

**KINGDOM OF LESOTHO**

**LESOTHO HIGHLANDS WATER PROJECT**

**COMPENSATION POLICY**

**LESOTHO HIGHLANDS DEVELOPMENT AUTHORITY**

**1997**

20/11/97  
1997

Compensation Policy approved by the Government of Lesotho July

## TABLE OF CONTENTS

1.	THE COMPENSATION POLICY .....	1
2.	DATE OF EFFECTIVENESS .....	1
3.	LEGAL OBLIGATIONS .....	1
3.1	THE TREATY ON THE LESOTHO HIGHLANDS WATER PROJECT .....	1
3.2	THE LHDA ORDER OF 1986.....	1
3.3	THE LHWP COMPENSATION REGULATIONS, 1990: LEGAL NOTICE NO. 50 OF 1990.....	1
3.4	THE LESOTHO CONSTITUTION .....	2
4.	OBJECTIVES OF THE POLICY .....	2
5.	APPLICATION OF THE POLICY .....	2
6.	RESPONSIBILITY FOR COSTS .....	2
7.	ELIGIBILITY FOR RELOCATION OR RESETTLEMENT.....	2
8.	ELIGIBILITY FOR COMPENSATION.....	3
9.	UNIFORMITY OF COMPENSATION.....	3
10.	LAND ACQUISITION.....	3
10.1	ACQUISITION OF RURAL LAND .....	3
10.1.1	<u>Permanent Occupation by LHDA</u> .....	3
10.1.2	<u>Other Permanently Acquired Land (Permanent Occupation)</u> .....	3
10.1.3	<u>Temporary and Exclusive Occupation</u> .....	4
10.1.4	<u>Temporary and Non-exclusive Occupation</u> .....	4
10.2	ACQUISITION OF URBAN LAND.....	5
11.	COMPENSATION ENTITLEMENTS .....	5
11.1	INDIVIDUALLY OWNED FIXED ASSETS.....	5
11.2	PRODUCTION FROM ARABLE LAND.....	6
11.2.1	<u>Land For Land</u> .....	6
11.2.2	<u>Cash</u> .....	6
11.2.3	<u>Grain</u> .....	7
11.3	COMPENSATION OF CULTIVATORS WITH SECONDARY LAND RIGHTS .....	7
11.4	COMPENSATION FOR GARDENS .....	7
11.5	COMPENSATION FOR RIGHTS AND ACCESS TO COMMUNAL ASSETS .....	7
11.5.1	<u>Grazing Land</u> .....	7
11.5.2	<u>Brushwood</u> .....	7
11.5.3	<u>Medicinal Plants</u> .....	8
11.5.4	<u>Useful Grasses</u> .....	8
12.	PUBLIC INFRASTRUCTURE AND AMENITIES.....	8
12.1	DOMESTIC WATER SUPPLIES .....	8
12.2	GOVERNMENT- COMMUNITY OWNED INFRASTRUCTURE.....	8
12.3	COMMUNITY-OWNED AMENITIES .....	8
12.4	INSTITUTIONAL PROPERTY.....	8
13.	SPECIAL PROVISIONS .....	9
13.1	VULNERABLE HOUSEHOLDS .....	9
13.2	DISTURBANCE ALLOWANCE .....	9
14.	ASSESSMENT OF STANDARD OF LIVING .....	9
15.	DISPUTE RESOLUTION .....	10

## DEFINITIONS

The following definitions apply to the Policy:

An **Affected Household** is one which suffers losses as a result of being affected by the Project and for which compensation is due.

**Arable Land** is land which is under cultivation or lying fallow at the time of disturbance.

**Brushwood** is naturally growing shrub which is a communal fuel resource.

A **Commercial Property** is a building or buildings used primarily for the purposes of a retail business.

**Compensation** is the restitution of losses sustained on account of the Lesotho Highlands Water Project (LHWP).

A **Designated Village** is one which is severely affected by the project and whose households will be entitled to compensation for loss of communal and individually owned resources

**Development** comprises projects identified to improve the standard of living of the individuals and communities affected by the project.

**Environmental Action Plan** comprises a combination of programmes under Compensation, Public Health, Rural Development and Natural Environment and Heritage to be or are being implemented in both Phases 1A and 1B of LHWP.

