector for the intervention being requested. The committee will carry out the exercise based on checklist and screening form (sample in appendix 1). The committee will be trained on use of the screening forms and prepared checklists on social impacts.

The aim of this exercise will be to assess the suitability of the proposed site or identify any form of encumbrances. In case the land on the chosen site is owned by someone or has assets for somebody, village development committee will have to identify necessary compensatory measures for affected persons.

5.1.2 Desk Appraisal of the Proposed Site and Project

Desk appraisal of sub projects from the community will be carried out by District Executive Committee led by District Lands Officer in districts of site location. This would help to appreciate the scale and size of the proposed plans. The project appraisal form has to indicate that the proposed site is either free from encumbrances or that all resettlement related issues have been sorted out by the community well in advance.

5.1.3 Field Appraisal of the Proposed Site and the Project

The purpose of the site visit would be for the District Executive Committee to verify the indications by the community that the proposed site is free from encumbrances or that any resettlement related issues have been sorted out. In this connection, while in the field, District Executive Committee members will undertake rapid verification screening of the site and proposed activities. This will be undertaken by use of the *Resettlement Screening Form (Appendix 3)*. Based on field verification results, the District Executive committee would make anyone of the following recommendation on request for funding from MESIP:

(a) Rejection of Funding for a Proposed Sub Project on a Proposed Site

This would be on observation that the implementation of the project on the proposed site **would bring** about involuntary resettlement, eviction of squatters, loss of land (whether ownership is recognized by customary land tenure or land titles, impact on cultivations and property, loss of access to property, loss of access to natural resources and other economic resources.

(b) Approval of Funding for a Proposed Sub Project on a Proposed Site

This would be on observation that the implementation of the project on the proposed site **would not** bring about involuntary resettlement, eviction of squatters, loss of land (whether ownership is recognized by customary land tenure or land titles, impact on cultivations and property, loss of access to property, loss of access to natural resources and other economic resources.

5.2 Preparation of Resettlement Action Plan for Selected Sub Projects

In implementation of sub projects, most cases related to resettlements would be ably sorted out by community prior to request for project funding from Malawi Education Sector Improvement Project. In such cases there would be no need of resettlement action plans. However, there is likelihood of cases in which the community may (for good reasons) wish to acquire land by public interest and implement a sub project in an area where there would be impacts on people and properties. Such instances would require that the community has to address resettlement systematically. This would mean preparation of Resettlement Action Plan (RAP) for the project's activity. It will be the responsibility of District Lands Officer to assist the community in mobilization of appropriate team of experts to prepare a resettlement action plan within a reasonable time. A diagrammatic flow chart regarding the preparation and implementation of resettlement action plan is provided in annex 4. An outline of the contents of a resettlement action plan is provided in annex 3. In general, a resettlement action plan for a community based sub project must consist at least the following aspects:

- Description of the location of the proposed sub project.
- The size of land which the sub project will take up and its existing uses.
- Detailed inventory of all assets to be lost or impacted by all households and individuals affected by having to move their place of residence or business to allow for the construction of the facility. This must be made from baseline survey (census of the area) against which the future wellbeing of the household can be measured. A plan of action for the resettlement of the homestead must be drawn.
- Inventory of the people who will lose land over which they have established ownership or rights of usufruct (either permanently or temporary fashion) to allow for construction of the facility. This must be made from baseline survey (census of the area) against which the future wellbeing of the households can be measured. A plan of action for the resettlement of replacement of homestead and/or impacted assets must be drawn. This should also detail how compensation for crops will be paid, where replacement of land will be found (if necessary), and which steps will be followed to ensure that the households productive base is re-established.
- A plan of action for ensuring that the communally held resource base is replaced/re-established to ensure that no one is worse off after project implementation than before is established
- The preparation of a resettlement action plan would be done as collaborative efforts between the community and District Executive Committee. Key officials to be involved would be the District Lands Officer, District Forestry Officer, District Water Officer, Environmental District Officer, Community Development Officer and extension workers. The local Authorities will demand support from the Department of Lands and Valuation at Ministry of Lands and Housing where there are inadequate technical skill (such as valuation experts) at district level. Such a wide range of the experts would provide adequate support to the village development committee or area development committee to produce credible schedule for compensations to project affected people. The District Executive Committee will be responsible for review and approval of Resettlement Action Plan prepared by village Development Committee. However, as required by the Government regulations, Resettlement Action Plans prepared by District Executive Committee will be reviewed and approved by The Ministry of Lands and

Housing. Nonetheless, since World Bank policies supersede the national legislation on involuntary resettlement, therefore, as an agreed project processing, MESIP will be following World Bank operational safeguards policies that basically require that ***All Resettlement Action Plans to undergo World Bank review and clearance.***

For cases where the community is able to handle the resettlements and no RAP is required, the community may employ a variety of mechanisms including Voluntary Land Contributions to address compensation. The following guiding principles are suggested to be used subject to further consultation with communities:

- (j) the impacts of contribution must be minor, involving (a) no physical displacement from housing, and (b) no more than 10 percent of the productive assets held by each contributor.
- (ii) the land required must be free of squatters, encroachers, or other claims or encumbrances.
- (iii) consultation will be undertaken in an atmosphere free of intimidation or coercion.
- (iv) verification of the voluntary nature of land contributions must be obtained from each person contributing land.
- (v) the impacts of contributions will be adequately mitigated. If any loss of income or assets is envisaged, there should be verification of voluntary acceptance of community-devised mitigation measures from those expected to be negatively affected.
- (vi) a grievance mechanism will be established before the initiation of a process for civil works in the concerned districts

5.3 Monitoring of Resettlement Activities

Monitoring mechanisms for resettlement activities within the programme will be linked to existing government monitoring systems at community level, district level and national level. Monitoring at community level will be undertaken by Area Executive Committee and District Executive Committee (DEC) with technical support of the extension workers. Monitoring resettlement activities at community level has to be done by District Executive Committee (DEC) as opposed to the community structures so that the District Executive Committee provides independent results. The District Monitoring and Evaluation Officer will provide technical support in tracking key monitoring indicators on the exercises. This would help to effectively provide oversight on compliance to compensatory measures by the community in all cases of activities that acquired land and displaced people. Monitoring at national level will assess the effectiveness of the stakeholders in mainstreaming of resettlement principles in administration and implementation of activities funded from MESIP. The key stakeholders in monitoring at national level will be Local Development Fund Technical Support team, Ministry of Finance, Economic Planning and Development, Ministry of Lands and Housing and Ministry of Local Government and Rural Development (MLGRD). Information from local authorities will be collected by District Monitoring and Evaluation Officer (M&EO) and will be transmitted to Ministry of Finance, Economic Planning and Development and the Local Development Fund secretariat. The ministry will produce consolidated annual monitoring reports. Key issues to be monitored at community level will be type of resettlement losses, and / or impacts, delivery of compensations to affected people and provision of resettlement assistance to project affected people. Table 3 below here outlines a suggested monitoring plan at community level. The plan

outlines typical resettlement losses, entitlements, monitoring indicators, authorities responsible for monitoring and means of verifications.

Table 4: Proposed Monitoring Plan of Resettlement Activities at Community Level

Type of resettlement losses		Compensation entitlement	Monitoring indicators	Monitoring authorities	Means of verification
Loss of or impact on land	•	<ul style="list-style-type: none"> Land replacement Cash compensation in lieu of land 	<ul style="list-style-type: none"> Hectares of land replacement. Cash paid in Malawi Kwacha Number of people compensated. 	District Executive Committee Traditional Authority (T/A)	Records with local vi headmen and Village Development Commi
Loss of or impact on residential structures	•	<ul style="list-style-type: none"> Cash compensation 	<ul style="list-style-type: none"> Cash compensation. Number structures compensated. Number of people compensated. 	District Executive Committee Traditional Authority (T/A)	Records with local vi headmen and Village Development Commi
Loss of or impact on commercial/business structure	•	<ul style="list-style-type: none"> Cash compensation 	<ul style="list-style-type: none"> Cash paid in Malawi Kwacha. Number of structures compensated. Number of people compensated. 	District Executive Committee Traditional Authority (T/A)	Records with local vi headmen and Village Development Commi
Loss of or impact on rental accommodation	•	<ul style="list-style-type: none"> Cash compensation 	<ul style="list-style-type: none"> Cash compensation in Malawi Kwacha Number of accommodation units compensated. 	District Executive Committee Traditional Authority (T/A)	Records with local vi headmen and Village Development Commi
Loss of or impact on businesses	•	<ul style="list-style-type: none"> Cash compensation 	<ul style="list-style-type: none"> Cash paid in Malawi Kwacha Number of businesses compensated. 	District Executive Committee Traditional Authority (T/A)	Records with local vi headmen and Village Development Commi
Loss of or impact on forest trees	•	<ul style="list-style-type: none"> Cash compensation 	<ul style="list-style-type: none"> Number of trees compensated. Cash paid in Malawi Kwacha Number of people compensated 	District Executive Committee Traditional Authority (T/A)	Records with local vi headmen and Village Development Commi
Loss of or impact on fruit trees	•	<ul style="list-style-type: none"> Cash compensation 	<ul style="list-style-type: none"> Cash paid in Malawi Kwacha Number of fruit trees compensated. Number of people compensated 	District Executive Committee Traditional Authority (T/A)	Records with local vi headmen and Village Development Commi
Loss of or impact on crops	•	<ul style="list-style-type: none"> Cash compensation 	<ul style="list-style-type: none"> Kilogrammes of crops compensated. 	District Executive Committee	Records with local vi headmen and Village

