

## Chapter 5: ARAP Legal Framework

### 5.1 The Constitution

The Republican constitution sets a benchmark on the issue of land acquisition. It prohibits arbitrarily deprivation of property and stipulates 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.

### 5.2 Statutory provisions

In Malawi, there are several pieces of legislation that provide a legal framework for involuntary resettlement. Principal among these pieces of legislation are: Land Acquisition Act, 1971 (Amended 2016) Public Roads Act, 1962 (Amended 2017); Lands Act, 2016; Customary Land Act, 2016; Physical Planning Act (2016); Registered Land (Amendment) Act, 2017 Customary Land Act, 2016 and the Environment Management Act, 2017. These legal frameworks have provisions for resettlement of people that may be displaced from their residential or non-residential locations/ business places.

#### 5.2.1 Lands Acquisition (Amendment) Act (Act 9 of 2017)

The Act makes provision for compensation whenever the Minister acquires land under the Lands Acquisition (Amendment) (Act 9 of 2017) and specifically requires that the compensation be paid in a lump sum. The Act stipulates that unless otherwise agreed between parties, appropriate compensation shall be assessed by an independent valuer appointed by the Minister.

The grounds on which the assessment of the compensation shall be based on are very extensive and overall resonate very well with JICA Guidelines and World Bank Safeguard Policies. These are:

- (a) Loss of occupational rights
- (b) Loss of land
- (c) Loss of structure
- (d) Loss of business
- (e) Relocation costs
- (f) Loss of goodwill
- (g) Costs of professional advice
- (h) Nuisance
- (i) Loss or reduction of tenure; or
- (j) Disturbances, if it is not too remote and is natural and reasonable consequence of the disposition of the land

The Act stipulates that the following are the only matters to be taken into consideration when assessing the amount of compensation:

- a) The value of the land, or interest therein of the claimant at the time of valuation
- b) The damage sustained by the person interested, at the valuation date, by reason of the severance of such land from his land by reason of the exercise of the powers conferred by under the Act
- c) The Claimant is compelled to change his residence or place of business
- d) Increase in the value of the land and any benefits likely to accrue at the valuation date from the proposed development
- e) The relief obtained by the Claimant as a result of taking of the land

The Act further stipulates the matters shall not be taken into consideration in assessing the amount of compensation. These are:

- a) *Improvements not made two year before valuation date that were in good faith*
- b) Enhancement of the market value due to the proposal to change of use of land
- c) Increase in value due to use of land or premises for contrary to the law or could be restrained by the court
- d) The damage sustained by the Claimant, it caused by a private person would not be a good cause for action
- e) The special suitability or adaptability of the land for the proposed development
- f) The degree of urgency which has led to the taking of the land; and
- g) Any disinclination of the Claimant to part with his interests in land

**Procedures for acquiring land:** This law covers procedures relating to the acquisition of land by either the government or individuals or developers from any category of land.

During the preliminary investigation the boundaries of the land proposed to be acquired are clearly marked and set out. If the Minister resolves that it is desirable or expedient to compulsorily acquire any land under this Act, he serves a notice upon the persons who are possessed of the interest in the land known to him after reasonable inquiry. All notices under this Act are published in the Government Gazette. The notices cover the steps for assessment of land, crops, fruits and other landed properties and subsequent procedures for payments of the compensations to the displaced people. In urban areas, the Lands Department and the Urban Councils are the key institutions in the resettlement of displaces persons.

#### 5.2.2 Public Roads (Amendment) Act (Act 8 of 2017)

According the Public Roads (Amendment) Act (Act 8 of 2017), the amount of compensation in respect of private land shall be based on the loss or damage suffered by the claimant arising from the damage or destruction of his interest in surface rights on such land valued at the valuation date and shall include:

- (a) The damage, if any, sustained by the personal interested at the valuation date by reason of the severance of such land from his other land or other injurious matter affecting his other property .movable or immovable by reason of the exercise the powers conferred by this Act; and
- (b) If, in consequence of the matters giving rise to the claim, the claimant is compelled to change his residence or place of business, the reasonable

expenses, if any, incidental to such change, but shall not include any sum in respect of *improvements on land in a road reserve affected since the land became a road reserve.*

In case of customary estate, the Act stipulates that the occupier shall be entitled to reasonable compensation in respect of the disturbance and the amount of such compensation shall be based on the open market value on the loss suffered by the claimant arising from damage to or destruction of his interest in the land and surface rights on such land. The Act provides for compensation for other disturbances where the claimant has to move his place of residence or business

### 5.2.3 Registered Land (Amendment) Act, 2017

The Act incorporates provisions to provide for title registration throughout the country for all Categories of land including customary estates. The Act also takes into account the move to decentralise land administration and management. Thus, all land shall be subjected to registration for purposes of determination of ownership. Registration districts have been decentralised and reliance is no longer placed on the Minister to declare registration districts. The Act stipulates that the consent of local lands committees be obtained in the dealings with customary land in place of the Local Land Boards.

### 5.2.4 Customary Land Act, 2016

The Customary Land Act, 2016 is the main act in customary land administration and management in Malawi. The Act establishes "customary estates", which is customary land owned, held or occupied as private land within a traditional land management area and which is registered as private land under the Registered Land Act. As such, customary land is given equal value as any privately owned land such as leasehold or freehold.

In terms of operation, the Act creates customary land committees (CLCs) at group village headman (GVH) level to manage land within a Traditional Land management Area (TLMA).

Land dispute resolution under the Act will be through Land Tribunals. These will be Customary Land Tribunal at traditional Authority level (to be chaired by the TA for TLMA), District Land Tribunal (to be chaired by the District Commissioner) and Central Land Board (to be presided a Resident Magistrate). If the complainant is not satisfied with a decision of a land tribunal, he or she can appeal to the next level or the high court.

### 5.2.5 Physical Planning Act (2016)

The Physical Planning Act is a principal act for regulating land use planning and physical developments in Malawi. The Act empowers the Minister to acquire land if it is considered desirable or expedient in the interests of the implementation of any plan or of the proper control and furtherance of development of any land under the Act. The land may be acquired, either compulsorily or by agreement paying compensation as may be agreed or determined in accordance with the Law.

For the purpose of determining whether compensation is payable and assessing the amount of compensation which may be payable in accordance with the Act, the expression "incapable of any reasonable beneficial use" shall mean that the land

cannot be used for any lawful purpose in keeping with surrounding uses so as to enable derive an income or produce from land.

Where the right to compensation has arisen, the claimant may instead of pursuing a claim of compensation require the Minister to purchase the land by issuing a purchase notice. The Minister or responsible authority may agree to purchase the land in accordance with the provision of the Land Acquisition Act as if it were a compulsory acquisition of land or reject the purchase notice but agree to pay compensation assessed in accordance with the Physical Planning Act or reject the purchase notice on the grounds that the land is not capable of yielding any reasonable beneficial use.

#### 5.2.6 Land Act (2016)

The Land Act categorises land as either public land or private of land where as Public land is classified either as Government land or unallocated customary land, while Private land is classified as classified as freehold, leasehold or customary estate.

**Acquisition of unallocated customary land for public utility:** Where any unallocated customary land is needed for public utility, the Minister shall serve notice upon the traditional authority within whose traditional land management area the customary land is situated. However for where any customary land shall be required for use as a public road or for the widening or diversion, such land shall be acquired in accordance with the Public Roads Act.

**Private land: Compensation for improvements on surrender:** The a Act provides for compensation based on the unexhausted value of the Improvements whenever a lessee surrenders his lease in accordance with section

The JICA Guidelines complemented by the World Bank policies on involuntary resettlement (OP/ BP 4.12) have a number of aspects similar to the Malawi Government legislative and policy frameworks in the management of resettlement. For example both policies emphasize on minimization of the extent of resettlement and recommend considerations of fair and adequate compensations to project affected persons. However, there are few gaps that exist between the JICA guidelines/ World Bank policies and those of Government of Republic of Malawi. A detailed comparative analysis is provided in Table 5-1 below.

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**Table 5-1: Comparative analysis of JICA Guidelines/ World Policies and the Malawi Legal Framework**


JICA Involuntary Resettlement Guidelines & World Bank Policies	Malawi Involuntary Resettlement Provisions	Gap	Resettlement practice under the project
<p><b>JICA Guidelines</b></p> <p>Involuntary resettlement and loss of means of livelihood are to be avoided when feasible by exploring all viable alternatives</p>	<p>The Malawi EIA Guidelines require that the ESIA explores alternative to the proposed project. Issues of involuntary resettlement and loss of livelihood are considered when exploring alternatives to the proposed project</p>	<p>No significant gap</p>	<ol style="list-style-type: none"> <li>1. An ESIA has been undertaken under the project and has examined alternatives to the expansion of the road to dual carriage way.</li> <li>2. No detour route to reduce the number structures/properties to be affected by the project</li> <li>3. Variation in the width configuration in built-up and non-built-up areas</li> </ol>
<p>When population displacement is unavoidable, effective measures to minimize the impact and to compensate for losses should be taken</p>	<p>Lands Acquisition (Amendment) Act (Act 9 of 2017) makes provision for minimizing the impact of relocation and to adequately compensate for losses incurred as a result of displacement.</p>	<p>No gap. The Land Acquisition Act provides the necessary legal framework for minimizing the impact of population displacement.</p>	<p>The methodology of valuation for f compensations in the ARAP to be consistent with the provisions under the Lands Acquisition Act</p>
<p>People who must be resettled involuntarily and people whose means of livelihood will be hindered or lost must be sufficiently compensated and supported, so that they can improve or at least restore their standard of living, income opportunities and production levels to pre- project levels.</p>	<p>The Public Roads Act provides for reasonable compensation in respect of disturbance and the amount of compensation is based on open market value on the loss suffered.</p>	<p>Malawi legal framework does not make specific reference to the improvement /or restoration of livelihoods to pre-project level</p>	<p>The ARAP has establish livelihood baseline for the people affected as basis for compensation</p>

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<p>Compensation must be based on the full replacement cost as much as possible.</p>	<p>Lands Acquisition (Amendment) Act (Act 9 of 2017) comprehensively covers grounds for compensation while the Public Roads Act states that where the claimant is compelled to change his residence or place of business, the reasonable expenses compensation shall include expenses incidental to such change</p>	<p>No gap</p>	<p>Compensation has been calculated consistent with the provision of the Land Acquisition Act and the Public Roads Act</p>
<p>Compensation and other kinds of assistance must be provided prior to displacement.</p>	<p>Lands Acquisition (Amendment) Act (Act 9 of 2017) provides for appropriate compensation and payment of compensation in a lump sum.</p>	<p>Malawian policies do not clearly spell out this approach and in practice resettlement is treated as a separate exercise outside project planning and implementation</p>	<p>Payment of full replacement cost to be a condition for the project to start.</p>
<p>In preparing a resettlement action plan, consultations must be held with the affected people and their communities based on sufficient information made available to them in advance.</p>	<p>Consultations with the PAPs is mandatory under the Malawi EIA Guidelines. Environmental Management Act describes "EIA report shall be disclosed" (article 25.3). And the Guidelines for Environmental Impacts Assessment (Appendix G) describes details of stakeholder consultation including methods and timing of the consultation. The guidelines describe that timing of the stakeholder consultation should be flexible. The guidelines recommend (1) on preparation of TOR of EIA, (2) on</p>	<p>No gap</p>	<p>Consultations were held between February and March 2018 with business people, banks, filling stations owners, vendors, schools, faith based communities, traders, market committee representatives and communities in the city and along the M1 road through Focus Group Discussions (FGD) and individual's interviews. The views of the key stakeholders have been taken into consideration in the preparation of this ARAP.</p>