**Gardens** are small cultivated areas associated with a homestead and which are part of the residential site or part of a field.

The **Head of Household** is a man or a woman who generally runs the affairs of the household and is looked on by other members of the household as the main decision-maker.

A **House** includes all buildings in which people live or sleep, or could do so without major additions or improvements.

A **Household** is a group of persons who live together in the same compound or dwellings and share the same sleeping facilities and/or the same cooking or eating facilities.

A **Homestead** is a building or group of buildings occupied by a household.

**Host village** is one which receives resettling and/or relocated households and is entitled to compensation related to communal resources.

**Medicinal Plants** are naturally growing plants which are used for medicinal purposes.

A **Non-owning Occupant** is a person, excluding visitors, who lives in a house he or she does not own.

**The Project** is the Lesotho Highlands Water Project.

A **Recipient** is the household head or its representative who is entitled to receive compensation .

**Relocation** denotes the removal of a homestead from its present place to one within the Scheme Area, the members remain as part of their old social and economic environment, and they do not relinquish their existing land rights.

**Resettlement** refers to a move over a greater distance, with significant, but not necessarily complete, severance of social and economic ties with the old environment, and relinquishment of their existing land rights.

**Secondary Rights** are rights of temporary usage, as opposed to permanent rights of ownership in the case of a house, or of customary rights to arable land which are acknowledged by the traditional or elected land authorities.

**Trees** are non-indigenous woody plants of a size sufficient to make them useful for practical purposes, such as construction or fuel.

**Useful Grasses** are those which have a practical use, apart from providing fodder for livestock, in construction and handicrafts.

**A Vulnerable Household** is one which, for whatever reasons, has a lower than average capacity to recover its former standard of living and quality of life after experiencing the impacts of construction or inundation.



## **1. THE COMPENSATION POLICY**

This document constitutes the Lesotho Highlands Development Authority's Compensation Policy for both Phases 1A & 1B, hereinafter referred to as the Policy. The policy is based on the original policy document produced in 1989 and approved by the Lesotho Government in 1990.

## **2. DATE OF EFFECTIVENESS**

The Policy will be effective from 1 April 1998 for 1A and from July 31<sup>st</sup> 1997 for 1B, subject to the provisions contained in Section 3.

## **3. LEGAL OBLIGATIONS**

LHDA's legal obligations to the people and communities affected by project works, upon which this Policy is based, are contained in the following documents:

### **3.1 The Treaty on the Lesotho Highlands Water Project**

The Treaty is an agreement between Lesotho and RSA and is binding on both parties. The basis of LHDA's Compensation Policy is expressed in Article 7 para. 18 of the Lesotho/RSA Treaty on the LHWP:

'The LHDA shall effect all measures to ensure that members of local communities in the Kingdom of Lesotho, who will be affected by flooding, construction works, or other similar project-related works, will be enabled to maintain a standard of living not inferior to that obtaining at the time of first disturbance: Provided that such Authority shall effect compensation for any loss to such member as a result of such project related causes, not adequately met by such measures.'

Article 15 of the Treaty states,

'The Parties agree to take all reasonable measures to ensure that the implementation, operation and maintenance of the Project are compatible with the protection of the existing quality of the environment and, in particular, shall pay due regard to the maintenance of the welfare of persons and communities immediately affected by the project.'

### **3.2 The LHDA Order of 1986**

In Lesotho the LHDA Order of 1986 is 'primary legislation'. Section. 44 (2) of the Order states that the Authority shall,

'ensure that as far as reasonably possible, the standard of living and the income of persons displaced by the construction of an approved scheme shall not be reduced from the standard of living and the income existing prior to the displacement of such persons;'

### **3.3 The LHWP Compensation Regulations, 1990: Legal Notice No. 50 of 1990**

The Regulations are 'subordinate legislation', serving as an elaboration on the Order and providing a framework and set of procedures for implementing the Compensation Policy. Amendments to the Policy may require amendments to the Regulations. The Compensation Policy serves as a set of guidelines to assist LHDA in the

implementation of its compensation programme which should be executed in accordance with the Compensation Regulations.

### **3.4 The Lesotho Constitution**

Article 17 of the Constitution requires the prompt payment of full compensation for compulsory acquisition. The aim of the revised Compensation Policy is to fulfil this obligation. Full compensation for individuals, households or communities will be made at least annually according to the approved rates.

