


# **Projects Compensation Policy**

26 April 2019

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This policy does not waive any authorisations required for expenditure related to it.

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## ACRONYMS AND ABBREVIATIONS

CPA	Communal Property Association
CPI	Consumer Price Index
DoA	Delegation of Authority
DWS	Department of Water and Sanitation
EXCO	Executive Committee
GRI	Global Reporting Initiative
IFC	International Finance Corporation
MC	Minimum Consideration
PAP	Project Affected Person
PMID	Project Management Implementation Division
PoE	Panel of Experts
PS	Performance Standards
SACPVP	South African Council for the Property Valuer Profession
TA	Traditional Authority
TCTA	Trans-Caledon Tunnel Authority

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**GLOSSARY OF TERMS**

<b>Actual financial loss</b>	All financial losses which are caused directly by land acquisition and associated displacement.
<b>Assets</b>	Property or resources owned or held for the benefit of individuals, communities, government or other institutions, and for which compensation is payable in the event of land acquisition.
<b>Communal land</b>	Land occupied or used by members – usually a rural community, subject to its rules or customs.
<b>Compensation</b>	Payment in cash or in kind for an asset or a resource that is acquired or affected by a project at the time the asset needs to be replaced
<b>Minimum consideration</b>	The minimum amount of compensation payable to a PAP, applicable in cases where the value of their displaced assets or the nature of their inconvenience / disturbance is present but insignificant.
<b>Cultural heritage</b>	Cemeteries, historic sites and spiritual sites as defined in the National Heritage Resources Act, 25 of 1999. Spiritual Sites are typically associated with prominent landscape features, including rocks, outcrops, significant trees, water holes and wells, which are thought to contain spirits, often with supernatural power.
<b>Economic displacement</b>	Loss of income streams or means of livelihood resulting from land acquisition or obstructed access to resources (land, water, or forest) resulting from the construction or operation of a project or its associated facilities.
<b>Economic Trees</b>	Trees that perform a function or provide a service that can be measured in monetary terms.
<b>Ex gratia payments</b>	An amount payable to the communities and/or individuals over and above the valuer/ geologist / agricultural economist or any relevant professional's recommended amount after considering site-specific attributes which are normally not included when determining market value for such assets or business.

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<b>Inconvenience allowance</b>	Amount payable to the affected people for any disruption or nuisance caused by the project activities. These may include among others, noise, dust, vibrations and access restrictions.
<b>In-kind compensation</b>	Is the compensation paid towards affected people or organisation in the form of non-cash payment.
<b>Involuntary resettlement</b>	Resettlement is involuntary when it occurs without the informed consent of the displaced persons or if they give their consent without having the power to refuse resettlement (where implementing authority has expropriation powers).
<b>Land</b>	Any erf, agricultural holding or farm portion, and includes any improvement or infrastructure on the land and any real right (servitude) in land.
<b>Land acquisition</b>	The process of acquiring land and / or servitude rights either by way of negotiated agreement or by expropriation.
<b>Land expropriation</b>	Process whereby government/expropriating authority has a right to take land for public purposes or interest subject to compensation.
<b>Livelihood</b>	The full range of means that individuals, families, and communities utilise to make a living, such as wage-based income, agriculture, fishing, foraging, other natural resource-based livelihoods, petty trade, and bartering.
<b>Livelihood restoration</b>	Re-establishing productive livelihood of the displaced persons to a level equal to or better than before resettlement.
<b>Market value</b>	An estimated amount for which the property should exchange hands on the date of valuation between a willing buyer and willing seller in an arm's length transaction, after proper marketing and where the parties had acted knowledgeably, prudently and without compulsion.
<b>Non-economic trees</b>	Trees that provide a service that lacks money measurement (such as shade and beauty).
<b>Permanent displacement</b>	Loss of shelter, assets income streams, means of livelihood or obstructed access to resources cannot be reversed.


