MALAWI

PROPOSED REHABILITATION OF THE MZUZU-NKHATA BAY (M5) ROAD

DRAFT SUMMARY

ABBREVIATED RESETTLEMENT ACTION PLAN

SEPTEMBER 2012
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1.0 INTRODUCTION

The Government of Malawi (GoM) through the Roads Authority (RA) plans to rehabilitate and widen the existing 46 km long Mzuzu- Nkhata Bay road. The road is classified as M5 and has a gazette road reserve of 60 m. Currently, the road has a narrow carriageway that is in poor condition rendering the road a safety hazard. The project intends to widen the carriageway from an average 4.2m width to 6.7 m with 1.5 m sealed shoulders on each side. The rehabilitation of the road will be done within the road reserve area and there will not be any major horizontal re-alignment. The African Development Fund (ADF) loan shall be used to finance the rehabilitation of the Mzuzu-Nkhatabay road. The loan amount shall be in the sum of UA21.89 million. The Bank will finance 100% for all project components.

The RA in collaboration with the Mzuzu and Nkata Bay district Councils and in collaboration with all stakeholders undertook a census of the people and structures that would be affected by the implementation of the project. A stakeholder analysis identified the key stakeholder who needed to be consulted. The Cut-off date was 15th June 2012 when public consultations were made along the project road.

The total number of Project Affected Persons (PAPs) determined from the property surveys in the two Local Authorities (Las) and census is 86 and hence an Abbreviated Resettlement Action Plan (ARAP) has been prepared by the RA. The Environmental and Social Impact Analysis has also been conducted by the RA. The studies revealed all the PAPs are people who have encroached the road reserve. Nonetheless, the RA plans to compensate all PAPs in accordance with the Government of Malawi (GoM) Laws. The RA is implementing the Road Reserve Marking and Reclaiming Projects country wide since 2010 and recently compensated tree owners on this road under the Road Reserve Marking Programme. Compensation for trees is therefore not part of this ARAP study.

This ARAP Summary provides a brief of the resettlement plans for the Mzuzu – Nkhata Bay road rehabilitation Project in Malawi and is in accordance with the African Development Bank’s Involuntary Resettlement Policy, 2003.

2.0 PROJECT DESCRIPTION AND IMPACT AREAS

The project is in line with the national priorities as enshrined in the Malawi Growth and Development Strategy II (2011-16) which prioritise road infrastructure. The MGDS II recognize that infrastructure is a key component for creating an enabling environment for private sector driven growth and provision of timely and quality social services. The sector goal is to ensure provision of a safe, affordable, accessible and high quality road transport system in Malawi.

The project specific objectives are: (i) to reduce vehicle operating costs; (ii) to reduce travel time between the towns of Mzuzu and Nkhata Bay; and (iii) to generally boost the social-economic welfare of the communities in the road catchment area by providing improved access to social economic centers including markets, schools, and health centers.

The existing Mzuzu-Nkhata Bay Road zone of influence extends into the two districts of Mzimba and Nkhata Bay. The project will involve rehabilitation of the road between the towns of Mzuzu and Nkhata Bay District Council. In terms of the Traditional Jurisdiction the road passes through Traditional Authority Kambundulis, Timbili and Mkumbira areas. The total proposed road length
is 46 km. The works shall include widening of the carriageway from 4.2m to 6.7m with 1.5m sealed shoulders and a bituminous running surface. The proposed project road starts from Mzuzu City at the City Council Offices where Chainage 0+00 km is positioned and ends in Nkhata Bay District at the Nkhata Bay Jetty. The project has three components which include: (i) civil works (rehabilitation of the Mzuzu-Nkhatabay road); (ii) consultancy services (design review, preparation of bidding documents, and supervision; road safety audit; financial and technical audits); (iii) capacity building (road sector needs assessment study; skills training and acquisition of management systems in procurement project management and road asset management).

As the road progresses from Mzuzu City it passes through a sparsely populated area with a number of residential properties on both sides of the road and thereafter runs through the protected Kaning’ina Forest Reserve. The road passes through the sparsely populated villages and traditional forests including the protected Kalwe Forest Reserve. As the road approaches Nkhata Bay district Town it passes through a stretch of unplanned residential areas before reaching the end point at Nkhata Bay Jetty. Most of the structures along the proposed road alignment at Nkhata Bay Town and in Mzuzu City are located within the 60 m gazetted road reserve and in order to avoid demolishing them and unnecessarily displacing people a reduced road corridor ranging from 10 m to 15 m has been considered for the purpose of rehabilitating this road. Since the terrain is hilly and swampy the provision of diversions during construction will be limited and hence a corridor of 20 m has been considered in the middle section of the road.