## **4. OBJECTIVES OF THE POLICY**

The objectives of the Policy are to:

- satisfy the legal obligations as defined in Section 3 above;
- facilitate and provide mechanisms of participation to the people and communities directly and indirectly affected by the LHWP.
- ensure that compensation principles are applied uniformly throughout the Project; and
- Encompass those elements of development, environmental protection, health and social welfare as an integral part of the Environmental Action Plan.

## **5. APPLICATION OF THE POLICY**

This Policy shall be applied to:

- all villages as determined in Section 7 below;
- all households as determined in Section 8 below.

## **6. RESPONSIBILITY FOR COSTS**

The costs of implementing this policy shall be counted as project costs and will be borne by LHDA.

## **7. ELIGIBILITY FOR RELOCATION OR RESETTLEMENT**

Relocation or resettlement of a household entails compensation, since at the very least buildings will have to be replaced, even if arable land rights remain intact. The following criteria refer to:

### Designation for Involuntary Resettlement or Relocation

- Villages wholly or partially inundated or within the demarcation line;
- Villages severely affected by construction work; and
- Villages situated in a place regarded by LHDA as unacceptably dangerous in relation to the reservoir or to construction works, or affected as a result of impoundment of reservoirs.

### Eligibility for Voluntary Resettlement or Relocation

- Where a village whose access to important facilities and resources is severely impaired by the reservoir, and where access is not restored by the

construction of roads and bridges or by the provision of ferries, the whole village will be eligible for relocation.

## **8. ELIGIBILITY FOR COMPENSATION**

The compensation programme is directed primarily at affected households and communities.

Affected households will be eligible for compensation for the loss of:

- individually owned fixed assets including buildings, trees and graves;
- production from arable and garden land;
- rights and access to communal assets including grazing, brushwood fuel, useful grasses, and medicinal plants;
- Access due to project works such as flooding of existing feeder & access roads.

## **9. UNIFORMITY OF COMPENSATION**

- 1) In order to take into account the differences in compensation requirements between the phases of the project, the compensation programme for each phase shall be comprehensively reviewed and appropriate changes made for each phase if required.
- 2) The compensation procedures adopted for each phase of the project shall, as a general rule, be applied uniformly to all those affected by that phase.
- 3) Households sustaining losses due to any project-related causes whatsoever shall be entitled to compensation according to the same set of principles.

## **10. LAND ACQUISITION**

Land acquisition will be in accordance with the Land Act of 1979 and the LHDA Order of 1986.

### **10.1 Acquisition of Rural land**

LHDA shall compensate for land acquired under the following conditions:

#### **10.1.1 Permanent Occupation by LHDA**

- 1) Land acquired outright for permanent and exclusive occupation and use by LHDA (e.g. land on which permanent structures such as dams, roads and buildings are erected).
- 2) In this case all previous rights over the land are extinguished and unauthorised access to or use of the land is prevented.
- 3) Full compensation for the losses (listed under Section 8 above) shall be paid to eligible households.

#### **10.1.2 Other Permanently Acquired Land (Permanent Occupation)**

- 1) Land acquired by LHDA for permanent occupation, but where access, subject to specified conditions, may be granted to the public, includes:



- land occupied by a reservoir where LHDA may permit and even encourage certain people to fish, operate boats, etc.;
  - land under powerlines where LHDA has a wayleave, which permits it to exclude or allow various forms of land use, shall not be compensated, however occupation or construction of buildings under power lines will be restricted for safety reasons. Other forms of agricultural activities shall be permitted.
  - land on the periphery of a reservoir, where LHDA proclaims a 'safety zone' within which human settlement is excluded in order to reduce hazards to local residents; and land in the drawdown zone, which could be developed for fodder production or improved grazing.
- 2) Access to this category of land may be allowed by LHDA subject to an agreement with prospective users. The agreements may be suspended by LHDA if the land or water is being used irresponsibly or unproductively, or if LHDA wishes to resume occupancy.
  - 3) The holders of the affected land rights shall be compensated according to the same principles as people whose land is permanently acquired by the project for its exclusive occupation.