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<p>Appropriate and accessible grievance mechanisms must be established for the affected people and their communities.</p>	<p>implementation of EIA, (3) on evaluation of EIA report, (4) on approval of EIA report</p> <p>Various legislation, including the Constitution of Malawi makes provision for grievances to be addressed through the formal court system. This is a constitutional right.</p>	<p>Practice has shown that settlement of disputes through the formal court this can be a costly and time consuming exercise and may not be effective for the Souvenir and other vendors plying their business in the project area.</p>	<p>MTPW will hold stakeholder meetings once the draft ARAP is ready</p> <p>The complaints and grievances mechanism as outlined below is readily accessible to deal with complaints expeditiously. However if this fails the aggrieved party can refer the matter to the formal court system.</p>
<p><b>World Bank OP 4.12 Key Principles</b>          Affected people are to be identified and recorded as early as possible in order to establish their eligibility through an initial baseline survey (including population census that serves as an eligibility cut - off date, asset inventory, and socioeconomic survey), preferably at the project identification stage, to prevent a subsequent influx of encroachers and others who wish to take advantage of such benefits.</p>	<p>ARAP prepared during project feasibility studies</p>	<p>Significant gap exists although not strictly applicable to this project</p>	<p>The census was carried out on 15<sup>th</sup>, 16<sup>th</sup> and 29<sup>th</sup> September Thus 29<sup>th</sup> September has been set as the eligibility cut-off date</p>

<p>Eligibility of Benefits include, the PAPs who have formal legal rights to land (including customary and traditional land rights recognized under law), the PAPs who don't have formal legal rights to land at the time of census but have a claim to such land or assets and the PAPs who have no recognizable legal right to the land they are occupying</p> <p>Preference should be given to land-based resettlement strategies for displaced persons whose livelihoods are land-based</p> <p>Provide support for the transition period (between displacement and livelihood restoration)</p> <p>Particular attention must be paid to the needs of the vulnerable groups among those displaced, especially those below the poverty line, landless, elderly, women and children, ethnic minorities etc.</p>	<p>The Public Roads Act does not provide for the compensation of people affected by the project on land in a road reserve since the land became a road reserve.</p> <p>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.</p> <p>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</p> <p>No special provision for vulnerable groups among the displaced persons</p>	<p>Laws of Malawi significantly deviate from World Bank policies regarding compensation to people who do not have legal rights to the land they are occupying.</p> <p>No significant gap. For this project, the livelihoods of the displaced persons are not land-based</p> <p>Significant gap</p> <p>Significant gap</p>	<p>Land ownership has not been a factor in the valuation of assets and making arrangement for relocation</p> <p>The Lilongwe City Council has made arrangements for the relocation of the vendors at the Souvenir market.</p> <p>Project to start after the issues of compensation are resolved to the satisfaction of the displaced persons with support for the transition period guaranteed</p> <p>ARAP to confirm the presence of vulnerable groups</p>
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Source: Various Malawi Land Related Laws, JICA Guidelines and World Bank Policies

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## Chapter 6: Institutions responsible for resettlement activities and ARAP implementation and implementation arrangements

### 6.1 Agencies responsible for resettlement activities

The key agencies responsible for the resettlement activities are the Lilongwe City Council, the Roads Authority, Ministry Lands, Housing and Urban Development and the two utility companies: Electricity Supply Commission of Malawi (ESCOM).

The Treasury will be responsible for providing money for the ARAP implementation while the Roads Authority responsible for disbursement in consultation with the Lilongwe City Council<sup>3</sup>.

#### 6.1.1 The Lilongwe City Council (LCC)

The LCC provides services such as firefighting, street lighting, sanitation, waste management, health, and education. However, the Council lacks the necessary financial resources to implement significant development plans and provide the required basic infrastructure and urban services needed for economic development to take place. Improved governance, revenue collection, management capacity, and understanding of the city's competitive advantages are seen as major factors to address the current development challenges faced in Lilongwe.<sup>4</sup>

The local Government act of 1998 provides guidance on the management of the city council with elected councilors and a mayor. The following Departments of the Council will be key in the planning and implementation of the resettlement activities.

**Table 6-1: LCC Departments and their responsibilities**

Department	Responsibility
Administration	Local Governance and City Administration
Planning and Development	Urban planning, development control, housing and land administration services
Commerce and Industry:	City marketing and managing city markets and bus stations
Public Works:	Infrastructure provision

*Source: Lilongwe City Council Website*

<sup>3</sup> This arrangement was confirmed in our discussion with the Secretary for Transport and Public Works on 09 October, 2018

<sup>4</sup> The Study on Urban Development Master Plan for Lilongwe, Final Report, JICA, 2010

### 6.1.2 Ministry of Lands, Housing and Urban Development

The Ministry is mandated to provide land and housing management services to the general public, stakeholders and parties seeking these services in a manner that ensures that physical development takes place in an orderly and sustainable manner. The Ministry of Lands, Housing and Urban Development is responsible for the provision of the following products and services:

- a) Survey of land parcels
- b) Update and provision of land information
- c) Preparation and revision of national, regional and local physical development
- d) Enforcement of development planning and management rules, standards and guidelines.
- e) Allocation and registration of land parcels
- f) Valuation of properties
- g) Resolution of land disputes
- h) Facilitating of provision of basic infrastructures on public land

The Ministry will play a key role in the valuation and payment of compensation to the displaced persons.

### 6.1.3 The Roads Authority

The Malawi Roads Authority (RA) is a quasi-government body which was established by an Act of Parliament. Public roads, which form the national road network are under the Ministry of Works and Public Infrastructure. However, the Minister has delegated the duty of looking after the various classes of roads to various Road the RA, Local Government Authorities. RA looks after the Main, Secondary and Tertiary roads throughout the country.

The RA has the Environment and Social Management Unit responsible for Environmental and Social Management of all projects executed by the Roads Authority. The responsibility of the Unit includes:

- a) Development and updating the RA Environmental and Social Policy with regard road construction, maintenance and development;
- b) Development and maintenance of Environmental Guidelines for use in the road sector development activities;
- c) Development of Health and Safety Guidelines for the Road Sector Development Activities in Malawi
- d) Preparation of draft Environmental Impact Assessment terms of reference for road development activities in line with World Bank Safeguard policies;
- e) Reviewing Road infrastructure EIA documents and Engineering designs before commencement of civil and structural works;

- d) Monitoring the implementation of Environmental and Social Management Plans (ESMPs) by consultants and contractors in road infrastructure development;
- g) Developing Environmental and Social Management System for environmental and engineering activities in the Road sector;
- h) Development of Resettlement Policy Framework and outline Resettlement Action Plans;
- i) Development Environmental and Social guidelines and procedures to be followed in case of resettlement and compensation for people affected by road construction activities.
- j) Conducting training in Environmental, Social, Assessment and Management for contractors, consultants and other stakeholders in the road sector.

#### **6.1.4 Electricity Supply Commission of Malawi (ESCOM) and Electricity Generation Company (Malawi) Limited (EGENCO)**

The Electricity Supply Corporation of Malawi (ESCOM) is a limited liability company mandated to procure, transmit and distribute electricity in the country.

ESCOM does not have the capacity to provide uninterrupted supply electricity to the entire city of Lilongwe. There is urgent need to put in place measures that will increase the capacity of the institutions to improve on their service provision.

Electricity Generation Company (Malawi) Limited (EGENCO) is a limited liability company mandated to generate electricity in Malawi. EGENCO has a total installed generation capacity of 372.64MW, with 350.94 MW from hydro power plants and 21.7 MW from standby diesel power plants. EGENCO aims to explore alternative sources of generating electricity that can complement hydro power generation, which makes up 98% of EGENCO's current power generation capacity. In the meantime, company is implementing a number projects to increase electricity it generates such as the installation of a 20 MW solar PV plant and additional 10MW peaking diesel generator set.

Reliable supply of electricity is required for the functioning of traffic lights throughout the City.

#### **6.1.5 The Lilongwe Water Board (LWB)**

The Lilongwe Water Board (LWB) is a Statutory Corporation responsible for the provision of water supply services to the City of Lilongwe and the surrounding areas. LWB customers include domestic, institutional, industrial as well as commercial.

LWB's mandate is to manage the source of raw water, abstract and treat water in full compliance with regulatory bodies such as World Health Organization (WHO) and Malawi Bureau of Standards (MBS); and provide adequate and reliable water supply to the residents of the City of Lilongwe that meets customer needs.

The Board does not have the capacity to supply water to the entire city of Lilongwe. There is urgent need to put in place measures that will increase the capacity of the institutions to improve on service provision.

## **6.2 Institutional arrangements for ARAP implementation**

The Malawi Government through the Roads Authority will have the overall responsibility to coordinate the implementation of the ARAP. The RA has experience in implementation of ARAPs for similar projects. The RA will set a project management team to manage the resettlement process while an independent consultant will be hired to monitor the compensation process and will work with the established structures to ensure that PAPs are fairly compensated for the loss resulting from the implementation of the project

The RA will set up a Resettlement Taskforce comprising:

- a) Representative of the PAPs chosen by the Lilongwe Street Vendors Association which is the umbrella body for all Market Committees in Lilongwe
- b) Representative from market committees of the affected markets
- c) Lilongwe City Council
- d) Roads Authority
- e) CSO
- f) Ministry of Lands and Urban Development
- g) ESCOM
- h) Lilongwe Water Board

The taskforce will perform the following functions:

- a) Act as a two-way channel of communication between the Roads Authority and the PAPs.
- b) Conflict prevention – ensure that compensations are fair, transparent and payment is made in a timely manner
- c) Support the RA in overseeing the resettlement process

The roles and responsibilities of various agencies to be involved in resettlement planning process and implementation of resettlement activities are summarized below.