Type of resettlement losses		Compensation entitlement	Monitoring indicators	Monitoring authorities	Means of verification
			<ul style="list-style-type: none"> • Cash paid in Malawi Kwacha • Number of people compensated 	Traditional Authority (T/A)	Development Commi
Loss of or impact on vegetables	•	<ul style="list-style-type: none"> • Cash compensation 	<ul style="list-style-type: none"> • Cash paid in Malawi Kwacha. • Kilogrammes of vegetables compensated. • Number of people compensated 	District Executive Committee Traditional Authority (T/A)	Records with local vi headmen and Village Development Commi
Loss of or impact on grazing land	•	<ul style="list-style-type: none"> • Grazing land replacement 	<ul style="list-style-type: none"> • Availability of alternative grazing land 	District Executive Committee Traditional Authority (T/A)	Records with local vi headmen and Village Development Commi
Blockages to access to natural resources	•	<ul style="list-style-type: none"> • Alternative access routes 	<ul style="list-style-type: none"> • Functional alternative routes to natural resources. 	District Executive Committee Traditional Authority (T/A)	Records with local vi headmen and Village Development Commi
Blockage of pathways/footpaths	•	<ul style="list-style-type: none"> • Provision of alternative pathways/footpaths 	<ul style="list-style-type: none"> • Functional alternative footpaths/pathways 	District Executive Committee Traditional Authority (T/A)	Records with local vi headmen and Village Development Commi
Blockage to access to irrigation land	•	<ul style="list-style-type: none"> • Provision of alternative irrigation land 	<ul style="list-style-type: none"> • Availability of alternative irrigation land. 	District Executive Committee Traditional Authority (T/A)	Records with local vi headmen and Village Development Commi
Loss of or impact on public facilities	•	<ul style="list-style-type: none"> • Cash compensation 	<ul style="list-style-type: none"> • Number of structures/sites. • Cash compensation in Malawi Kwacha 	District Executive Committee Traditional Authority (T/A)	Records with local vi headmen and Village Development Commi
Loss of or impact on livelihood	•	<ul style="list-style-type: none"> • Disturbance allowance • Rehabilitation assistance 	<ul style="list-style-type: none"> • Livelihood levels compared to socioeconomic baseline 	District Executive Committee Traditional Authority (T/A)	Records with local vi headmen and Village Development Commi