#### 10.1.3 Temporary and Exclusive Occupation

- 1) Land acquired for temporary and exclusive occupation and use by LHDA (e.g. land on which contractors' camps and temporary access roads are built). This will later be returned to the previous occupants or made over for some other public use.
- 2) The tender documents shall be highly specific in their requirements for reinstatement, giving the contractor and the supervising engineer clear instructions for reinstatement. These actions shall also appear in the Bill of Quantities.
- 3) The supervising engineer shall authorise payment of the contractor for these items only after a thorough inspection of the site by his own technical and environmental staff, and following formal clearance by LHDA.
- 4) The holders of land occupied temporarily and exclusively by LHDA or its contractors shall be compensated according to the same principles as people whose land is permanently acquired by the project, for the required duration of the exclusive occupation.

#### 10.1.4 Temporary and Non-exclusive Occupation

- 1) LHDA or its contractors may overestimate the area of land they require for their operations, and should this become apparent they may allow public access for limited purposes, such as grazing or ploughing, until the contract is ended, when the land will be returned to its previous users, or made over for some other public use, in a condition at least equivalent to that in which it was acquired.
- 2) As long as this land is being occupied by LHDA or its contractors the holders of the affected land rights shall be compensated for the loss of production at the same annual rate as people whose land is permanently acquired by the project.
- 3) Where a small area of arable land is required for a period less than three months by LHDA or its contractors, for example for a test pit, the holder of the affected land rights shall be compensated by means of a minimum amount, in the form of a lump sum. The land shall be restored to its original condition before it is returned to the holder.



## 10.2 Acquisition Of Urban Land

- 1) LHDA may acquire land in an urban area for project construction purposes, or for purposes of resettling families displaced by the project.
- 2) When acquiring land for either purpose it shall follow the regulations and procedures set out in the Land Act of 1979 and its amendments; and act in Collaboration with the Department of Lands, Surveys and Physical Planning (LSPP).
- 3) Land required by LHDA for roads shall be compensated under the LHDA Order and Regulations.
- 4) Urban land so acquired by LHDA shall be valued by the LSPP at its full market value and for properties a replacement value shall be paid. LHDA shall check each valuation to ensure that the terms of the Treaty on the LHWP are met.
- 5) Should there be insufficient urban land available for the relocation of persons displaced by the project, LHDA shall use its best endeavours to acquire land in a location acceptable to the affected persons, and which with the agreement of the Town and Country Planning Division of LSPP may be converted to urban use.
- 6) Urban sites for resettlement or relocation shall be provided with road access , sanitation and water supplies to current urban standards.

## 11. COMPENSATION ENTITLEMENTS

Compensation for the losses listed under Section 8 above will be as follows:

### 11.1 Individually Owned Fixed Assets

- 1) Houses will be replaced with new buildings of equivalent floor area and of a standard not lower than the original buildings. Basic fixtures shall be provided in new houses. In cases where individuals want to buy houses, they shall be allocated the equivalent value.
- 2) Kraals and outbuildings will be replaced at the new location or compensated for in cash to those who do not require them, based on the valuation of these structures.
- 3) Each new residential plot will be fenced, unless the owner wishes it to be unfenced.
- 4) One toilet will be provided for each resettled or relocated household, no matter whether the original house had one or not.
- 5) Each household to be resettled/relocated shall be provided with heating/cooking facility and shall have the option of accepting this or *choosing a cash payment equivalent to the value of a cooking/heating facility determined by LHDA*. In cases of urban houses which have fireplaces, these shall be provided for in new houses.
- 6) Graves will be exhumed and reburied according to the wishes of the family up to a cost limit established by LHDA and given in the Compensation Rates.
- 7) Trees will be compensated with a lump sum or annual cash payment equivalent to the lost production.
- 8) In the case of damages to buildings and other structures which can be repairable, LHDA shall effect the necessary repairs without necessarily replacing the entire structures.
- 9) For business structures owners shall be given a choice of receiving full replacement value of the property in cash or arranging for the design and construction of equivalent premises at LHDA's cost.

## 11.2 Production from Arable Land

Loss of arable land will be compensated according to the choice of the land holder, by one or a combination of the following methods:

### 11.2.1 Land For Land

This option is subject to the introduction of legislation by GOL to modify the land tenure arrangements.