**Table 6-2: Agencies responsible for resettlement activities**

Institution	Mandate	Role/ Responsibility	Supporting institutions
Roads Authority (RA)	Management of environmental and social impacts of all projects executed by the RA	<ul style="list-style-type: none"> <li>a) Reviewing the ARAP</li> <li>b) Monitor the implementation of the ARAP</li> <li>c) Financing of the ARP</li> <li>d) Compensation of PAPs</li> </ul>	<ul style="list-style-type: none"> <li>• Ministry of Lands, Housing and Urban Development</li> <li>• Department of Environmental Affairs</li> </ul>
Lilongwe City Council (LCC)	<ul style="list-style-type: none"> <li>• Local Governance and City Administration</li> <li>• City marketing and managing city markets, bus stations</li> <li>• Infrastructure provision</li> </ul>	<ul style="list-style-type: none"> <li>• ARAP Implementation</li> <li>• Find alternative trading areas</li> <li>• Support to PAPs for income generation</li> </ul>	<ul style="list-style-type: none"> <li>• Ministry of Land, Housing and Urban Development</li> <li>• Roads Authority</li> <li>• Ministry of Commerce &amp; Industry</li> </ul>
Ministry of Lands, Housing and Urban Development	<ul style="list-style-type: none"> <li>• Allocation and registration of land parcels</li> <li>• Valuation of properties</li> <li>• Resolution of land disputes</li> <li>• Facilitating of provision of basic infrastructures on public land</li> </ul>	<ul style="list-style-type: none"> <li>• Compensation of PAP</li> <li>• Fund management</li> </ul>	<ul style="list-style-type: none"> <li>• Roads Authority</li> <li>• Lilongwe City Council</li> <li>• Banks</li> </ul>
ESCOM	Procure, transmit and distribute Electricity	Relocation of underground electricity cables	Lilongwe City Council
Lilongwe Water Board	the provision of water supply services to the City of Lilongwe and surrounding areas	Relocation of underground pipes	Lilongwe City Council
Civil Society Organization	Advocacy	Watchdog for the PAPs and support income restoration programmes	Lilongwe City Council & RA

*Source: Websites of the institutions*



## Chapter 7: Eligibility

### 7.1 Definition of displaced persons

Displaced persons under this project are categorized as:

- a) Those who have formal legal rights to land recognized under the Land Act and the Registered Land Act. These include:
  - The Lilongwe Total Filling station
  - NICO Centre fences
  - Animal Health Perimeter fence
  - 3 privately owned plots on the detour route
  - Wullian Shopping Complex (partial)
- b) Those who have no recognizable legal right or claim to the land they are occupying. These are classified as:
  - Renters : Those renting Airtel/ TNM/ Zoono Kiosks and those renting LCC purpose build sheds at FMB Bank
  - Businesses: Vendors at FMB Bank plying their business in the open and makeshift sheds ( overflow)
  - Squatters and encroachers - Hawkers at Lilongwe Bridge
  - 2 individuals operating flower nurseries along the detour
- c) Employees (formal)
  - Employees : Employees of the Lilongwe Total filling station which will be affected by road expansion

### 7.2 Criteria for determining their eligibility for compensation including Cut-off date

The population census conducted on 14<sup>th</sup> and 15<sup>th</sup> September, 2018 is the basis for determining illegibility and the census start date (14th September, 2018) is the cut-off date. However as a result of the reduction in scope of the project, a mini census was carried out on 28<sup>th</sup> February for the detour route in order to establish the persons that will be affected by the construction and temporary use of the detour road. These have been included in the list of those eligible for compensation.

## Chapter 8: Valuation of Land compensation for losses

This chapter describes the valuation approach and methodology used in the valuation of project affected assets. Valuation is the process of estimating the value for a specific purpose of a particular interest in property at a particular moment in time. In this case, the valuation of the property will have taken into account the (a) current use of the property; (b) history of the acquisition and the use of the property; (c) market value of the property; and (d) extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property.

The valuation is aligned to the provisions Lands Acquisition (Amendment) Act (Act 9 of 2017) and Public Roads (Amendment) Act (Act 8 of 2017). It should also be mentioned that the methodology took into consideration the JICA Guidelines on involuntary resettlement and the World Bank Safeguard Policies.

The valuation of assets is done in accordance with Practice Statements and Guidance Notes published by the International Valuation Standards Council (IVSC). The IVSC (2009) defines Market Value as "the estimated amount for which a property should exchange on the date of valuation between a willing buyer and a willing seller in an arm's-length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion."

### 8.1 Valuation Methods:

There are five methods which are commonly used in valuation of properties. The basis of the valuation should be market value. The five methods of valuation are as described below: -

**The Comparison Method:** This is an approach of deciding the value of a property by comparing it with similar properties for which transactions have already taken place. This method is widely adopted in practice but requires the keeping of adequate records of transactions. The aspects of value with this method looks at the location of the property, topography, accessibility, age, construction material and legal factor of the property. Comparable must be comparable in terms of the legal rights being sold. If the legal titles are not the same or similar, then valuation by comparison may be impossible. The method can only be used in markets with regularly occurring sales of comparable parcels of real estate. The valuer's knowledge of the market together with other market data and statistics enables a judgment to be made as to whether the market is rising, falling or static. The valuer's awareness of all the factors that affect changes in value supports the valuer's opinion of the level or rate of price movement between sale dates and valuation dates.

**Investment method:** The investment method is used to value properties held as investments. The approach determines the annual income obtained from the property and estimates the net income by subtracting annual expenses on the property. The net income is capitalised with a suitable to in order to come up with capital value. The valuation process for this method is as shown below: -

- Determination of Gross Annual Income;
- Determination of Annual Expenses;
- Obtain Net Operating Income (NOI);



- Choose a suitable capitalization rate; and
- Capitalize NOI using the formula.

**Profit Method:** The approach wholly or partly depend on a capacity to earn income on occupation of the property. The method requires the estimation of the annual average annual gross earnings of the property and the deduction of working expenses (excluding rent) and an amount for occupier's remuneration, including interest on the capital tied up in the business. The balance represents the amount available for annual rent, which is then capitalized by an appropriate Years Purchase to arrive at capital value.

**Residual Method:** This approach is well used in valuation of undeveloped land or land with obsolescent or otherwise unsuitable buildings incapable of producing an economic rent and where the site is ripe for development or redevelopment. The actual value of a particular piece of land (or site) will depend on not only on its current or existing use but also on its potential use and the anticipation of development rights – often referred to as hope value or development value. The value of the site in its proposed state is estimated, as are all of the costs involved in the development, including a suitable level of return to the developer.

**Cost approach:** This approach requires the estimation of the cost of rebuilding a particular property and adding to it the value of the land on which it stands. The method is mostly used to properties which do not come on the market and which you can't find comparable data. Costs of construction may be assessed on either the replacement or renewal approach. The replacement cost approach assesses the costs, including fees, of reconstructing the existing building in exactly the same style and materials, as it currently exists; whereas the renewal approach is to construct a new building of the same size and to perform the same function as the present structure, but in modern materials and style.

## 8.2 Assessment of affected properties

The assessment of affected properties is based on two approaches because no two properties are identical in characteristic making the use of one approach unrealistic.

Valuation of structures will take into account market research done by the valuers, rates are developed for valuing the structures. The cost approach to valuation is known under the alternative names of contractor's basis or depreciated replacement cost (DRC) method. This is due to the different types of properties that have been affected. It is used on properties for which there is no market, or for which there is insufficient direct comparable market evidence or that will produce nil or insufficient profits for a prospective occupier, thus precluding the use of the comparison or profits methods of valuation. Value is based around costs of construction of the building on the site plus the land value. The projects where people are affected, the best method to use when doing valuation is replacement cost.

Valuation of land will take use the comparative method. Valuation by comparison is a process of identifying similar or substitute parcels of land within the vicinity taking

into consideration their land use. Property market information on land transactions has been collected for over the last two years to establish the rates per square meter.

#### Valuation of trees

The valuation of trees is guided by the Government Forestry Gazette of 2010 offered a basis for calculation of values. As the gazette with the new rates was undergoing a review, it was informed by the officers in the exercises the possibility of increasing the rates of trees by 100%. The adopted figures have therefore taken cognizance of this fact. Trees, during inventory, were categorized into three, namely:

- Small with a circumference of 6 cm to 10 cm around the trunk;
- Medium with a circumference of 11 cm to 20 cm around the trunk; and
- Large with a circumference of 21 cm and above.

The large category enjoyed the full rate of that species of trees, while the medium and the small were valued at half the value of the large tree and a third respectively.

#### 8.3 International best practices

The compensations are guided by international best practices in determining entitlements in involuntary resettlement.

Temporary loss of access to facilities, suppliers, or customers can diminish business income significantly. A good practice is to pay compensation equivalent to the estimated net loss to the owner of the business. Because estimating may be unavoidable when determining losses (or incomes), compensation amounts are usually negotiated with business owners. If an affected business cannot continue in its current location, another good practice will be to provide new premises or a rental allowance for new premises

For lost wages the good practice recommends paying allowances, equivalent to regular wages, to workers temporarily losing employment.

Temporary disturbance will occur in areas adjacent to project activities. While people may still have access and use of their property, that access and use may be disrupted by project activities. Depending on the severity of disturbance, landowners may be offered a "disturbance allowance" for the period of disturbance. The "disturbance allowance" would be sufficient to cover the economic loss incurred by the disturbance.

Resettlement sites must be chosen through consultation with all displaced people and host communities. The site selection and the shelter and infrastructure options provided at the new sites should reflect both the preferences of the affected population and the best opportunities for timely restoration of livelihoods.

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**Table 8-1: Entitlement Matrix Guiding the Assessment of Compensation**

Type of loss	Entitled	Entitlements	Intent/Requirement	Responsibility
<b>A. COMMERCIAL LAND</b>				
Loss of commercial land	Owner with registered title	All (cash) payments for land lost at full replacement cost;	Payment for lost assets, assistance to reorganize on existing land or relocate on alternate land and support for transition period.	Roads Authority
		Disturbance allowance at 30% to cover land transition costs; processing of title documents		Roads Authority
<b>B. STRUCTURES</b>				
Loss of Commercial structure	Owner with title deed or registration certificate	All (cash) payments for land and structure will be made at replacement costs.	Payment for lost assets, assistance to reorganize on existing land or relocate on alternate land and support for transition period.	Roads Authority
		All payments at replacement cost in material, cash, or a combination of both according to the actual loss to repair or rebuild the structure to original or better condition when remaining land sufficient to rebuild upon;		Roads Authority

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Loss of Commercial Structure	Owner of registered business	For structures not having sufficient land to rebuild upon will be entitled to the following:			
		All (cash) payments for land and structure at full replacement cost (for materials and labour) in material, cash, or a combination of both, WITHOUT deduction for depreciation or salvageable materials;			Roads Authority
		Shifting allowance as per the entitlement matrix schedule			Roads Authority
		Payment at replacement cost in material, cash, or a combination of both according to the actual loss to repair or rebuild the structure to original or better condition when remaining land sufficient to rebuild upon;	PAPs will relocate as soon as payment is released and clear the area in the agreed timeframe. Transition assistance and income restoration.		Roads Authority
		Payment for any associated loss of income while commercial structure is being rebuilt.			Roads Authority
		For structures not having sufficient land to rebuild upon will be entitled to the following:			
		All (cash) payments for structure lost at full replacement cost (for materials and labour) in material, cash, or a combination of both,			Roads Authority

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		<p>WITHOUT deduction for depreciation or salvageable materials;</p> <p>Assistance to locate alternative plot for relocation;</p> <p>For income losses cash payment not exceeding three times the average annual net profits from business, as shown by the books of accounts, for three calendar years immediately preceding acquisition or livelihood restoration grant, whichever is higher</p> <p>Shifting allowance as per the entitlement matrix schedule</p>		<p>Ministry of Lands/ Lilongwe City Council</p> <p>Roads Authority</p> <p>Roads Authority</p>
<p>Loss of commercial Structure</p>	<p>Tenant/ operator of registered business</p>	<p>If there is partial loss of structure, PAP has the option to stay with the owners agreement OR if PAP chooses to move out, cash assistance for 6 months rental allowance AND</p> <p>Cash payment for rental allowance or cash value of remaining lease, assistance for finding alternate rental accommodation and support for income losses and during transition period.</p> <p>Payment for any associated loss of income while commercial structure is being rebuilt.</p>		<p>Roads Authority</p> <p>Roads Authority</p>