The road is designed for an average speed of 80km per hour and 50 km per hour in extreme cases dictated by hilly terrain, swampy areas and settlements. Changes in road alignment are likely to occur in some places to comply with design speed, visibility and carriageway width specifications. However these changes in the alignment will occur within the road reserve.

### 3.0 LEGAL FRAMEWORK

The Constitution of Malawi provides the basis for and against land acquisition. Section 28 (2) of the Constitution of the Republic of Malawi states that “No person shall be arbitrarily deprived of property” and section 44 (4) states 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 for redress”. In line with these the ARAP has been developed on the basis of the following Acts and Policy; Land Act, 1965; Lands Acquisition Act, 1971; Public Roads Act, 1962; Town and Country Planning Act, 1991; and the Malawi National Land Policy, 2002.

The Public Roads Act stipulates the widths and the owners of the road reserves which have been used in these studies. The Land Acquisition Act provides the procedures to be followed when acquiring land for public use. The ARAP also took into account of the Malawi National Land Policy which states that “compensation valuation for customary land, at the time of acquisition by the Government, should be based on the open market value of the land and all improvements on the land”. The AfDB’s Involuntary Resettlement Policy 2003 generally provides guidance on how to treat people who have been displaced or suffered other losses as a result of various projects. The Malawi National Land Policy is in tandem with the AfDB’s Involuntary Resettlement Policy of 2003 which states that “persons are eligible for compensation whether or not they have legal rights over the land”. The same policy also states that “compensation should
be based on replacement value rather than market value less depreciation”. AfDB places emphasis on the improvement of PAPs’ lives following displacement and prefers ‘in-kind’ forms of compensation rather than in cash, including special assistance to vulnerable peoples and gender sensitivity. There are specific guidelines with regards to the consultation process which should be participatory, culturally appropriate and ensure informed consent.

4.0 COMMUNITY PARTICIPATION AND PUBLIC INVOLVEMENT

Extensive consultations were conducted with all stakeholders in the project impact area in order to solicit their views on the proposed road rehabilitation project. Public consultations were conducted from 15th June to 3rd July 3, 2012 and over 250 individuals and representatives of organizations were consulted. Various other stakeholders were also consulted during the preparation of the Environmental and Social Impact Assessment. The consultations yielded a general agreement on the need for the rehabilitation of the road that was considered long overdue by most stakeholders. The negative and positive impacts were discussed with the local authorities, village leaders, the local community and independent organizations operating in the zone of influence of the project. The approach used comprised interviews, group discussions and observations during project site visits. Key concerns raised by local communities included the need for ensuring compensation for loss of property and land, ensuring employment of local communities in the project and improvement of road design to ensure road safety at certain location along the road.

The Ministry of Lands through RA issued a public notice in the local newspaper, the Daily Times of 28th June 2012, notifying the public of its intention to acquire land for the project in fulfillment of the GoM legal requirements and AfDB Policy. The use of the electronic media was to ensure that people owning property or planning to build properties along the road but reside in other parts of the country were reached and sensitized about the project. Contents of the notice translated in local languages were also communicated to the people living along the project road through a public address system.

5.0 IMPACTS OF THE PROJECT

It is envisaged that the rehabilitation of this road will have minimum negative impacts on the people within the zone of influence. The Roads Act provides 60 m road reserve for the project road. Even though people to be displaced are those who have encroached on the road reserve and in most cases were previously warned by the LAs careful consideration was made to reduce the road corridor widths required for the construction works as much as possible to minimize the number of people to be affected negatively by the project. The census survey of the expected size of the displaced persons identified a total of 8 dwelling houses, 28 shops, 16 informative and advertising posts, 4 institution structures, utilities for the 3 utility companies (water, electricity and telecommunications), 2 pit latrines and 1 brick wall fence are to be displaced from the gazetted road reserve. The total number of PAPs is 86 which is less than the 200 threshold for doing a full Resettlement Action Plan. Hence this ARAP has been prepared as opposed to a full Resettlement Action Plan.
6.0 ELIGIBILITY CRITERIA AND ENTITLEMENTS

The procedures, for determining eligibility to compensation, resettlement assistance and rehabilitation assistance measures, and the actual displaced persons considered the following factors:-

(a) Those that 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. None of the PAPs belong to this eligibility criterion.