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<b>Physical displacement</b>	Loss of shelter and assets resulting from the acquisition of land associated with a project that requires the affected person(s) to move to another location.
<b>Project affected person</b>	Any person who, as a result of the implementation of a project, loses the right to own, use, or otherwise benefit from a built structure, land (residential, agricultural, or pasture), annual or perennial crops and trees, or any other fixed or moveable asset, either in full or in part, permanently or temporarily.
<b>Project social licence</b>	The ability of the project to be accepted, approved and supported by local communities, authorities and relevant stakeholders to enable the project to be executed.
<b>Relocation</b>	Provision of replacement housing, assets, including land, and public infrastructure in another location.
<b>Replacement cost</b>	Market value of the assets plus transaction costs and excluding depreciation costs.
<b>Resettlement process</b>	The lifecycle of resettlement projects, subdivided into four distinct phases namely, pre-planning, planning, implementation and completion audit.
<b>Solatium</b>	Amount paid over and above the market value as stipulated in section 12(2) of the Expropriation Act 63 of 1975.
<b>Stakeholders</b>	Any and all individuals, groups, organisations, and institutions interested in and potentially affected by a project or having the ability to influence a project.
<b>Temporary displacement</b>	Loss of shelter, assets income streams, means of livelihood or obstructed access to resources for a defined period of time, allowing the PAP to return / continued use of assets after some time (e.g. after construction).
<b>Valuation</b>	A formally documented process of determining the current market value of an asset (movable and immovable) or a business; prepared by qualified professionals such as, but not limited to property valuer, agricultural economist, geologist and quantity surveyor.
<b>Vulnerable groups</b>	People who by virtue of gender, ethnicity, age, physical or mental disability, economic disadvantage, or social status may be more adversely affected by resettlement than others and who may be limited in their ability to claim or take advantage of resettlement assistance and related development benefits.

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## 1. PREAMBLE

Trans-Caledon Tunnel Authority (TCTA) is a state-owned entity charged with financing and implementing bulk raw water infrastructure projects. TCTA is an agency of the National Department of Water and Sanitation (DWS), which is responsible for amongst others the country's water resources in respect of usage, equitable allocation and distribution. TCTA assists the government in its pursuit of water security for South Africa and in realising its constitutional obligation of ensuring universal access to this essential resource for all citizens.

During project implementation, negative impacts relating to health, safety, environmental and social changes, land acquisition, and displacement may arise. The King IV Report on Corporate Governance amongst others, requires boards of companies to *"ensure that the company is seen to be a responsible corporate citizen"* by having regard to not only the financial aspects of the business of the company, but also the impact that business operations have on the environment and the society within which it operates.

Sustainable development requires the government to provide public facilities and infrastructure that ensure safety and security, health and welfare, and social and economic enhancement, including the provision of water and sanitation for all citizens. Accordingly, prior to the implementation of bulk raw water infrastructure projects, TCTA must attempt to avoid negative impacts through design and mitigating measures. In some instances, these measures would involve compensation, either in cash or in-kind. For projects to be implemented successfully, care must be taken to ensure that Project Affected Persons (PAPs) and communities are appropriately compensated for all identified impacts.

## 2. PROBLEM STATEMENT

The land occupied for residential, commercial, agricultural and/or livelihood purposes, may be required for the implementation of TCTA bulk raw water infrastructure projects. The acquisition of such land by TCTA, may result in permanent or temporary displacement. Thus, families are displaced from their homes, farmers from their fields and businesses from their customer base. Land acquisition for these projects often separates communities from sites of cultural or religious significance or disrupts support systems and other community networks. During the construction phase of TCTA projects, some activities may cause temporary restricted access to land and resources or result in permanent damage of private property or assets. PAPs may suffer from varying degrees of psychological distress due to amongst others; disruption to normal daily life, the loss of land, loss of natural resources, and physical relocation. One of the ways in which this distress and

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risks are minimised is by ensuring that all PAPs are identified and provided with fair compensation for different losses or inconveniences experienced during project implementation.

Project-specific procedures and processes may be applicable to certain projects. However, a degree of consistency in the approach to compensation-related matters is required across TCTA projects and over time to minimise project implementation and reputational risks. A compensation policy is required to provide this consistency and to assist in decision-making, related proper management and mitigation of project-related compensation matters.

### **3. PURPOSE AND SCOPE OF APPLICATION**

The purpose of this policy is to provide a framework for TCTA's approach to compensation negotiations and payments in a South African context, as well as the options recommended for specific types of losses. This policy allows for a standardised approach to all compensation-related matters across different projects.

If compensation takes place in the context of resettlement, this policy must inform:


- The development of project-specific entitlement and compensation frameworks geared towards achieving equitable compensation and improved livelihoods; and
- The resettlement / livelihood restoration implementation plan contained in the project-specific planning document.

The scope of this policy encompasses compensation for inconvenience, as well as for the temporary or permanent loss of tangible and intangible rights to assets and means of livelihoods because of land acquisition. It also caters for other negative effects that result from project implementation activities. The scope includes the following:

- Loss of land and/or rights to land;
- Loss of income and/or assets;
- Relocation of people and/or assets;
- Graves' exhumation and re-interment;
- Damage to existing properties / infrastructure;

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- Damages to existing crops and plants; and
- Impacts on religious, customary, and cultural rites.