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		<p>If there is complete loss of structure, PAP will be entitled to the following:-</p> <p>Cash for the value of the remaining lease OR</p> <p>Cash assistance to cover rental arrangements for minimum period of 6 months of equivalent standard and advance payments as determined by the chief valuer to owner on a case to case basis whichever is higher AND</p> <p>For income losses cash payment not exceeding three times the average annual net profits from business, as shown by the books of accounts, for three calendar years immediately preceding acquisition or livelihood restoration grant, whichever is higher</p> <p>Shifting allowance as per the entitlement matrix schedule</p>		<p>Roads Authority and Ministry of Lands</p> <p>Roads Authority And Ministry of Lands</p> <p>Roads Authority</p>
<p>Loss of commercial Structure</p>	<p>Owner or operator of non-registered</p>	<p>For structure – all payments for structure lost at replacement cost in material, cash, or a combination of both according to the actual loss; AND</p>	<p>Payment for lost assets, transition assistance and income restoration</p>	<p>Roads Authority</p> <p>Roads Authority and Ministry of Lands</p>

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	business / vendor	For income - cash payment equivalent to 6 months income OR Shifting allowance as per the entitlement matrix schedule		Roads Authority
Loss of rental accommodation	Tenant, user with lease	If there is partial loss of rental accommodation, PAP has the option to stay with the owners agreement OR if AP choses to move out, cash assistance for 6 months rental allowance AND  Assistance in finding new affordable rental accommodation AND  Shifting allowance as per the entitlement matrix schedule  If there is complete loss of rental accommodation, AP has the option of cash for the value of the remaining lease OR  Cash assistance to cover rental arrangements for minimum period of 6 months of equivalent standard and advance payments as determined by the chief valuer	Cash payment for rental allowance or cash value of remaining lease, assistance for finding alternate rental accommodation and support during transition period.	Roads Authority  Roads Authority and Ministry of Lands  Roads Authority, Lilongwe City Council and Ministry of Lands  Roads Authority  Roads Authority and Ministry of Lands  Ministry of Lands & Roads Authority



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		to owner on a case to case basis whichever is higher.			
		Assistance in finding new affordable rental accommodation AND			Ministry of Lands and Roads Authority
		Shifting allowance as per the entitlement matrix schedule			Roads Authority
<b>C. OTHER PRIVATE PROPERTIES OR SECONDARY STRUCTURES</b>					
Partial or complete loss of other property or secondary structure (i.e. billboards, fences etc)	Owners of structures (regardless if the land is owned or not)	All (cash) payments for affected structure at replacement cost; OR	Payment for loss and relocation if required		Roads Authority and Ministry of Lands
		Cost of repair of structure to original or better condition; OR			Ministry of Lands and Roads Authority
		Cash assistance for relocation of structure.			Roads Authority
<b>D. LOSS OF INCOME OF EMPLOYEES OR HIRED LABORERS</b>					
<b>D.1 Temporarily Affected</b>					



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While business re-establishes (i.e. reorganizing on remaining land or relocating in the same area)	All affected employees, wage or daily laborers in private or government businesses	Cash payment for lost salary/wages for each month PAP cannot work; OR	Businesses will be encouraged to retain existing employees	Roads Authority
D.2 Permanently Affected			Payment for lost income during business re-establishment	Rods AUthority
Job loss due to relocation of business to another area or business operator decides not to re-establish	All affected employees, wage or daily laborers in private or government businesses	Cash payment for 6 months' salary/wages and Project will encourage employers to provide severance pay for employees; AND Preferential access to project construction employment opportunities; AND	Payment for lost income, rehabilitation package to provide support and income restoration	Roads Authority Project and Ministry of Labour Contractor
E. Special Assistance				

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Effects on vulnerable PAPs	Vulnerable PAPs including the poor, elderly PAPs, female-headed households, and disabled	Assistance to vulnerable households will be given an additional 10% compensation	Assistance, over and above payment for lost assets, to reduce impacts of resettlement which can disproportionately effect the already vulnerable and to ensure that the project does not simply re-establish levels of poverty, vulnerability or marginalization	Roads Authority
Any unanticipated adverse impact due to project intervention		Any unanticipated consequence of the project will be documented and mitigated based on the spirit of the principles agreed upon in this policy framework.		
F. :Public Assets i.e. Road Signs, Power lines, Water Mains				

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Public Assets	Public Institutions	Cash payment at replacement cost for all damaged assets; OR	Roads Authority
		Reinstatement of structures or property if not damaged to its original position	Roads Authority and Ministry of Lands

Source: Compiled by Study Team from Malawi Land Related Laws, World Bank Policies

  
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**Table 8-2: Expected compensation**

Name	No/Length	Unit	Rate (MK)	Total (MK)
Billboards	11	No	2,500,000.00	27,500,000
Road Signs	21	No	500,000.00	10,500,000
Fruit Trees	2	No	10,123.27	20,247
Indigenous - Large (detour)	3	No	30,000.00	90,000
Indigenous Trees (medium)	18	No	16,000.00	288,000
Exotic trees - large (detour)	3	No	20,000.00	60,000
Exotic Trees	45	No	20,000.00	900,000
Fruit trees -guava (detour)	4	No	23,517.21	94,069
Fruit trees Bananas (detour)	76	No	20,294.32	1,542,368
Brick Fence	264	m	45,000.00	11,880,000
Chain link wire fence	96	m	35,000.00	3,360,000
Land Compensation	0.095	ha	900,000,000.00	85,500,000
Land Compensation (detour)	0.475	ha	900,000,000.00	427,500,000
Structures (LL Filling Station)	1	No		416,500,000
Disturbance Allowance (30% of permanent land take)	30% of land take		30% of land take	153,900,000
Shifting allowance for business owners (depends on the distance)	195	No	110,000.00	21,450,000
Loss of business allowance	195	No	90,000.00	17,550,000
Employees compensation (Filling Station)	12	No	50,000.00	600,000
Employees compensation – Lilongwe bridge, FMB and Mobile Money kiosks	80	No	128,000.00	10,240,000
Base Value				1,189,474,684
Contingency (20% of the of the base value)	20% of base value		20% of base value	237,394,937
<b>Grand Total Amount</b>				<b>1,427,369,621</b>

*Source: Compiled by Study Team*

## 8.4 Observations

### 8.4.1 The 2.1 Km to be improved under the project

The Lilongwe Total Filling station will be entirely affected thus calling for total compensation of the site. The road is passing through the canopy of the filling station and the site will not be used for intended purpose. The change of business use will be ideal for this property but this will be for the structure only. The fence of NICO Centre will also be affected.

There are different species of trees affected due to the road expansion but most of these trees are falling within the road boundary and the assumption is that these trees will not require compensation but an expected compensation amount will be placed on all these trees.

The expected compensation for the billboards will be put in place but a decision will have to be made whether or not to pay for those that were illegally erected.

The payment for the loss of land will be paid at 100% compensation because this is total land take and 30% will be given for disturbance allowance. Those affected by structures, an entitlement of a lump sum amount agreed by the client will be given as shifting allowance.

While the Malawi laws exclude payment of compensation for the structures that were illegally erected, the international best practice is to compensate all the displaced persons. As such Land compensation will be given irrespective of whether the properties were registered or not.

Traders at post of office will be displaced and the Lilongwe City Council should make arrangements. The project will ensure that the livelihoods of the traders improve or at least remain at the pre-project level. The traders are thus entitled to loss of business allowance and shifting allowance.

#### **8.4.2 The 350m long and 12m wide detour road**

There is land that will be used temporarily during the construction of the main road. Land owners need to be compensated for using the land as temporary access road as well as for disturbances. A research was made in the City of Lilongwe to see how similar projects have been handled in terms of compensation of such properties being used temporarily. It was found that the Millennium Challenge Corporation power line project also compensated some project affected persons by compensating those 10 percent of the full compensation and disturbance allowance of 30 percent from the 10 percent land compensation

Ground verification confirmed that there is there is already an established access road of about 15 meters and this will not attract compensation. We have seen from others sources that land owners were notified about the project and they allowed the project to go on and they will use the land after the project. All valuation will still be made available and decision to pay the PAPs or not will be made by the client.

There is a stair case at Wullian which is partly affected by the temporary access road and if the project will still require 12-meter width of the access road, this will need to be demolished.

There are also 2 individuals operating nursery gardens. The 2 will be given loss of business allowance as well as shifting allowance.

The JICA team findings regarding the private property to be affected by the detour route are presented in the table below.

**Table 8-3: Findings of the JICA Study Team consultations with private property owners on the detour route**

Plot Number	Owner	Status of the land and proposed development	The position of the owner on the project
2/ 633 SD11805	Mr. Kim	Vacant land earmarked for expansion of the commercial building	The land owner has agreed to give the land temporarily during construction. LCC have communicated with the owner and still communicating.
2/ 763 SD 21388	Dr. Jack Zhang	Undeveloped land earmarked for recreational development	The owner would like to know when the temporarily bridge will be demolished for him to start developing the land. He is happy to start developing the land after the MI Road Project, if it can be completed by 2020.
Plot No.3 DP400/ 2017 (3/ 1010)	Dr. Mathews Kagole	Undeveloped land earmarked for recreational development	Compensation paid for the existing structures to the original owner. LCC needs to demolish the structures. LCC sold the land for recreation purpose. This was not communicated to the land owner.

*Source: JICA Study Team*

### 8.5 Basis for the unit costs

- a) **Land:** Comparable cost in the locality the land is situated
- b) **Land detour route:** Rate used by MCC project
- c) **Trees:** Department of Forestry 2010 Gazette
- d) **Disturbance allowance:** Rate applied for World Bank projects in Sub-Saharan Africa
- e) **Contingency:** Rate used internationally
- f) **Fences:** Prevailing rates
- g) **Shifting allowance:** Rate used by MCC Project
- h) **Loss of business:** Rate used by MCC Project
- i) **Employee compensation (Lilongwe Filling Station)** – Based on monthly salary of MK50, 000 for six months
- j) **All other employees :** Based on monthly salary of MK28,000 for six months

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## **Chapter 9: Expected negative impacts and proposed resettlement measures**

The ARAP survey has confirmed that the negative impacts of the project associated with land acquisition and resettlement are not substantial. Since the ROW of M1 road is designated as 60m substantial land acquisition for the project is not required. Notwithstanding, the road width in the centre of the city is narrow and there are many obstacles such as fences. The Lilongwe Filling Station is the most notable property that will be affected to the extent that it will no longer be operated as filling station. The compensation has been appropriately calculated based on the loss of business.

There are also billboards, Airtel/ TNM/ Zoona Kiosks, traffic lights, pedestrian flyover along the length of the road. Other businesses that will be affected include the vendors selling souvenirs at FMB Bank and during construction only hawkers at Lilongwe Bridge and flower nursery businesses, private land and a small part of Wullian Shopping Complex on the detour route.

Regarding treatment of the vendors or hawkers, the survey team managed to talk to the Roads Authority as well as the Chief Executive of the Lilongwe City Council. At the recommendation of this ARAP the RA will officially request the LCC to relocate the vendors to another location, On the other hand, the Lilongwe City Council is aware of this project and is fully committed to find an alternative location of the displaced vendors. However, there is no specific piece of land earmarked for the vendors although the authorities are looking at the land around Area 3 Market as a suitable location. The recommendation is to relocate the vendors to a location that is easily accessible and not obscure because of the nature of their business. The proposed location should be big enough to accommodate all the vendors in purpose built sheds including the provision of privately operated washrooms. The resettlement site(s) must be chosen through consultation with all displaced people and host communities. The site selection and the shelter and infrastructure options provided at the new sites should reflect both the preferences of the affected population and the best opportunities for timely restoration of livelihoods.