(b) Those who have no formal legal rights to land at the time the census was done 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 and illegally given land by the local chiefs to settle within the road reserve.

(c) Those who have no legal right or claim to the land they are occupying. This class of people includes those that had settled on a semi-permanent basis, or permanent basis within the road reserve without any formal grant or authority.

(d) Vulnerable groups

Persons who encroach on the road reserve after the Cut-off date shall not be entitled to Compensation, or any Resettlement Assistance or any other form of Rehabilitation Assistance.

Entitlements for compensation were based on ownership of the assets within the road reserve and the various categories of losses identified during the field consultations. Due to the continued

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<table>
<thead>
<tr>
<th>Structures</th>
<th>Nkhat Bay</th>
<th>Mzuzu City</th>
<th>Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Institutions</td>
<td>4</td>
<td>0</td>
<td>4</td>
</tr>
<tr>
<td>Bill Boards</td>
<td>16</td>
<td>2</td>
<td>18</td>
</tr>
<tr>
<td>Shops</td>
<td>28</td>
<td>0</td>
<td>28</td>
</tr>
<tr>
<td>Houses (PAPs</td>
<td>8</td>
<td>0</td>
<td>8</td>
</tr>
<tr>
<td>dwelling in the</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>houses are 28)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Utilities</td>
<td>3</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>Pit Latrines</td>
<td>2</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Wall Fences</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Land (ha)</td>
<td>8.2</td>
<td>1.0</td>
<td>9.2</td>
</tr>
</tbody>
</table>
fluctuation of the Malawi Kwacha, the calculated values of assets will be implemented as soon as possible. The period for compensating PAPs will not exceed six months from date of valuation.

7.0 ASSET VALUATION METHOD

Following on consultations with all stakeholders all PAPs opted for cash compensation. The GoM used its compensation schedules compiled in 1994 to determine values for loss of assets to be incurred due to the implementation of this road project. The schedules were first adjusted for inflation to arrive at the current rates. This was to ensure that the compensation values represented full replacement values of the property as at the time of the assessment. These values will be valid for six months and all efforts are to be made to pay the PAPs before the expiry of the validity period. A 10% disturbance allowance to cater for transfer, transportation and labour was included. The assessed values were then disclosed to the PAPs individually who then verified and signed for the amounts as a sign of being in agreement.

Asset owners were identified with the help of the Traditional Authority or village headman. Values for affected buildings and structures were determined by taking into account the construction materials used, floor/surface area covered, age and location of building or property. Since the structures are within the road reserve no compensation for land was considered.

8.0 INSTITUTIONAL FRAMEWORK FOR COMPENSATION

The Office of the President and Cabinet has delegated the authority on compensation and land acquisition to the Local Authorities (Las). The LAs use the property and land valuation expertise in the Ministry of Lands and Housing for assessing compensation for structures and use their staff to assess compensation for trees and crops with the help of forest expertise from the Department of Forestry.

The Roads Authority with the assistance of the two LAs will be responsible for the implementation and monitoring of the ARAP and Roads Fund Administration (RFA) will be responsible for effecting payments. A team comprising officials from the RA, Department of Lands, Mzuzu City Council, Nkhata Bay District and Department of Forestry has been formed to prepare, implement and monitor the ARAP.

The schedules of compensation once approved by the LAs are to be submitted to RA who are the implementing agency of the project for onward transmission to RFA. RFA will submit a request for funding to the Ministry of Finance once the ARAP is approved. RFA, LAs and RA will jointly undertake the payments to the PAPs.
9.0 PAYMENT OF COMPENSATION

Payment will be made in the following ways:

i. By agreement between the government and the land or property owners:

(a) The GoM will pay the assessed sums which have been deemed as adequate as compensation to each PAP; and the PAP may accept that amount as compensation payable to him.