Furthermore, the policy articulates the following compensation-related matters:

- Regulatory framework and international standards, and their underlying principles.

This policy focusses on compensation associated with acquiring land and rights to land through agreements in consultation with the PAPs. It excludes compensation related to land and rights acquisition through expropriation as this is detailed in the Land Acquisition Policy. This policy is applicable to all TCTA personnel and third parties it engages in any aspect of compensation as part of the implementation of bulk raw water infrastructure development projects.

#### 4. POLICY STATEMENT

TCTA recognises the sensitivity of construction work disturbances, displacement and compensation-related matters emanating from infrastructure development projects and hence TCTA is committed to consistently providing equitable compensation to eligible PAPs. Compensation will be done in accordance with South African legislative requirements, customs and norms, best practices and standards. The process of equitable compensation, agreed in consultation with PAPs, supports land acquisition activities to minimise project-implementation risks.


TCTA will seek to minimise negative impacts of project implementation and where not practicable, may provide just and equitable compensation. , TCTA's Sustainability Policy, Environmental Policy, Land Acquisition Policy and the Resettlement and Livelihood Restoration Policy, as illustrated in Appendix A, underpin this policy.

#### 5. OBJECTIVES

The objectives of this policy are to:

- communicate TCTA's stance on compensation-related matters and processes clearly and concisely;
- ensure a standardised approach across TCTA's projects on the negotiation and determination of compensation measures and options offered for different types of losses;

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- ensure compliance to South African legislation and regulations, alignment to international standards relating to compensation where practicable.; and
- achieve informed and participatory design of fair compensation.

## 6. GUIDING PRINCIPLES

This policy is based on the following principles:

- TCTA must ensure that meaningful and adequate consultation with PAPs is ongoing throughout the project lifecycle, and that the determination of compensation is done in consultation with PAPs. Compensation must consider the full replacement cost of assets and other help needed to restore or improve living standards or livelihoods.
- TCTA must give preference to in-kind or land-based compensation.
- TCTA must always deal with compensation-related matters, in accordance with South African legislative requirements, codes of good practice and TCTA values of Respect, Integrity, Excellence and Growth.
- TCTA must consider and respect existing cultural and religious practices, as well as areas of archaeological importance when identifying compensation entitlements. Furthermore, it must make reasonable efforts to preserve artefacts relating to these practices. In addition, TCTA must respect language preferences and levels of education throughout the compensation process.
- TCTA must compensate PAPs within a reasonable timeframe, in a fair manner, and it must apply compensation measures consistently. Eligible PAPs must include those who do not have formal legal rights to land and assets they occupy and use. TCTA must also identify vulnerable PAPs and their needs, and provide the necessary assistance.
- In the case of resettlement, and where practicable, TCTA must finalise the compensation process prior to the commencement of project implementation activities.
- Where unforeseen disputes arise between or among affected parties such as PAPs, spouses, descendants of deceased PAPs, TCTA will pay compensation into a trust account until a resolution is found.
- All compensation must be approved in line with the delegation of authority prior to being effected.

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## 7. REGULATORY FRAMEWORK AND APPLICABLE STANDARDS

Compensation-related matters must comply with all South African legislative requirements regulations, codes of good practice and applicable TCTA policies and procedures. Where practicable, compensation-related matters must be dealt with in a manner that is aligned with best practice and international standards.

### 7.1 SOUTH AFRICAN LEGISLATIVE REQUIREMENTS

The relevant legislations governing the application of this policy are listed below; Appendix B outlines their relevance to this policy. The Land Acquisition Policy and Resettlement and Livelihood Restoration Policy respectively outline other legislations relevant to land acquisition and various aspects of resettlement, and these are not repeated here.

- Arbitration Act, 42 of 1965
- Basic Conditions of Employment Act, 75 of 1997 (BCEA);
- Communal Property Association Act, 28 of 1996 (CPA);
- Conservation of Agricultural Resources Act, 43 of 1983 (as amended) (CARA);
- Constitution of the Republic of South Africa Act, 108 of 1996;
- Extension of Security of Tenure Act, 62 of 1997 (ESTA);
- Interim Protection of Informal Land Rights Act, 31 of 1996 (IPILRA);
- Land Reform (Labour Tenants) Act, 3 of 1996;
- Municipal Systems Act, 32 of 2000 (MSA);
- Municipal Finance Management Act, 56 of 2003 (MFMA)
- National Environmental Management Act, 107 of 1998 (NEMA);
- National Heritage Resources Act, 25 of 1999 (NHRA);

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- National Water Act, 36 of 1998 (NWA);
- Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 19 of 1998 (PIE);
- Property Valuation Act, 17 of 2014;
- Public Finance Management Act, 1 of 1999 (PFMA);
- Restitution of Land Rights Act, 22 of 1994 (RLRA);
- South African Human Rights Commission Act, 40 of 2013 (SAHRCA); and
- Water Services Act, 108 of 1997.