The road project will also affect infrastructure such as shops, fences of building, one filling station and a mosque. There are liabilities such as electricity poles, telephones lines, water pipes and others that will need to be removed and replaced.

Underground utilities such as water supplies, sewages and communication cables, electric poles and cables, advertisement boards, a pedestrian bridge, and so on exist along this section of the M1 road.

Properties and infrastructure that are going to be affected during the construction of the project have been identified and valued; the affected owners need to be compensated in line with the World Bank Safe Guard Policy Guideline and Resettlement Management Framework. The organizations such as Electricity Supply Commission of Malawi (ESCOM), Lilongwe Water Board, and Lilongwe City Council need to be informed and involved to ensure that they shift their poles and pipes before the road construction starts. It is important that the Roads Authority work closely with the Lilongwe City Council and the Ministry Lands Housing and Urban Development to ensure that the rightful people affected are properly identified and compensated before the construction of the road starts to reduce and avoid conflicts.

The affected people should also be made aware of the start date of the project to enable them move some of their valuable properties before they are demolished.

Consultations were held between February and March 2018 with relevant stakeholders in the project area. The stakeholders included business people, banks, filling stations owners, vendors, schools, faith based communities, traders, market committee representatives and communities in the city and along the M1 road through Focus Group Discussions (FGDs) and individuals interviews.

The following is the summary of the impacts frequently mentioned by the stakeholders that relate to loss of business and livelihood that have been taken into account in this ARAP.

- a) Disruption/ loss of business during the construction due to dust emission, poor access to business premises
  - Traffic to be properly managed during the construction phase.
  - Construction period to be according to plan
  - Road should not be closed completely during construction.
- b) Loss of business after construction due to poor access to business premises caused by loss of service roads currently used as car parking spaces and pedestrian walkways.
  - The application of reduced widths for the each element which forms the cross section to maintain parking space as much as possible as well as walking space in accordance with the pedestrian demand.
- c) Loss of livelihood and disruption of business due to delays in payment of compensation/ relocation costs for the affected individuals and business/ compensation not paid upfront
  - Project to adhere to international standards regarding involuntary resettlement.





## Chapter 10: Grievance redress mechanism

Grievances are any complaints or suggestions from the project affected persons about the way a project is being implemented. Although the scale of involuntary resettlement for this project is small, experience has shown that any involuntary resettlement gives rise to grievances among the affected population over issues ranging from rates of compensation and eligibility criteria to the location of resettlement sites and the quality of services at those sites. It is therefore imperative that this ARAP puts in place mechanism for timely redress of such grievances for the satisfactory implementation of resettlement activities and the completion of the project on schedule. For effective implementation of the project, grievances and complaints will be redressed throughout the lifetime of the project.

### 10.1 Purpose of the grievance redress mechanism

The grievance redress mechanism will be put in place in order to; (a) create and maintain trust with affected persons; (b) avoid the negative consequences of failure to adequately address grievances; and (c) identify and manage stakeholder concerns and thus support effective risk management.

### 10.2 Likely Grievances and Disputes under the road improvement project

The grievances and disputes that are most likely to arise during the implementation of compensation and resettlement program for this project include:

**Table 10-1: Likely grievances, likelihood and proposed mitigation measures**

	Likely source grievance	Likelihood	Mitigation
1	Misidentification of assets or mistakes in valuing them	Unlikely	The basis of valuation must be clear and communicated to the affected persons
2	Property boundary disputes	Unlikely	Reference to official documents
3	Multiple claims of assets	Unlikely	Census conducted and affected persons identified
4	Dispute over the unit rate applied for the valuation	May occur/ possible	Basis for the establishment of unit cost must be clarified and discussed with the affected persons
5	Disagreement over the location of the resettlement site related to loss of business or inadequate services	Definite	Resettlement sites must be chosen through consultation with all displaced people and business operators at the site
6	conflicts over the compensation sharing	Probable	Owner and employer to be treated individually and not as a unit.

	arrangements between owner and employee		
7	Loss of income to traders due to decrease in customers	Definite	Pay compensation equivalent to the estimated net loss to the owner of the business.

*Source: Compiled by Study Team*

### 10.3 Grievance Redress Framework

Grievance related to any aspect of the project will be handled through negotiations, which will be aimed at achieving consensus following the procedures outlines below. However if the affected person is not satisfied with the decision made he/ she may submit the complaint to a court of law as a matter of last resort. Affected persons will be exempt from all administrative and legal fees incurred pursuant to the grievance redress procedures.

### 10.4 Institutional arrangements

The Lilongwe Street Vendors Association is the umbrella body for all Market Committees and is a viable institution for providing a two way channel of communication between the Lilongwe City Council and the Street Vendors. In between are the Market Committees responsible for individual markets and localities. The same structures will be the entry points for the grievance redress.

The ARAP is recommending that the Roads Authority and the Lilongwe City Council should have in place procedures to allow affected people to lodge a complaint or a claim without cost and with the assurance of a timely and satisfactory resolution of that complaint or claim. In addition, a recommendation is made that was far as practicable the existing structures should be used to for grievance redress. However where women and vulnerable groups are not represented, the structures should be reconstituted to have representation from the two groups.

The Lilongwe City Council will constitute a Grievance Redress Committee (GRC) to receive and hear complaints from the affected persons. The Council's Administration Directorate will provide secretarial services to the Committee. The Committee will have representatives from the Council (Chairperson of the Planning and Development Committee, Roads Authority, Ministry of Lands, Housing and Urban Development Committee, an independent Valuer, the Chairman of the Lilongwe Street Vendors Association and a representative of special interest groups, especially women

#### Step 1: Recording of grievances

Grievances will be filed by the person affected by the project to the Secretary of the Market Committee for recording for initial screening of the validity of the grievance. The Market committee will act within 15 days upon receipt of the complaint and after a hearing with the aggrieved party. The chairperson of the Lilongwe Street Vendors Association or her/ his representative will be at the hearing. Each market committee

will be provided with a hard cover for recording of the complaints indicating the date, name of the complainant, the date the complaint was received and the action taken. If the Committee is convinced that the complaint is genuine, the issue will be referred to a designated public officer at LCC to receive and record the complaint on behalf of specially constituted grievance redress committee. The complainant will not be bound by the decision of the Market Committee and will be free to lodge complaint at the Lilongwe City Council and the formal court system.

**Step 2: Lodging complaint with Grievance Redress Committee (GRC) secretariat**

The GRC secretariat will receive and record the complaints and arrange for hearings. The GRC will act within 15 days of receipt of the complaints. If more time is required, this should be communicated clearly and in advance to the concerned persons(s). The status and resolution of the grievance should be communicated orally and in writing, and recorded against the original grievance entry in the register. The Committee will also have a broader mandate of defining the roles and responsibilities for the implementation of the ARAP and ensure that activities are undertaken in a coordinated manner. The grievance committees will have authority to ensure coordination and proper implementation through monitoring, grievance processing, and public information and consultation activities.

**Step 3:** If no understanding or amicable solution can be reached, or if the affected person does not receive a response from the GRC within 15 days of the registry of the complaint, the aggrieved persons may as a last resort, exercise their constitutional rights by taking their grievances to a formal court system for remedy. Affected persons will be exempt from all administrative and legal fees incurred pursuant to the grievance redress procedures.

## Chapter 11: Monitoring and evaluation

### 11.1 The objectives for the monitoring and evaluation of the ARAP

It is expected that monitoring will determine whether the resettlement measures designed to avoid or minimize the negative effects of the involuntary resettlement are being implemented as proposed and agreed upon by the stakeholders. The objectives for monitoring and evaluation of the ARAP include:

- a) To provide the developer with feedback on ARAP implementation and to identify problems and successes as early as possible to allow timely adjustment of implementation arrangements
- b) To ensure that the resettlement process is being managed in line with the Project's objectives and desired outcomes, as well as meeting the requirements of affected stakeholders.

The monitoring and evaluation plan of the project will have three key components which include: performance monitoring impact, monitoring and external audits. These three components will constitute two parallel aspects as follows:

Internal monitoring which consists of performance monitoring and impact monitoring, spearheaded by the projects and external monitoring consisting of external audits carried out by an independent third party.

### 11.2 Performance Monitoring

This is an internally driven continuous process aimed at ascertaining the ARAP implementation milestones against a set of certain actions. The project performance milestones will include the following:

- Public meetings held
- Grievances redress procedures in place and functioning
- Compensation payments disbursed
- Housing lots allocated
- Related infrastructure completed
- Relocation of people completed
- Livelihood restoration and development activities initiated
- Monitoring and evaluation reports submitted.

### 11.3 Impact Monitoring:

This is aimed at assessing the long term change associated with the ARAP implementation process. The change is related to the prevailing conditions prior the ARAP being implemented. The monitoring will be done by the Roads Authority which will hire an independent consultant.

#### 11.4 Completion Audit

The completion audit will be carried out by an independent consultant hired by RA to establish whether the project has implemented all activities needed to ensure compliance with resettlement commitments defined in the ARAP and applicable policies, and whether resettlement and compensation can be deemed complete. Among the key objectives of the evaluation or completion audit are the following:

- To determine whether the developers efforts to restore the living standards of the affected population have been properly conceived and executed
- Evaluate whether the mitigation actions prescribed in the RAP have had the desired effect; and
- Measured socio-economic status of the affected population against the baseline conditions of the population before displacement, as established through the census and socio-economic studies. At such time as affected peoples' quality of life and livelihood can be demonstrated to have been restored, the resettlement and compensation process can be deemed "complete".