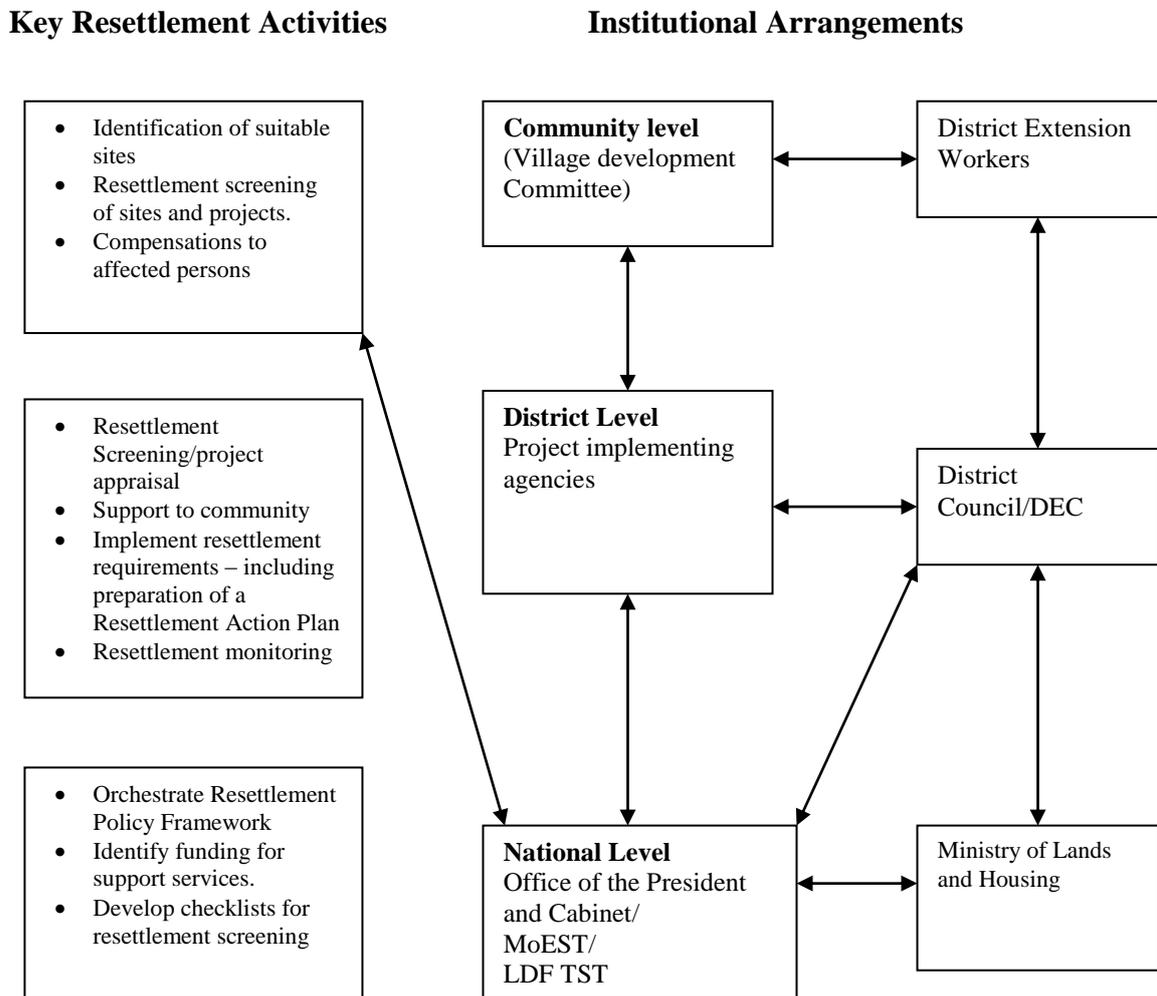
CHAPTER SIX

INSTITUTIONAL ARRANGEMENTS AND CAPACITY BUILDING ON RESETTLEMENT

6.1 Institutional Arrangements

Resettlement exercises have been a traditional responsibility of the Ministry of Lands and Housing (particularly the Department of Lands and Valuation), the District Commissioner, Traditional Authorities and village headsmen within the chosen areawhile the Office of the President provides funding. However, today because of themulti – dimension of resettlement activities, successful implementation of resettlement depend on collaboration of different stakeholders, at local level (village/area level), district level and national level.This is necessary because the implementation of the activities would require inputs, expertise and resources which would be adequately taken care of if the concerned parties liaise from time to time. Figure 3 below outlines a diagrammatic arrangement of key institutions to be involved in resettlement.

Fig. 3: Diagrammatic Arrangements of Key Institutions in Resettlement Activities



6.2 Definition of Responsibilities of Stakeholders

The following sections outline key responsibilities of the institutions involved in resettlement planning and implementation within the context of implementation of sub projects to be funded from MESIP

(a) *Responsibilities of the Community.*

In context of community development initiatives, permanent community level structures include village development committees, area development committees and area executive committees. Main responsibilities in resettlement activities will be as follows:

- The Village Development Committee/ Area Executive Committees (AEC), which include extension workers, will be responsible for resettlement screening based of checklists and screening form (annex 1). This would help to identify and mitigate the potential social impacts within selected sites. The exercise will help the communities to select potential sites without cases of resettlement. The committees will be responsible for consultations with wider communities on resettlement related matters.
- The Village Development Committees (VDC) and Area Development Committee (ADC) will be responsible for identification of project affected people, assets to be compensated and identification of resources for compensations to those to be displaced.
- The Village Development Committee/Area Development Committee will be responsible for initial attention to grievances which may arise from resettlement related matters. Further review of the grievances would be the responsibility of Traditional Authorities within the area. It should be pointed out that since sub projects are community based, negotiation and agreement by consensus will provide the best avenue to iron out and resolve any grievances expressed by the individuals, the land owners or households whose land and properties might be affected. The communities will ensure that resettlement related grievances should be addressed during the identification and appraisal of land for the sub projects.

The main institutional weaknesses of these local structures include the following: inadequate knowledge on use of screening forms on resettlement, in adequate skills in scoping social impacts from resettlement related exercises. One way of addressing these gaps will be to require District Executive Committee particularly District Lands Officer, Environmental District Officer and extension workers to provide technical back up to the village development committees in every instance.

(b) **Responsibilities of the Local Authority**

The District Executive Committee is the key implementation arm of the Local Authority and responsibilities in relation to resettlement activities will be as follows:

- Local authorities will be the main implementing government institutions on resettlement activities within the implementation schedule of the MESIP project. Main tasks will include project screening for resettlement, preparation of

- Resettlement Action Plans, implementation of compensatory measures, supervision and monitoring of community level resettlement activities in line with Resettlement Policy Framework. Necessary annual budgets provisions for resettlement related activities will be made for each district assembly.
- At desk appraisal, District Executive Committee will screen the proposal for information on land acquisition, resettlement and project impacts. Application without such information will be referred to the communities. At field appraisal level, the District Executive Committee will verify that the land on the site is free from encumbrances. The local communities will have to confirm the information that the communities have appropriately acquired land and that all resettlement related matters have been cleared off. Implementation of resettlement activities by the communities will be undertaken based on Resettlement Action Plan which would be prepared based on steps outlined in section 5.2.0 in chapter five.
 - Making recommendations on rejections for funding activities that would bring about unwarranted involuntary resettlement of households or communities when implemented.
 - In case there is need to prepare a resettlement action plans for special activities to be funded from MESIP, The District Commissioner, District Agricultural Development Officer (DADO) and District Lands Officer will arrange and provide technical support to the communities in the exercise.
 - The District Executive Committee will be responsible for monitoring the community level activities on resettlement to ensure that compensatory measures are taken care of and adequately before commencement of an activity.

Some institutional weaknesses at Local Authority include inadequate technical skills for valuation of properties, inadequate knowledge on use of screening forms on resettlement and inadequate skills in scoping social impacts from resettlement. Since 2005, Malawi Government had deployed District Lands Officers in local authorities in order to assist District Commissioners in overall land administration and property management matters. The District Lands Officers are graduate professionals, and they provide technical leadership in land administration and property management. The main job descriptions for District Lands Officer include overall land management within the district, monitoring land uses, conflict resolution on referred cases of land disputes, processing land leases and resettlement activities.