In instances where projects trigger cross-border displacement, the planning process must consider the relevant legislation of all project countries. TCTA must reach an agreement on the legislation that will be applied with all project governments without infringing on their national sovereignty.

## 7.2 RELEVANT TCTA POLICIES

Below is a list of TCTA policies that have bearing on the approach to compensation-related matters. Appendix B provides a brief synopsis of each.

- Sustainability Policy;
- Environmental Policy;
- Land Acquisition Policy; and
- Resettlement and Livelihood Restoration Policy.

## 7.3 INTERNATIONAL STANDARDS AND GUIDELINES

Below is a list of pertinent international standards and guidelines adopted for this policy. Appendix B provides a brief description of each.

- Equator Principles III, 2013.
- International Finance Corporation's (IFC) Performance Standards (PS), 2012, specifically:

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- PS 1: Assessment and Management of Environmental and Social Risks and Impacts.
- PS 5: Land Acquisition and Involuntary Resettlement
- PS 8: Cultural Heritage
- World Bank Environmental and Social Framework, 2017.
- World Bank Operational Policy 4.12: Involuntary Resettlement.
- International Bill of Human Rights.
- Global Reporting Initiative (GRI) standards.
- King IV, 2016.

## **8. APPROACH TO COMPENSATION**


The approach to compensation-related matters is underpinned by an ethos of collaboration and inclusive decision making by TCTA or its representative third parties and PAPs. Ongoing consultation throughout the project lifecycle must ensure that PAPs are adequately informed about the compensation process and timing, and promote their understanding of the process to avoid a sense of entitlement. Consultations must provide PAPs with adequate opportunity to make representations for TCTA consideration.

Where appropriate, TCTA or its third-party representatives must give guidance to PAPs regarding compensation matters. Conversations with PAPs about the amount or quantum of compensation must be open and honest, and the parties must negotiate compensation offers in good faith. TCTA must allow PAPs adequate time to consider compensation offers.

TCTA must discuss, investigate and recommend compensation measures to PAPs in appropriate project fora. TCTA must further keep detailed records (including minutes, attendance registers and photographs) of such engagements and have them readily available as supporting information.

All compensation payments will be subject to EXCO or Board approval in line with the delegation of authority (DoA).

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## 9. COMPENSATION REQUIREMENTS

To ensure consistency on compensation-related matters across TCTA's projects, the subsections below specify compensation requirements for different types of displaced assets, and other losses and inconveniences or disturbances associated with project implementation in a South African context.

### 9.1 PERMANENT PHYSICAL DISPLACEMENT AND RELOCATION OF ASSETS

#### 9.1.1 DESCRIPTION

Permanent displacement of physical assets and the relocation of these assets to an alternative location. This may include demolishing homesteads, replacing them with alternative ones and moving supporting structures such as fences, plants, crops and trees.

#### 9.1.2 ACTION

TCTA must give preference to in-kind compensation. Replacements must be of at least equal or better quality and standard than the displaced asset. The size of replacement structures must be at least the same or larger than the displaced ones. In urban areas where local authorities have classified some people as indigent, the size of replacement houses may be of a similar or bigger size, but within the rates and taxes exemption house size as per municipal by-laws and/or municipal council resolutions. In rural areas, replacement houses must be of equal or larger size and be of similar or better quality. TCTA must facilitate the involvement of relevant social service authorities for relocated families in order to ensure that PAPs are supported and can adjust to the new environment.

TCTA must agree with PAPs on acceptable in-kind and or cash compensation for replacement of plants, economic and non-economic trees. TCTA will provide saplings for each displaced tree where practicable and pay compensation for the loss of amenity or livelihood from the tree, as determined through the valuation process.

In case of cash compensation for the loss of physical assets, a relevant valuer or specialist will determine the compensation value inclusive of transactional costs.

#### 9.1.3 MOTIVATION

International guidelines and standards, as referenced in Section 7.3 above, inform the prescribed compensation action.

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## 9.2 TEMPORARY PHYSICAL RESETTLEMENT

### 9.2.1 DESCRIPTION

Relocating PAPs from their residences to a temporary one, either as an interim measure prior to a permanent move, or to avoid exposure to short-term project-related impacts.

### 9.2.2 ACTION

TCTA must cover all costs associated with the move to temporary residences, as well as inconvenience costs, including rent and utility bills for the duration of stay. TCTA must also pay the costs of the move from the temporary residence to the permanent replacement or back to the original one.