The indicators that will be a key reference point as part of the monitoring and evaluation exercise are indicated in Table 18

**Table 11.1-1: ARAP implementation indicators**

Subject	Indicator	Means of verification	Responsible entity	Cost	Frequency of Monitoring
Service roads	Changes in space available for servicing businesses	<ul style="list-style-type: none"> <li>Amount/Percentage of land taken up by road expansion</li> </ul>	Project Lilongwe Council & City Council	0.00	One-off
Household	Changes in household structure	<ul style="list-style-type: none"> <li>Size of the households</li> <li>Gender distribution and marital status</li> <li>Number of children</li> <li>Number of orphans</li> <li>Education attainment</li> </ul>	National Statistical Office	0.00	Every 10 years
Women status	Current status of women	<ul style="list-style-type: none"> <li>Participation in decision governance structures</li> <li>Number of women who received compensation</li> <li>The kind of special assistance provided to women</li> <li>Number of governance structures reconstituted to include women</li> </ul>	CSO/Independent consultant	3,000,000	Annually for three years
Population	Population influx	<ul style="list-style-type: none"> <li>Number of people from outside the project area</li> </ul>	Project	300,000	One-off during construction and operation phase
Compensation and rehabilitation	Compensation and rehabilitation of PAPs	<ul style="list-style-type: none"> <li>Compensation records indicating PAPs and amount of money received</li> </ul>	Roads Authority	0.0	One-off at the completion of the compensation exercise

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			Number of new souvenir shed constructed	Lilongwe Council	0.00	One-off at the completion of the construction of replacement souvenir shed
			Number of PAPs compensated	Roads Authority	0.00	One-off at the end of the compensation exercise
			Amount of money disbursed.	RA	0.00	One off at the end of payment of compensation
			Number of PAPs not compensated in prescribed time and amount	CSO/Independent consultant	500,000	One-off at the end of the compensation exercise
			Reasons for not compensating some of the eligible	RA	0.00	One-off at the end of the compensation exercise
			PAP satisfaction level with the resettlement and compensation procedures	CSO/Independent consultant	2,500,000.00	One-off at the end of the compensation exercise
Restoration of livelihood activities	PAPs earning capacity	<ul style="list-style-type: none"> <li>Number of businesses restored.</li> <li>Reasons for not re-establishing businesses if applicable</li> <li>Expenditure on food</li> <li>Assets owned</li> <li>No reporting struggling to meet household needs</li> </ul>		CSO/Independent consultant	5,000,000.00	One-off one year after payment of compensation
Public	Public involvement	<ul style="list-style-type: none"> <li>Number of community level meetings</li> </ul>		Lilongwe Council	0.00	Quarterly throughout project

Grievance	Grievance management	<ul style="list-style-type: none"> <li>• Participation of governance structures in resettlement process.</li> <li>• Number of grievances received.</li> <li>• Number of grievances resolved (at what level)</li> <li>• Number of grievances referred to Malawi Formal court system</li> <li>• Number of outstanding grievances and reasons for not resolving them</li> </ul>	CSO/Independent consultant	500,000.00	Quarterly throughout the resettlement phase
Consultation	Consultation programme operation	<ul style="list-style-type: none"> <li>• Number of functioning/vibrant market committees</li> <li>• Number and dates of market committee meetings conducted and types of issues raised in these meetings</li> <li>• Involvement of the Lilongwe Streets Vendors Association and Market local committees in the project planning and development</li> </ul>	CSO/Independent consultant	500,000.00	One-off in the middle of the resettlement period

Source: Compiled by Study Team

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ANNEXES

Annex 1-1: An outline of the details of the affected assets

Main point on road	Easting	Northing	Captured details along the 2.1Km M1 Road	Road side from Paul Kagame Road Junction
1	582770	8453877	Billboard at Lilongwe Total Filling Station	LHS
			Lilongwe Total Filling Station forecourt	
			Pavement/ road at Mike Appel & Gatto, Kia Motors	
			Accacia Trees at Riverton University	RHS
			KIA Billboard	LHS
			Cindrella	RHS
			Accacia Trees at Riverton University	RHS
2	582962	8453650	Airtel & TNM kiosks at Standard Bank	
			Electronic Advertising Billboard	
			NICO Centre Perimeter Fence-44 panels-brick walls bonded with cement mortar interspersed with steel grilles	LHS
3	582987	8453544	Post Office Sign Post	RHS
			Sailun Billboard	RHS
			Curios Vendors market at Post Office	RHS
			Cinderella Trees	RHS
			Chitimbe-naural trees	RHS
			Sonllite sign Post -close to Masache Driving Sch.	RHS
			Stone Retaining walls on road side	RHS
			Perimeter Brick fence- 3 panels	RHS
			At Ministry of Agric. -Animal Health Dept.	
			Cinderella Trees	RHS

Main point on road	Easting	Northing	Captured details along the 2.1Km M1 Road	Road side from Paul Kagame Road Junction
			Mwimbi	RHS
			Mthethe	RHS
			Carport-(15 by 6)-construction details are CIR, concrete floors and steel poles	
			Palm Trees	LHS
			Accasia	Town Hall Round about
			Mswaswa	Town Hall Round about
			Sekese	Town Hall Round about
4	583184	8453281	Town Hall Roundabout	
5	583224	8453272	Lilongwe Water Board Valve manhole at Town Hall	Town Hall Roundabout
			Visekese-Large	
			Acacia Trees	
			AXA Sign post	RHS
			LILONGWE BRIDGE	
6	583454	8453315	Vendors Benches at Lilongwe Bridge	LHS
			Pavement at the fly-over pedestrian crossing	LHS
			Traffic Lights	LHS
			Cinderella Trees-Large	LHS
7	583551	8453333	Airtime kiosks at Standard Bank-flyover	LHS
			Pavement/ car parking for several stores(Akbanes, Kak Arcade, Kassam Arcade, Karim Arcade	LHS
			Airtime Kiosks next Health Education Unit	RHS
			Chain-link fence(32*3)-Health Education Unit	RHS
			Exotic Tree(medium)	RHS

Main point on road	Easting	Northing	Captured details along the 2.1Km M1 Road	Road side from Paul Kagame Road Junction
			Natural Trees	RHS
8	583551	8453333	Lilongwe Dairy(2001) Limited- Billboard	
9	583551	8453333	Perimeter Fence Opposite Kassam Arcade	RHS
			Alliance Media Billboard	RHS
			Pavement along 99 Shop	RHS
			Natural Tree	RHS
10	583551	8453333	FINCA Billboard	RHS
11	583551	8453333	NEDBANK ATM Billboard	RHS
			Shoprite Quick-Save Parking	RHS
			Natural tree @ ATC and Car park	RHS
			Kiosk at the MASJID	RHS
			Masjid Perimeter Fence (4m*19 panels)	RHS
			Parking area @ DH Gelu House	LHS
			Kalaria Hardware	LHS
			Rukshar House	LHS
			Omtar Hardware	LHS
			Tikambe Shopping	LHS
			Natural tree and pavement at Mohamed Arcade	RHS
12	583551	8453333	ALIF Enterprises- Pavement(estimated breadth of 45 by 3) cut-off	LHS
			First mark Billboard	LHS
13	583551	8453333	PUMA Filling Station Billboard	LHS
			JCDeaux Advertising Billboard	LHS
			Lucaena tree	LHS
			Indigenous/ natural tree	LHS

Main point on road	Easting	Northing	Captured details along the 2.1Km M1 Road	Road side from Paul Kagame Road Junction
			Mangoes	LHS
			Chain-link fence(45*3)-Police Mobile C	RHS
			Police Mobile C sign post a Junction	RHS

**Annex 1-2: Summary of details along the detour Road**

Affected asset			Nb	LENGTH/ SIZE
Natural Trees			3	Large
Exotic Trees			3	Large
Fruit Trees	Guava		4	Medium
	Bananas		76	
Flower growing business(vendors)			2	
Vacant land -Private		0.186167	3	0.186167ha
Part of Wullian shopping complex		Structure(stairs)		28m <sup>2</sup>
		Khonde		9m <sup>2</sup>
		Carpark yard		92m <sup>2</sup>


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Annex 1.8: Details of the persons who will be affected by the project

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**Monitoring Form****Project: The Project for The Improvement of Major Roads in The City of Lilongwe**

Construction Phase (including Detail Design Phase)

**1. Response/Actions to Comments and Guidance from Government Authorities and the Public**

Monitoring Item	Monitoring Results during Report Period
Number and contents of formal comments made by public	
Number and contents from Government agencies	

**2. Pollution****(1) Air Pollution**

Item	Monitoring Results during Report Period	Measured to be Taken	Frequency
Confirmation for environmental mitigation measures in construction plan			Before commencement of construction activities
Confirmation for implementation of environmental mitigation measures on construction activities <ul style="list-style-type: none"> <li>· Water spray in/around the project site</li> <li>· Regular inspection of construction machinery</li> <li>· Rational operation of construction machinery</li> </ul>			Any time during construction phase

**(2) Water Pollution (Lilongwe River)**

Item	Monitoring Results during Report Period	Measured to be Taken	Frequency
Confirmation for environmental mitigation measures in construction plan			Before commencement of construction activities
Confirmation for implementation of environmental mitigation measures on construction activities <ul style="list-style-type: none"> <li>· Water quality (turbid) of Lilongwe river (visual inspection)</li> <li>· Protection of embankment slope</li> <li>· Sampling of water</li> </ul>			Any time during construction phase  (Sampling of water) Semiyearly

**Criteria of Water Sampling**

Item	Unit	Measured Value (Mean)	Measured Value (Max)	Country's Standards (Effluence)	Reference (measured value in feasibility survey)	Referred International Standards*	Measurement Point	Frequency
pH				6.5 - 9.0	7.53 - 7.63	7.0-8.3	Lilongwe river (Construction areas of piers)	Semiyearly
DO	mg/L			>5.0	5.16 - 6.10	⇒2		
BOD	mg/L			20	2.2 - 2.8	⇒5.0		
COD	mg/L			60	11.8 - 14.1	-		
SS	mg/L			30	97 - 140	-		

Item	Unit	Measured Value (Mean)	Measured Value (Max)	Country's Standards (Effluence)	Reference (measured value in feasibility survey)	Referred International Standards*	Measurement Point	Frequency
FC	Counts/100mL			-	100 - 300	<8		

\*: MoE, Japan

### (3) Soil Pollution

Item	Monitoring Results during Report Period	Survey Points	Frequency
Confirmation for environmental mitigation measures in construction plan		-	Before commencement of construction activities
Confirmation for implementation of environmental mitigation measures on construction activities · Regular inspection of construction machinery		Project site	Any time during construction phase

### (4) Waste

Item	Monitoring Results during Report Period	Measured to be Taken	Frequency
Confirmation for environmental mitigation measures in construction plan		-	Before commencement of construction activities
Confirmation for implementation of environmental mitigation measures on construction activities · Dumping of construction wastes		Project site, Dumping site of wastes	Any time during construction phase

### (5) Noise (Construction Noise)

Item	Monitoring Results during Report Period	Measured to be Taken	Frequency
Confirmation for environmental mitigation measures in construction plan		-	Before commencement of construction activities
Confirmation for implementation of environmental mitigation measures on construction activities · Regular inspection of construction machinery · Rational operation of construction machinery		Project site	Any time during construction phase

## 3. Natural Environment

### (1) Ecosystem

Item	Monitoring Results during Report Period	Survey Points	Frequency
Confirmation for the plan of tree cutting and reforestation		-	Before commencement of construction activities
Confirmation for the reforestation		Project site, Reforestation site	Any time during construction phase

**(2) Hydrology**

Item	Monitoring Results during Report Period	Survey Point	Frequency
Condition of pier design of Lilongwe bridge (mitigation measures against water flow obstruction)		-	During Detail Design phase

**4. Social Environment**

**(1) Resettlement /Poor**

Item	Monitoring Results during Report Period	Survey Point	Frequency
Review of ARAP		-	Before commencement of construction activities
Progress of land acquisition and resettlement under ARAP		Project site	Before commencement construction activities, and during construction activities

**(2) Local economies, such as employment, livelihood, etc.**

Including in Resettlement / Poor

**(3) Misdistribution of benefits and damages**

Including in Resettlement / Poor

**(4) HIV/AIDS and other STDs**

Item	Monitoring Results during Report Period	Measured to be Taken	Frequency
Confirmation of construction plan (education and enlightenment)		-	Before commencement of construction activities
Confirmation of records of construction activities including protection against HIV/AIDS		Project site	During construction period

**(5) Working Environment (including Safety)**

Item	Monitoring Results during Report Period	Measured to be Taken	Frequency
Confirmation of safety plan of construction work			Before commencement of construction work
Confirmation of records of construction activities including safety			During construction phase

**(6) Trans-boundary impacts or climate change**

Item	Monitoring Results during Report Period	Measured to be Taken	Frequency
(Maintenance of construction machinery) Confirmation of construction records			During construction period