(c) Responsibilities at National Level

Resettlement activities require multi – sectoral services and as such several line ministries would be involved in one way or the other. However, in case of resettlement issues related to activities to be funded from MESIP, the following ministries and institutions have to be involved adequately: Ministry of Education, Science and Technology, Local Development Fund TST, Ministry of Lands and Housing, Ministry of Economic Planning and Development, Ministry of Agriculture and Food Security, Department of Forestry, Department of Environmental Affairs. Some of the main activities to be done at national level are as follows:

- Mainstreaming resettlement planning within project management systems of MESIP by synchronising resettlement screening with project activities appraisal systems.
- Preparation of comprehensive and user friendly checklists on social impacts from land acquisition and resettlements to enhance orderly resettlement activities by the communities.
- Provision of necessary resources to district level staff for conducting resettlement awareness meetings within communities.
- Provision of necessary resources to district level staff for monitoring resettlement activities carried out at community level by the communities themselves.
- Coordination at national level monitoring on resettlement activities within the period of implementation of project activities.
- Sensitization of stakeholders on resettlement planning in implementation of activities funded from MESIP

6.3 Capacity Building for Management of Resettlement Activities

The proposed Malawi Education Sector Improvement Project will fund multi – sectoral community based sub projects across the country. The risks of generating resettlement issues emanates from observations that most of new activities would require land uptake within the local villages. At the moment the specific locations are not known. In order to effectively screen resettlement issues, it is likely that the exercise would require dynamic and multi-disciplinary professionals. It is therefore necessary for the authorities to put in place appropriate tools for enhancing the knowledge and skills among the staff to be involved in resettlement screening and identification of compensatory measures. Some of the key capacity building activities which have to be carried are as follows:

- (a) Adaptation of checklists for social and economic impacts from resettlement activities to be used at local level. Such tools would guide the communities in avoiding involuntary resettlement in site identification processes. The target group for this exercise would be staff of LDF TST and the MESIP PMU, district executive committee, area executive committee, village development committees and area development committees.
- (b) Training and awareness in use of resettlement screening forms in appraisal of project’s activities. The target group for this exercise would be staff of LDF and MESIP PMU, DEC and VDCs.
- (c) Establishment of appropriate computer based information management systems for resettlement activities at local authority level. This is necessary so as to capture systematically data related to resettlement at local level.

6.4 Budget Estimates

Management of resettlement issues in relation to activities to be funded from MESIP will be carried out at community level, district level and national level. Appropriate budget support to activities expected at each of these three levels is outlined in Tables 4, below here. It should be pointed out that the budget estimates are indicative, and may be revised by stakeholders as the cases of resettlement become clearer and more specific. Moreover, a majority of these activities would be funded under the assumption that the Royal Norwegian Embassy in Malawi will make resources available to finance some of the project's pre-implementation activities. The tables also highlight sources of funding for the exercises. Furthermore it should be highlighted that the figures are provided with the assumption that the rates of land acquisition and compensation would be current local market values (including Replacement Costs) – not necessarily book values.

Table 5: Indicative Budget for Resettlement Activities at Community, Local Authority and National Levels

Serial Number	Losses or Impacts Budgeted for Expected on Proposed Site	Unit of Budget	Budget Estimates (in Malawi Kwacha)	*Budget (US\$)	Source of Funding
1.0	National stakeholder awareness workshops on resettlement issues	Lump sum	5,500,000	10,000	Royal Norwegian Embassy
2.0	Preparation of checklists for social and economic impacts of resettlement	Lump sum	1,500,000	2,727	Royal Norwegian Embassy
3.0	Sensitization of the communities on resettlement issues	Lump sum	2,350,000	4,273	Royal Norwegian Embassy
4.0	Training of Front Line Staff in Resettlement Activities ³	Lump sum	13,020,000	23,672	Royal Norwegian Embassy
5.0	Resettlement screening exercises	Lump sum	2,000,000	3,636	Royal Norwegian Embassy
6.0	Preparation of Resettlement Action Plan	Lump sum	7,350,000	13,364	Royal Norwegian Embassy
7.0	Resettlement compensations/assistance to impacted persons	Lump sum	50,000,000	90,909	Government of Malawi
8.0	Administrative and Monitoring activities	Lump sum	7,000,000	12,727	Government of Malawi
Total			88,720,000	161, 308	

Based on August 2015 Exchange rate of 1US\$=MK550

³Activities are broken down in Table 6 below

6.5 Capacity Building Plan for Frontline Staff in Resettlement Activities

The implementation of this Resettlement Policy Framework has an inherent Capacity Building arrangement for frontline staff responsible for facilitating training, screening for resettlement and preparation of resettlement actions plans at community level. Three key staff members will be targeted at area level and these include the Agricultural Extension Development Officer (AEDO), the Community Development Assistant (CDA) and the Forestry Assistant (FA).