- 1) Where arable land, greater than 1000sqm, is acquired by the project, and the affected household wishes to be compensated with land for land, LHDA shall endeavour where possible to provide alternative land in a place acceptable to the affected family.
- 2) The land rights granted to a family compensated with land for land shall provide security of tenure at least equivalent to that which the family held over its previous fields.
- 3) LHDA shall, where feasible and cost effective, reclaim land for agriculture through such means as reinstating a spoil dump for agricultural purposes or moving soil from a reservoir basin to a higher terrace.
- 4) Where LHDA requires part of a field, and the remainder of that field is less than 500 sqm in area, LHDA shall, if the land-holder agrees, acquire and compensate for the entire field.
- 5) Where the field-owner whom the land was acquired wishes to continue cultivating the remaining portion, LHDA shall normally permit him or her to do so. This shall not affect the amount of compensation paid to that person.

### 11.2.2 Cash

Loss of arable land may be compensated with cash in the form of an annual cash payment, or a lump sum payment with certain provisos.

#### a) Annual Cash Payment

The total amount of the annual cash paid to each recipient (over a 50 year period) for the loss of arable land, shall be determined on the basis of the established production capacity of the land. *The amount shall be determined in such a way that the affected household can afford to purchase of a basket of commodities as determined in the Compensation Rates.*

#### b) Lump Sum

- 1) Where a recipient wishes to replace his or her arable land income with income from a specific investment LHDA shall carefully examine the security and the likely yield of the proposed investment. Only in cases where the proposed investment has a low risk and offers a reasonable return, and where the recipient is judged capable of managing the investment properly, shall LHDA award compensation as a lump sum for investment.
- 2) The amount of lump sum compensation shall be calculated from the annual cash payments at 4.5% discount rate.
- 3) Where LHDA acquires an area of arable land smaller than 1000 sq meters compensation shall be payable by a cash lump-sum calculated on the same basis as that for holders of larger areas of arable land. This shall be paid as a once-off payment.

### 11.2.3 Grain

Where the recipient chooses grain compensation, the payment shall be made in such a way that the quantities of grain received are directly proportional to the area of land lost. The grain recipient shall have an option, after a specified period, to convert from grain to a lump-sum or annual cash payment.

### 11.3 **Compensation Of Cultivators With Secondary Land Rights**

LHDA shall not compensate those holding secondary land rights, as sharecroppers, renters or borrowers. The owners of fields shall be compensated and subsequent arrangements can be made by field owners and their sharecroppers and renters as to their share in the compensation arrangement. However, such secondary land holders shall be eligible for disturbance allowance.

### 11.4 **Compensation for Gardens**

- 1) Where LHDA acquires garden land it shall try to ensure that the replacement residential site includes a cultivable area of equivalent area or equal in productive value to that of the previous garden.
- 2) If suitable garden land at the new site cannot be found LHDA shall investigate the feasibility of creating gardens by earthmoving and landscaping. Wherever feasible and cost effective, and desired by the families concerned, gardens shall be created by these means.
- 3) Only when these possibilities have been exhausted, or when a family does not want to continue gardening, shall LHDA offer compensation for the loss of garden production in the form of an annual cash payment *or lump-sum*.

### 11.5 **Compensation for Rights and Access to Communal Assets**

All communal assets mentioned below, will be compensated to communities as a whole, in the form of lump sum or annual cash payments. These funds shall be used for development purposes within the communities.

The funds provided under communal assets shall be calculated on the basis of the number of households resettled or relocated.

#### 11.5.1 Grazing Land

All households resettled and households of host communities *including those of designated villages* shall be entitled to annual cash payments or a lump sum for the purposes of implementing development projects in their villages.

#### 11.5.2 Brushwood

Loss of access to communal brushwood resources will be compensated by calculating the energy value of the fuelwood collected and consumed at present by households in the designated villages, and by translating this into the cost of purchasing alternative fuels to provide the equivalent energy.



#### 11.5.3 Medicinal Plants

Their loss will be compensated by means of an annual cash payment or a lump sum equivalent to the estimated purchase cost of this resource to households in the designated villages.

#### 11.5.4 Useful Grasses

Their loss will be compensated by means of an annual cash payment or a lump sum equivalent to the estimated average value of this resource to the households in the host villages.

#### 11.5.5 Wild Vegetables

Loss of wild vegetables will be compensated to those households which have to be resettled as a result of Project construction works. Compensation for this resource shall only cover inundated areas of the project.