Item	Monitoring Results during Report Period	Measured to be Taken	Frequency
(Reforestation) Confirmation of records of construction activities and field reconnaissance			After completion of replanting

**4. Others**

**(1) Grievance on Environmental and Social Matters**

Number of Grievance	Details of Grievance	Handling and Outcomes

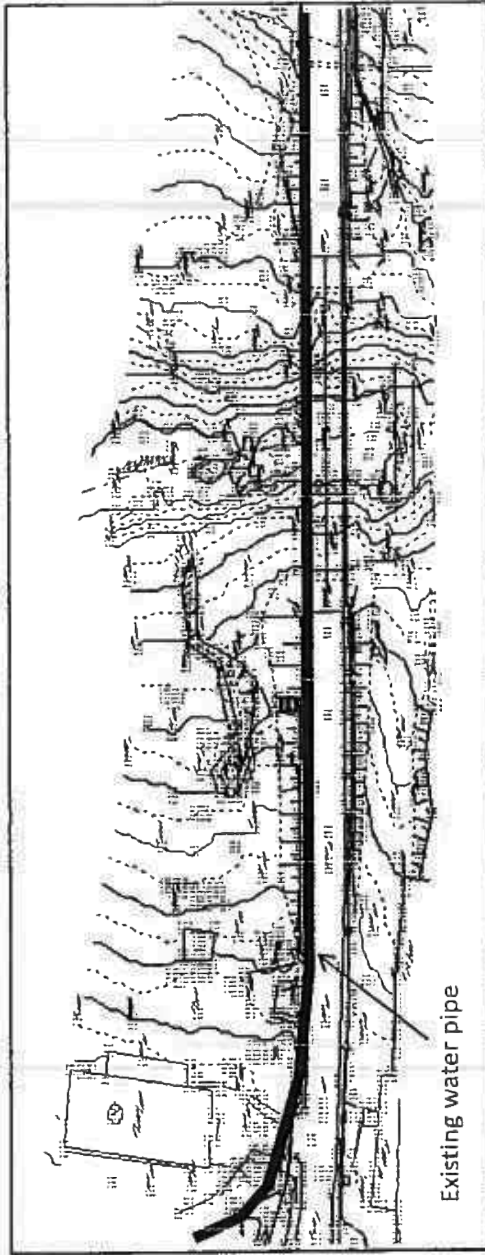
Construction Range of Water and Sewer Pipes

1) Water Pipes

STEP 1

Permission for the temporary work of water pipes

- Malawi side will get the permission to construct temporary water pipes and their temporary bridge at the downstream side of the existing bridge with their construction plan and drawings prepared by the Contractor.



STEP 2

Construction of the temporary bridge and water pipes

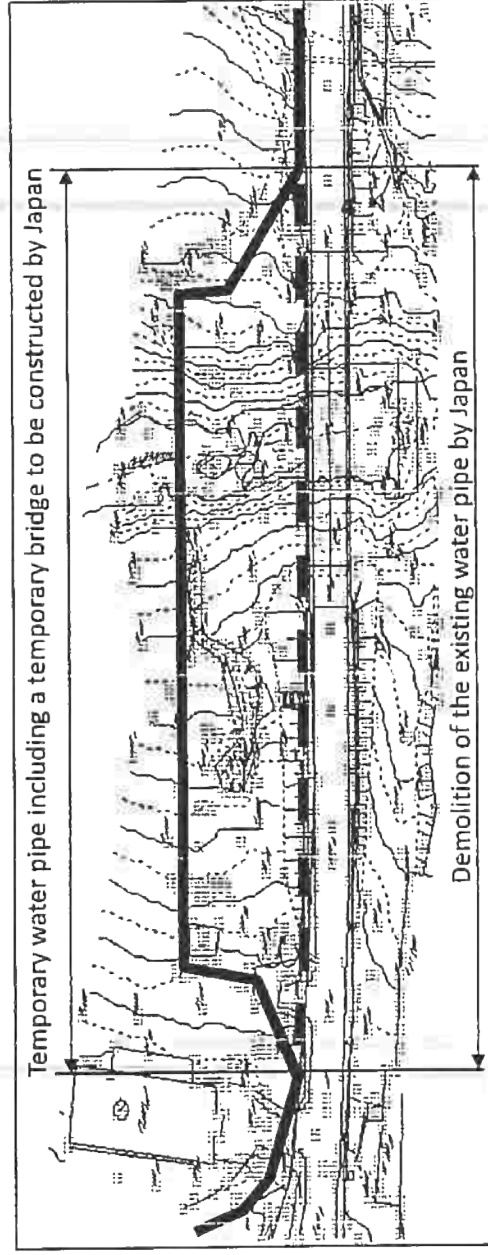
- The contractor will construct the temporary bridge, water pipes and valves at the necessary locations.
- The temporary bridge will be used also for the temporary sewer pipes.

Water flow test

- The contractor will cut the existing water flow and open the valve for the temporary water pipes in the presence of Malawi side.

Demolition of the existing water pipes and the existing bridge

- Malawi side will conduct the water flow test for the temporary water pipes.
- The contractor will demolish the existing water pipes and the existing bridge.



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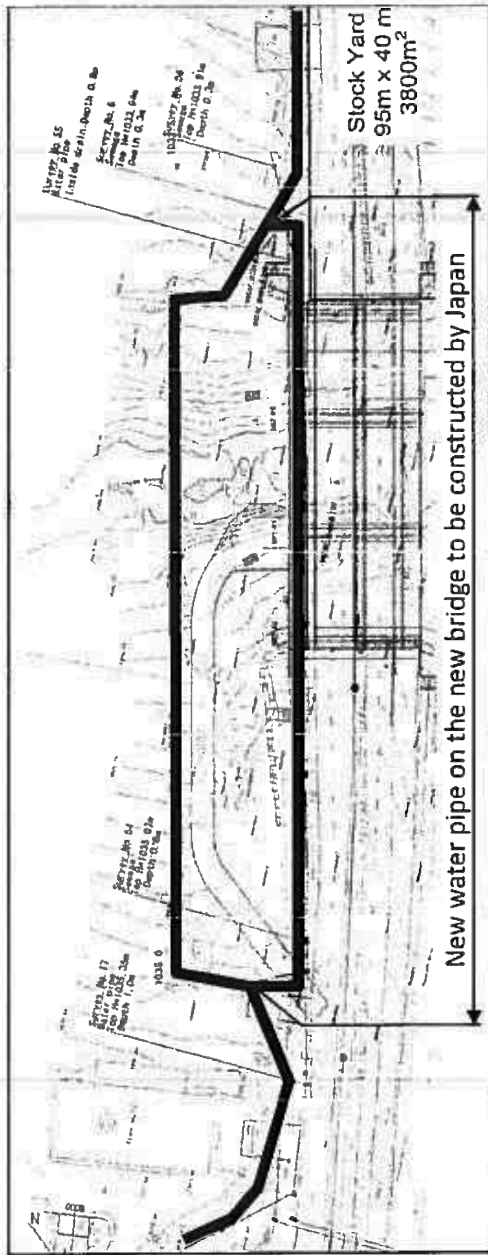
**STEP 3**

**New bridge construction and installation of new water pipes**

- The contractor will construct the new bridge and its approach road.
- The contractor will install new water pipes on the new bridge and under the approach road.

**Water flow test**

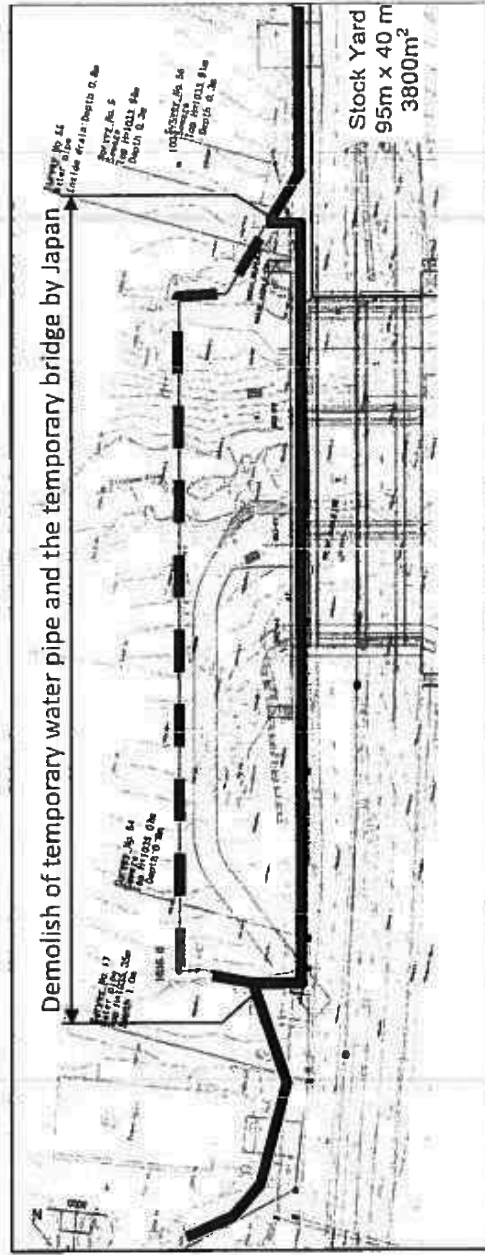
- The contractor will cut the temporary water flow and open the valve for the new water pipes in the presence of Malawi side.
- Malawi side will conduct the water flow test for the new water pipes.



**STEP 4**

**Demolition of the temporary water pipes and the temporary bridge**

- The contractor will demolish the temporary water pipes and the temporary bridge



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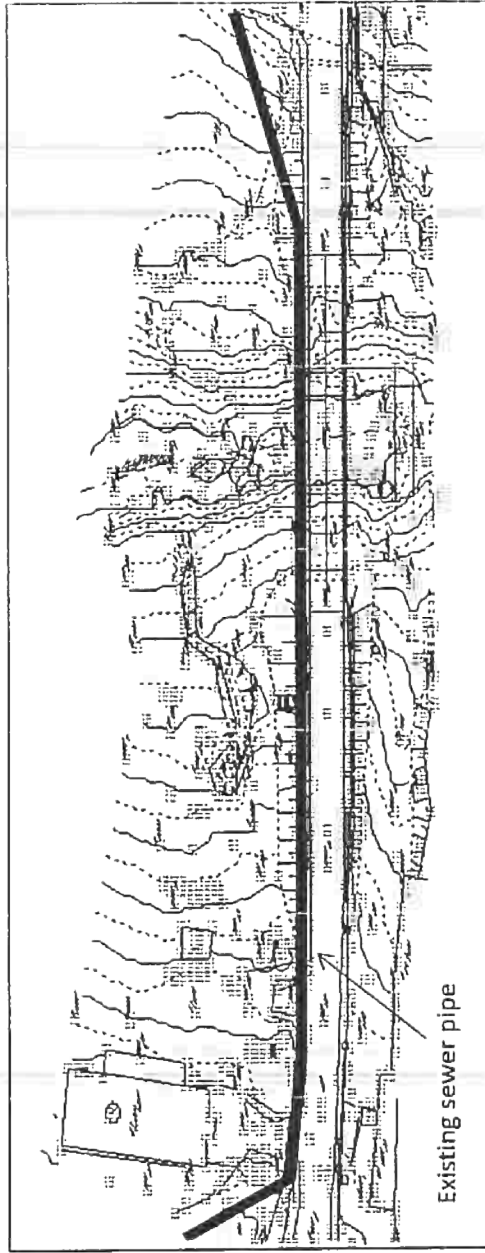
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## 2) Sewer Pipes

### STEP 1

#### Permission for the temporary work of sewer pipe

- Malawi side will get the permission to construct temporary sewer pipes and their temporary bridge at the downstream side of the existing bridge with their construction plan and drawings prepared by the Contractor.