The training will be done annually, and will be facilitated by a team of experts from the Local Authorities including the Environmental District Officer, the District Community Development Officer, the District Forestry Officer and the District Extension Methodology Officer. The indicative Budget for the Training of the front line staff is as outlined in table 5 below:

Table 6: Cost Estimate for Training of Extension Workers in Social and Environmental Safeguards (MK)

No.	Description of Expenditure Item	Quantity Per Council	No. of Councils	Duration	Unit Cost	Total Cost
1	Allowances for extension workers	30	6	3 days	10,000	54,000,000
2	Allowances for Facilitators	4	6	3 days	20,000	1,440,000
3	Allowances for Management Team	2	6	1	20,000	240,000
4	Allowances for DC	1	6	1	25,000	150,000
5	Allowances for support staff	8	6	3	10,000	1,440,000
6	Hall Hire	1	6	3	10,000	180,000
7	Stationery	1	6	1	20,000	90,000
8	Refreshments	100	6	3	1,500	2,700,000
9	Transport Refunds	30	6	1	1,000	180,000
10	Fuel including field trip	1	6	1	200,000	1,200,000
Total						13,020,000

REFERENCES

- Government of Malawi (2002), **Malawi National Land Policy**, Ministry of Lands, Housing and Surveys.
- Government of Malawi (1995), **The Constitution of Republic of Malawi**.
- Government of Malawi (1988), **Town and Country Planning Act**, Department of Town and Country Planning.
- Government of Malawi (1969) Water **Resources Act**. Ministry of Water Development
- Government of Malawi (1965), Ministry of Land, **Land Act**. Ministry of Lands and Housing
- Government of Malawi (1967), **Land Acquisition Act**. Ministry of Lands and Housing
- Government of Malawi (1998) **Local Government Act**. Ministry of Local Government and Rural Development
- Government of Malawi (1997) **Forestry Act**. Ministry of Forestry, Fisheries and Environmental Affairs.

Annex 1: Resettlement Screening Form for Proposed Sites and Sub Projects



Government of Republic of Malawi

..... District / Town / City Assembly

MALAWI EDUCATION SECTOR IMPROVEMENT PROJECT

RESETTLEMENT SCREENING FORM

GUIDELINES FOR THE EVALUATION:

The evaluator to undertake the assignment during field visit of the site.
 The evaluator to undertake the assignment after prior briefing of the exercise.
 The form to be completed by consensus of at least three people.

Project Name:	Estimated Cost:
Project Location: Village: Traditional Authority: District:	Project Objectives
Land tenure status	Proposed Main Project Activities:
Name / Signature and Position of Evaluator	Date of appraisal

	SCOPE AND FOCUS OF SCREENING	METHODOLOGY OF SCREENING			
		Appraisal of Impacts		Evaluation of Impacts	
		No	Yes	Low	High
1.0	SCREENING CRITERIA FOR PROPOSED SITE FOR THE PROJECT				
	<i>Will implementation of the sub project within proposed site generate the following socio-economic impacts?</i>				
1.1	Loss of or impacts on private land/gardens				
1.2	Loss of or impacts on private residential premises				
1.3	Loss of or impacts on private commercial premises				
1.4	Loss of or impacts on crops for a person/persons				
1.5	Loss of or impacts on forest trees for a person/persons				

1.5	Loss of or impacts on fruit trees for a person/persons				
1.6	Eviction of squatters/pirates				
1.7	Eviction of vendors				
1.8	Loss of or impacts on rental accommodation				
1.9	Closure/blockage of public footpath/road				
1.10	Blockage of pathways for livestock				
1.11	Loss of or impacts on grazing land				
1.12	Loss of or impacts on cultural sites – graveyards, ritual sites				
1.13	Loss of or impacts on public facilities – church, borehole, water kiosks,				
1.14	Loss of or impacts on access to public water resources/facilities				
1.15	Loss of or impacts on access to natural resources				
1.16	Spread of HIV and STIs				

OVERALL EVALUATION OF THE RESETTLEMENT SCREENING PROCESS

The results of the screening process would be either - that the proposed sub project is rejected for funding from MESIP or - that the proposed sub project on the proposed site be funded from MASAF 3 APL II. The basis of these options is listed in the table below:

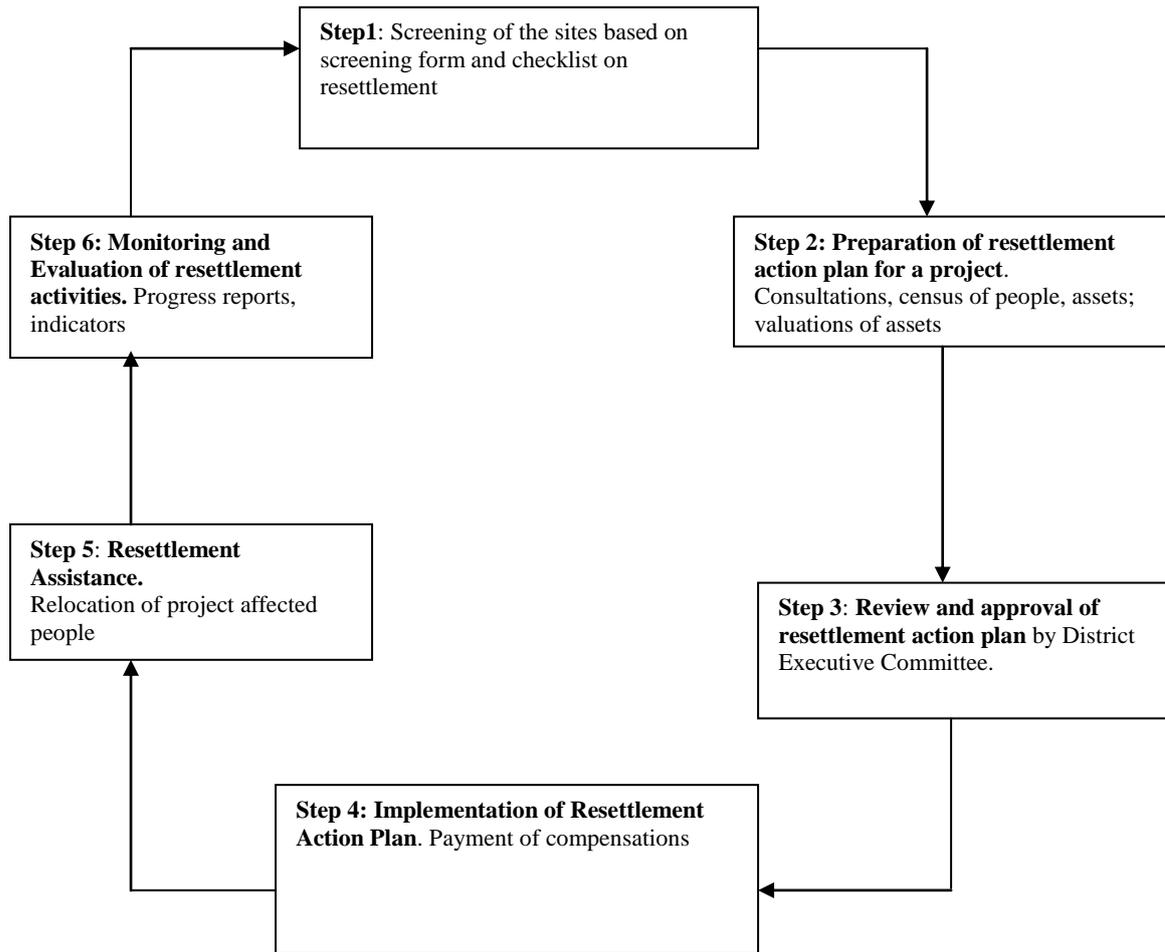
REJECTION OF FUNDING FOR THE SUB PROJECT ON THE PROPOSED SITE	APPROVAL FOR FUNDING FOR A SUB PROJECT ON THE PROPOSED SITE
1. An entry/entries of “YES” against each social impact in column 4, high impact, in table above by Village Development Committee.	1. Entries of “NO” against each of the social impact in column 4 in table above by Village Development Committee.
2. An entry/entries of “YES” against each social impact in column 4, high impact, in table above by District Executive Committee.	2. Entries of “NO” against each social impact in column 4 in table above by District Executive Committee.
Completion by District Lands Officer/Director of Planning and Development	
Date Received from	
Dated Reviewed:	
Date of Submission of inspection of the site	
Date of recommendation	
Date of clearance.	
Name & Signature of Officer:	

NOTES:

- Once the Resettlement Screening Form is completed and analyzed District Executive Committee will consider and endorse the overall position on the site. In case the proposed site and project is cleared of resettlement, The District Lands Officer will in turn forward the project for further consideration by other stakeholders and the process of preparing a RAP, where necessary, will begin.
- In case the project is rejected, The District Lands Officer will inform the village development committee accordingly.

Annex 2: An Outline of the Contents of Resettlement Action Plan

1. Description of the activity
2. Objectives of the activity.
3. Socio-economic characteristic of the people on the selected site
4. Inventory of the project affected people and assets to be lost
5. Eligibility criteria and Cut-off-date
6. Payment of compensation and records
7. Housing infrastructure and social services
8. Community participation
9. Integration with host population
10. Work plan for implementation of the resettlement
11. Institutional Arrangement
12. Grievance Redress Mechanism
13. Cost and budget
14. Monitoring and evaluation plan



Annex 4: Letter of Formal Land Acquisition

TO : WHOM IT MAY CONCERN
FROM : THE VILLAGE HEADMAN/OR OWNER OF THE LAND
CC : THE VDC CHAIRPERSON/OR THE VILLAGE HEADMAN
DATE :

LAND ACQUISITION AGREEMENT

I Village headman or/ owner of land..... of.....village, ofVillage Development Committee (VDC), T/A..... do hereby offer full rights and nonexclusive ownership of.....sq metres/hectares of land available at.....voluntarily/involuntarily (to be ticked by land owner) to, (name of community project) for purposes of construction of having fulfilled all processes and consultations of land acquisition.