### 12. **PUBLIC INFRASTRUCTURE AND AMENITIES**

The general rule for buildings and other infrastructure for which there is no market is that compensation is based on the principal of 'equivalent reinstatement'.

#### 12.1 **Domestic Water Supplies**

Where the project is the cause of a reduction in the supply of water from an established source, natural or artificial, to a community or an individual household, LHDA shall reinstate that source or replace it with another of at least equal yield, quality and convenience. This shall be provided as part of compensation to all affected people and host communities to WATSAN standards.

#### 12.2 **Government- Community Owned Infrastructure**

LHDA shall replace any Government-owned local infrastructure and public amenities it acquires, such as woolsheds, dips, clinics, etc. LHDA shall also effect required repairs in those cases where damages do not require replacements.

Environmental and physical planning considerations shall be taken into account in the repair, replacement and siting of such infrastructure.

#### 12.3 **Community-Owned Amenities**

Where LHDA acquires public buildings and land belonging to a group or section of the public, such as a church or an association, its replacement shall proceed along the same lines as the replacement of individually owned premises.

#### 12.4 **Institutional Property**

Where LHDA acquires the land or buildings of a school or church, which are owned by a religious institution, compensation will be paid

either by means of a lump sum, covering the replacement value of the property;

or by restoring the equivalent capacity for teaching and conducting religious activities at places chosen by the institution concerned in consultation, as appropriate, with the Ministry of Education, or other government body which has a mandate of laying out property specifications and allocating replacement land.

### **13. SPECIAL PROVISIONS**

#### **13.1 Vulnerable Households**

- 1) LHDA shall identify and register all affected families and individuals in the Scheme Area who are specially vulnerable and most likely to suffer deprivation due the effects of the project, and who are least able to avail themselves of the economic opportunities provided by the project.
- 2) These families shall receive the individual attention of LHDA's staff, possibly assisted by NGOs, who will ensure that they are enabled to retain and where possible improve upon the standard of living they enjoyed before the project affected them.
- 3) LHDA shall establish a **minimum household income threshold** below which no involuntary resettled household's income shall fall. Shortfalls in household income shall be made up to the level of the threshold, for a period of 10 years. The top-up payment will be the difference between the threshold amount and the household's income. Such cases shall receive the individual attention of LHDA's staff. The Project Authorities will consider special cases where vulnerable households do not qualify for this top-up payment, but need special support.

#### **13.2 Disturbance Allowance**

This allowance will be paid to all affected households included in LHDA's resettlement and relocation programme, and is intended to meet the unforeseen but inevitable initial costs of moving. The amount will decrease incrementally to zero over three years, from the date of arrival at the resettlement or relocation destination.

### **14. ASSESSMENT OF STANDARD OF LIVING**

- 1) LHDA shall compile base-line information on households affected by the project to determine their standard of living and income before the first impacts are felt.
- 2) This base-line shall provide a set of socio-economic indicators against which to measure changes in living standards and incomes of affected households. The affected households shall be monitored at appropriate intervals following the first impact of the project on them, to assess any change in their standard of living and income, and the effectiveness of the compensation, rural development, public health and other LHDA field programmes, in maintaining their standard of living.
- 3) In order to establish whether or not the affected households have been able to maintain their standard of living it will be necessary for LHDA to monitor the affected families.

- 4) The studies will reveal which households have been unable to maintain their standard of living, enabling LHDA to respond with adjustments to the compensation package and with other appropriate measures.

## **15. DISPUTE RESOLUTION**

- 1) Any person or group of persons aggrieved by the compensation awards made or not made by LHDA in connection with the acquisition by LHDA of land, housing, or other assets or rights shall discuss their grievances with LHDA's FOT staff, in an attempt to reach a mutually agreed solution.
- 2) Should this attempt fail, the claimant shall bring his or her grievance to the local liaison committee. The local liaison committee shall collaborate with FOTs, as necessary and appropriate, with the Chief, the VDC, and the District Administration, in trying to resolve the dispute.
- 3) Should the dispute not be resolved at this level, the matter shall be taken to the office of the LHDA's Chief Executive.
- 4) If the claimant is still not satisfied, the claim shall be brought to the High Court of Lesotho.
- 5) If the claimant is not content with the ruling of the High Court the claim shall be brought to the Appeal Court, whose decision shall be final.