### STEP 2

#### Construction of the temporary bridge and sewer pipes

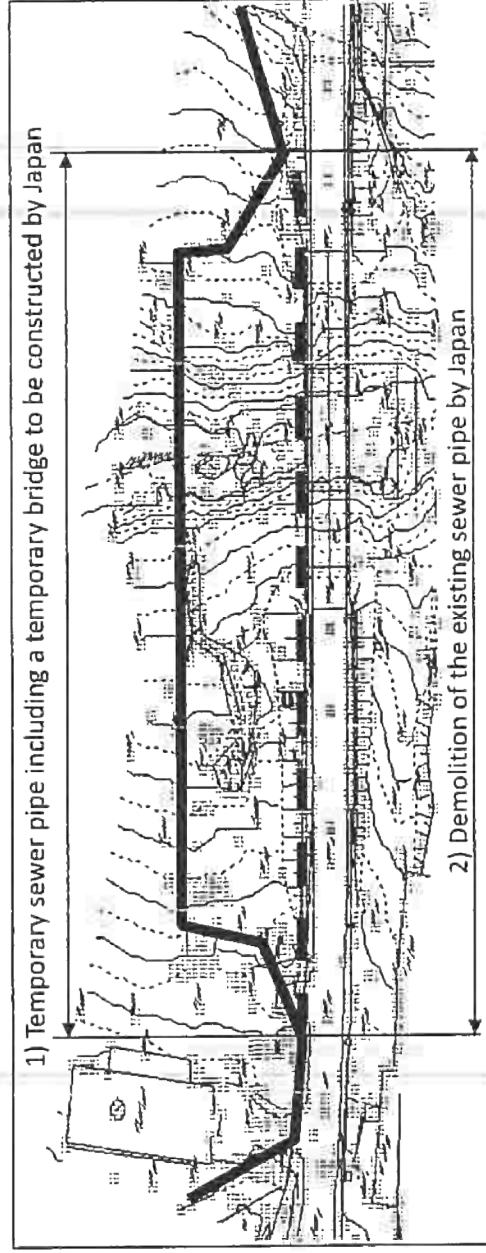
- The contractor will construct the temporary bridge, sewer pipes and handholes at the necessary locations.
- The temporary bridge will be used also for the temporary water pipes.

#### Sewage flow test

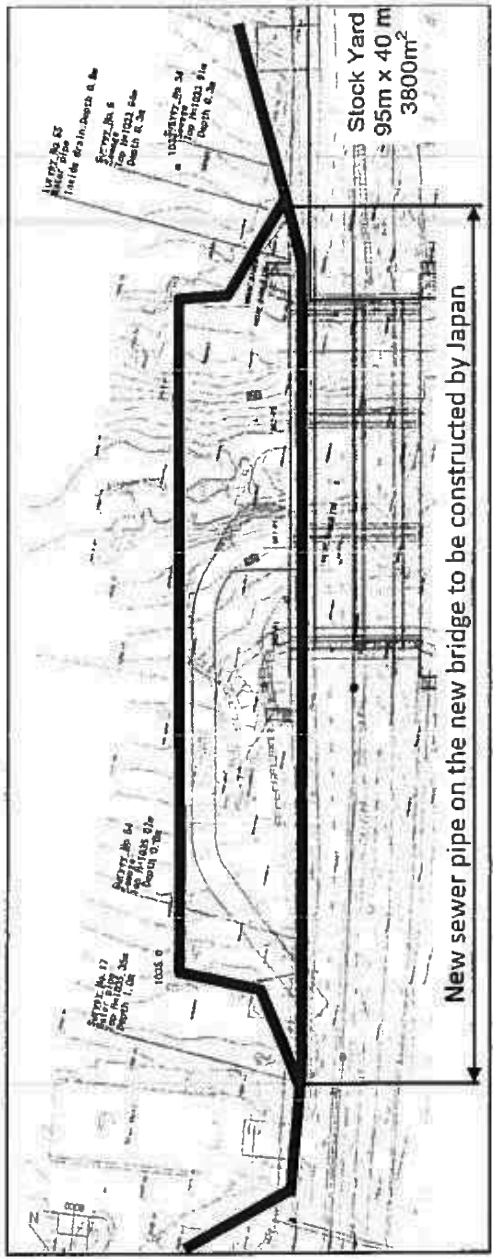
- The contractor will shift the existing sewage flow to the temporary sewer pipes in the presence of Malawi side.
- Malawi side will conduct the sewage flow test for the temporary sewer pipes.

#### Demolition of the existing sewer pipes and the existing bridge

- The contractor will demolish the existing sewer pipes together with the existing bridge.

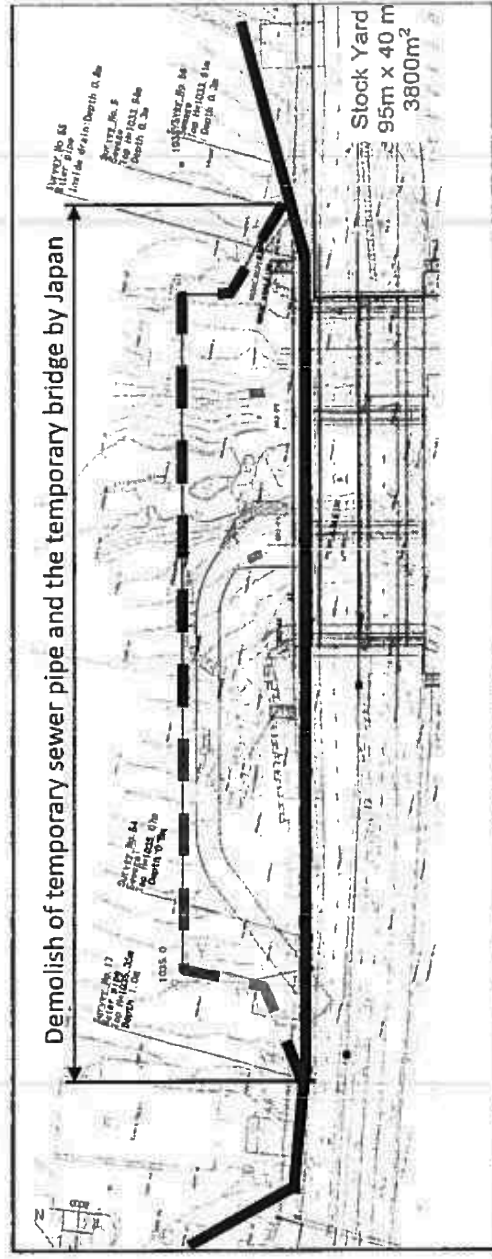


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**STEP 3**  
New bridge construction and installation of new sewer pipes  
 • The contractor will construct the new bridge and its approach road  
 • The contractor will install new sewer pipes on the new bridge and under the approach road.  
Sewage flow test  
 • The contractor will shift the temporary sewage flow to the new sewer pipes in the presence of Malawi side.  
 • Malawi side will conduct the sewage flow test for the new sewer pipes.

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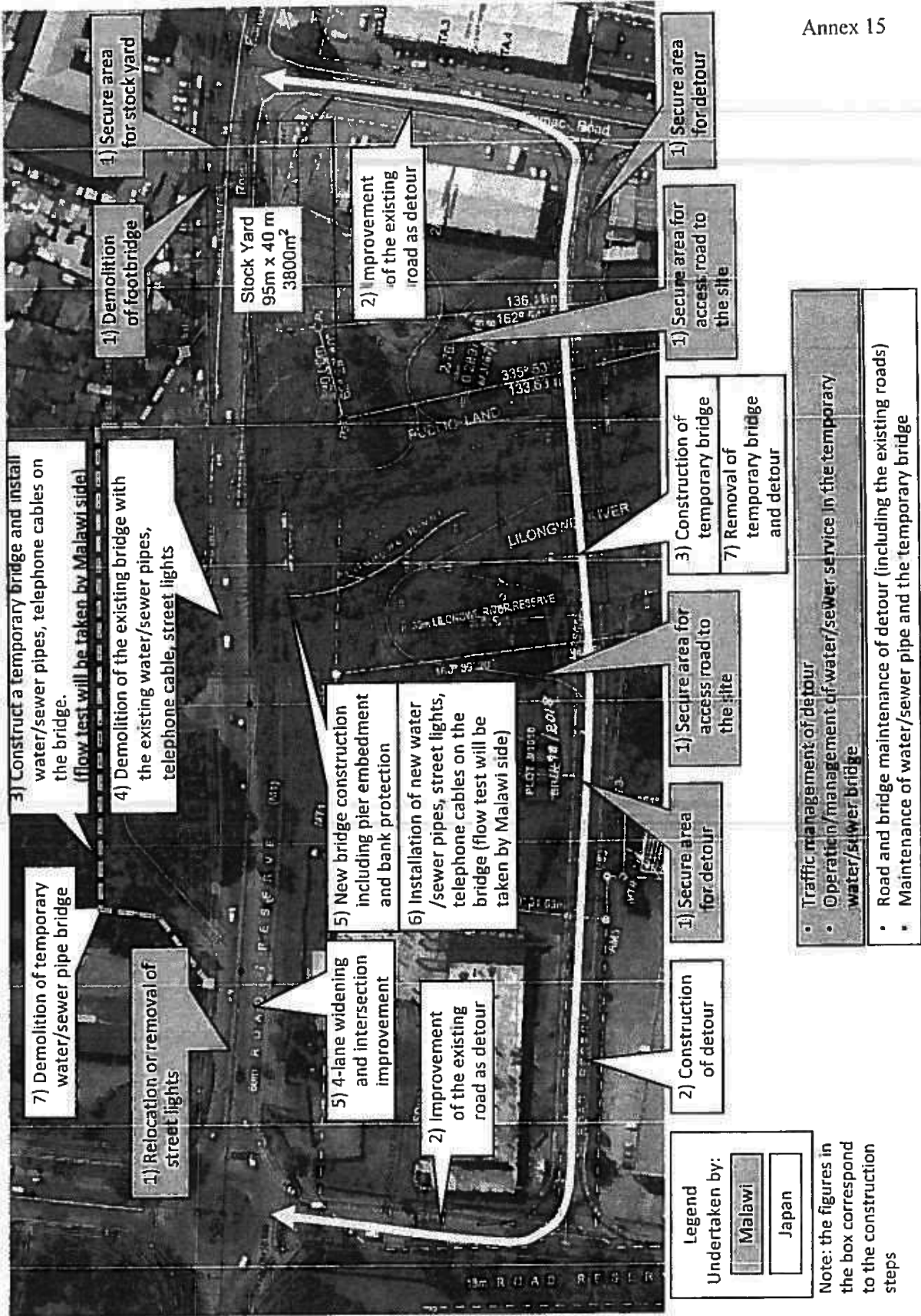


**STEP 4**  
Demolition of the temporary sewer pipes and the temporary bridge  
 • The contractor will demolish the temporary sewer pipes and the temporary bridge

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# Demarcation for Bridge Reconstruction (Major Works)



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