In this agreement, the offer shall not be transferred or assigned in whole or part to any third party without consent of the holder. In the event of the either party committing the breach of the terms of this agreement the aggrieved party will seek further formal arbitration.

Duplicate originals of this agreement have been signed on behalf ofVillage headman or/owner and on behalf of..... project management Committee on the dates specified below.

This agreement is entered into effect immediately when signed by all parties.

NameSignature.....Date.....

NameSignature.....Date.....

NameSignature.....Date.....

NameSignature.....Date.....

Official stamp (if available)

Annex 5: Resettlement Grievance Redress System

The following form should be used for Addressing Resettlement Grievances. The forms should be located at VDC level and if the complaint is not resolved at each level, refer to the next level of grievance resolution.

Sub Project Name:	Name of complainant:
Case Registration: New/ Referral	Case referred from:
Project Location: Village: Traditional Authority: District:	Village: Traditional Authority: District:
Land tenure status	Date of Grievance :
Type of grievance:	Who was the grievance addressed to:
Was the grievance addressed: Yes/No	
Type of grievance resolution: community consent or agreement/ compensations/ legal redress:	
If yes, how long did it take to address the grievance:	
Any appeals lodged: Yes/No	
Completion by Authority resolving the Grievance	
Date Received from (Complainant)	
Dated grievance reviewed:	
Date of consultation with complainant	
Date of redress recommended	
Date of clearance.	
Name & Signature of Officer (VDC chair/Traditional leader/ AEC member/ DC/ magistrate/Judge- (circle appropriate level where grievance was resolved).	
Name and signature of complainant	
Date	

Annex 6: Report on MESIP's ESMF/RPF Consultation Meetings (24th-28th August 2015 AT Linde Motel Mponela, Dowa, Malawi)

1.0 Introduction

A meeting was called to discuss the draft Environmental and Social Management Framework and the draft Resettlement Policy Framework (RPF) for the Malawi Education Sector Improvement Project which the Government of Malawi was preparing with support from the Global Partnership on Education.

2.0 Members present

1. Mr. John Ng'ambi, Local Development Fund, Social Development Specialist
2. Mr. Ashan Kapulula, Ministry of Education, Deputy Director of Planning
3. Ms. Suzane Mkomwa, Chief Economist, Ministry of Education Science and Technology
4. Mr. Mark Pindani, Education Infrastructure management Unit, Quantity Surveyor
5. Mr. Micheal Makonombela, Assistant Director, Environmental Affairs Department
6. Mr. Davie Chilonga, Assistant Director, Ministry of Lands and Housing
7. Mr. Mayeso Undi, Local Development Fund, Engineer
8. Mr. Steven Sakhama, District Environmental Officer, Kasungu District
9. Mr. Bruno Kamanga, District Environmental Officer, Dedza district
10. Ms. Tryness Nkhoma Mankwazi, District Environmental Officer, Mangochi district
11. Mr. Suzgo Gondwe, District Environmental Officer, Mulanje District
12. Mrs. Lilian Chimphepo, District Environmental Officer, Mzimba District
13. Mr. Mulinda Ng'ambi, Projects Officer, Civil Society for Basic Education
14. Ms. Sylvia Ambali, District Environmental Officer, Zomba District
15. Mr. Davie Chogawana, District Environmental Officer, Salima district

3.0 Members Comments

3.1 Members welcomed the Project

Members welcomed the government initiative to prepare the project with the aim of improving education outcomes in the country which the bemoaned to be poor. They looked forward the project would indeed contribute to the improvement of the education outcomes in the country particularly looking at its objectives of the project.

3.2 Comment of Attendance of the Meeting

Members welcome the idea of including members of the civil society to the meeting since most NGOs are the ones that work very closely to the Project Affected People (PAP). They requested that in future the meetings should involve members of the communities as well as more members from the civil society

3.3 Review of the Framework Documents

Members went through the draft documents (RPF and ESMF) page by page and paragraph by paragraph and made editorials of the documents and paraphrasing some of the paragraphs in the document.

3.4 Need for Further consultations

Members noted that the process of selecting beneficiary districts and schools at the time of these consultations was still underway. Members also noted that the activities, especially under component two of the project were still not very clear at the time of consultations. It was therefore recommended that further consultations should be undertaken during activity planning so that more targeted consultations and feedback at be obtained at district and beneficiary community level

3.5 Need for Capacity Building

Members requested that more targeted capacity building should be done at Community level especially for frontline line to facilitate more effective monitoring on the potential impacts and mitigation measures both for environmental impacts and resettlement impacts and activities

3.6 Review of Disclosure Documents

Members reviewed the disclosure documents and recommended that these should also be made available in a language that is more and easily understood by most members of the society so that they can make meaningful comments and give feedback

4.0 Approval of the RPF and ESMF

Members approved the draft ESMF and RPF and authorized the Ministry of Education, Science and Technology to submit the draft documents to appropriate authorities for further approval processes to proceed.