(b) Such sums will be disbursed by RFA, RA and LAs jointly to the Displaced Persons (DPs). A record of DPs, their claims and entitlements has been generated. After payment of such sums, documentation of the name(s) of the DP, the amount of compensation and the records of how the compensation was arrived at will also be kept. A copy of such records will be made available to the GoM and local chiefs.

ii. By the Court if there is no agreement:

a. If the compensation payable is not agreed upon between the GoM and the land or property owner, such compensation shall be determined by the Courts.

iii. Claim for compensation statute barred:

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

Payment of compensation shall strictly be based on results of the census and shall be recorded in the register at the LAs office and a copy to be with TA for record purposes and future reference.

10.0 COST AND BUDGET

The total costs of compensation for buildings and utilities are MWK 22,788,150.00 and MWK 221,275,442.40, respectively. The total cost for the implementation and monitoring of the ARAP is MWK 6,000,000.00. The total budget is therefore MWK 250,063,592.40. The GoM has included MWK300,000,000.00 in the 2012/2013 National Budget for the project which has since been approved by Parliament. A summary of the resettlement costs is given below.

Table 2: Summary of ARAP Budget

<table>
<thead>
<tr>
<th></th>
<th>Value of Structures MWK</th>
<th>10% Disturbance Allowance MWK</th>
<th>Total MWK</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nkhat Bay</td>
<td>20,378,318.18</td>
<td>2,037,831.82</td>
<td>22,416,150.00</td>
</tr>
<tr>
<td>Mzuzu City</td>
<td>338,181.82</td>
<td>33,818.18</td>
<td>372,000.00</td>
</tr>
<tr>
<td>Utilities</td>
<td></td>
<td></td>
<td>221,275,442.40</td>
</tr>
<tr>
<td>Implementation,</td>
<td></td>
<td></td>
<td>6,000,000.00</td>
</tr>
<tr>
<td>Monitoring and</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
11.0 ARAP IMPLEMENTATION ACTION PLAN

The following timeframes shall apply provided that time changes shall not adversely affect the rights or interests of Displaced Persons under this ARAP:

a) The assessed values shall be valid for 6 months from 26\textsuperscript{th} June 2012 when verification was completed.

b) Compensation, resettlement and rehabilitation activities shall only commence after GoM and AfDB have accepted the Resettlement Plan.

c) Compensation payments for affected assets as described above, will be completed as a condition for resettlement and before commencement of civil works under the project.

d) The tasks, budgets and time lines for the implementation action plan are detailed in the table below;

<table>
<thead>
<tr>
<th></th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Review &amp; Approval of ARAP</td>
<td>244,063,592.40</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Payment for Compensation</td>
<td>244,063,592.40</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Resettlement &amp; Rehabilitation</td>
<td>6,000,00 0.00</td>
<td></td>
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</tr>
<tr>
<td>Monitoring &amp; Evaluation</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Completion Audit</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

12.0 GRIEVANCE MANAGEMENT

The ARAP has put in place a complaints and grievances mechanism which is readily accessible to deal with complaints promptly or else in the event of failure the matter can be referred to the formal court system. Grievances Committee comprising the LAs and Community Representatives from the three Traditional Authorities have been formed to deal with grievances. The aggrieved parties have been advised to channel their complaints through the Community Representatives who in turn will submit these complaints to their nearest designated grievance
secretariats of either Mzuzu City Council or Nkhata Bay District Council. The receiving office will then call the grievances committee and table the matter before the committee for adjudication.

Therefore, all grievances concerning non-fulfillment of contracts, levels of compensation, or seizure of assets without compensation will be addressed to the complaints and grievances committee. The local committee will inform and consult with RA and the District Commissioner or Chief Executive Officer to determine the validity of claims. If valid, the local committee will notify the complainant who will be assisted as appropriate. If the complainant’s claim is rejected, the matter shall be brought before the District Commissioner for settlement. The grievance redress mechanisms has been designed with the objective of solving disputes at the earliest possible time, which will be in the interest of all parties concerned and therefore, it implicitly discourages referring such matters to the court for resolution.

Compensation and resettlement plans will be legally binding, and will recognize that customary law is the law that governs land administration and tenure in the rural/village areas. All objections to land acquisition shall be made in writing, to the implementing agency with copies to the Ministry of Lands and Natural Resources within 30 days after the public notice; or through a formal complaint lodged via the Traditional Authority and District Assembly. The traditional leaders and the local committee shall maintain records where grievances and complaints, including minutes of discussions, recommendations and resolutions made, will be recorded.