### 9.2.3 MOTIVATION

In some instances, project implementation must begin at the earliest possible time due to the emergency nature of an infrastructure project as per the Directive received from the Minister. Such instances may need temporary resettlement while permanent measures are being prepared.

In other instances, project-related disruptions or inconveniences are temporary and do not need permanent relocation.

## 9.3 INFORMAL LAND RIGHTS HOLDERS

### 9.3.1 DESCRIPTION

PAPs residing on land for which they do not have formal land rights or permission to occupy the land, but have been enjoying its use.


### 9.3.2 ACTION

TCTA must determine compensation for loss of use of rights to land through a valuation process, where applicable. In cases where this is not possible, TCTA must make an *ex-gratia* payment based on the merits of each case.

### 9.3.3 MOTIVATION

South African legislative requirements prescribe the recognition of informal land rights holders.

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## 9.4 MINIMUM CONSIDERATION

### 9.4.1 DESCRIPTION

TCTA adopts minimum consideration in cases of negotiated land access where the area affected is very small. This also applies in instances where the market value of the affected area, including solatium, is lower than the minimum consideration amount as stipulated in Schedule 1. Where TCTA acquires land through expropriation, minimum consideration cannot be applied. However, where multiple traditional authorities are the custodians of the same farm portion, and where the compensation due to each traditional authority is below the minimum consideration amount as indicated in Schedule 1, then the minimum consideration shall apply. PAPs must be compensated a once-off minimum consideration as indicated in Schedule 1. TCTA must adjust this amount for inflation at the consumer price index (CPI) rate annually on 1 March as outlined in Schedule 1. Payment of a minimum consideration is aligned with TCTA's commitment to be a good corporate citizen, as set out in the King IV.

## 9.5 INCOMPLETE LAND RESTITUTION

### 9.5.1 DESCRIPTION

A land claim on an affected piece of land lodged in accordance with the Restitution of Land Rights Act, but not yet awarded or effected at the time of displacement.

### 9.5.2 ACTION

TCTA must pay a cash compensation into trust account(s) of an attorney it has appointed after consultation with land claimants to enable safe keeping of funds until such a time the legal proceedings have been resolved.

### 9.5.3 MOTIVATION

Land restitution is a sensitive matter in South Africa and must be dealt with in a way that avoids conflict among different interested parties.

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## 9.6 INCONVENIENCE ALLOWANCE AND ASSETS REPAIR

### 9.6.1 DESCRIPTION

Factors such as dust, noise, vibrations and restriction of access as a result of project(s) activities affect the compensation paid to PAPs. These factors are health, safety, environmental and social hazards that need mitigation. Substantiated claims will inform the compensation.

### 9.6.2 ACTION

Pre-construction survey information, impact assessment and merits of the case must inform the quantum of the compensation.

### 9.6.3 MOTIVATION

TCTA pays compensation towards inconvenience and disturbance allowances as a goodwill measure.

## 9.7 ECONOMIC DISPLACEMENT: ACTUAL FINANCIAL LOSS

### 9.7.1 DESCRIPTION

Financial loss resulting from displacement because of project construction or operational activities, leading to a demonstrated financial burden on PAPs.

### 9.7.2 ACTION

TCTA must determine actual financial loss through a valuation process by registered valuers and specialists, and/or supported by proof of expenditure incurred, income derived, and possible future loss as a consequence of the project. Where practicable, in addition to cash compensation, these PAPs must be eligible for livelihood restoration and other help as part of their compensation package.

### 9.7.3 MOTIVATION

International guidelines and standards, referenced in Section 7.3 above, inform the prescribed compensation action.

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## 9.8 GRAVES EXHUMATION AND RE-INTERMENT

### 9.8.1 DESCRIPTION

Applicable in cases where known graves and the remains are re-interred because of project execution.

### 9.8.2 ACTION

Graves must be exhumed and the remains re-interred in line with the South African legislation and in a consented culturally appropriate manner that is inclusive of the necessary ceremonies to enable the affected families to observe their own traditions.

TCTA must establish a project-specific committee in consultation with the traditional leadership and/or authority. The committee must work out compensation for exhumation and re-interment, and relocation processes as per an area's practices where applicable.

In cases where the family or next of kin of the deceased is known, TCTA must cover costs for families or next of kin to observe their cultural practices; however, compensation must be calculated per family and not per grave.

**Grave** markings prior to the exhumation must be replicated as much as possible at the re-interment site. TCTA must cover logistical costs associated with the exhumation and re-interment within the project budget.

TCTA EXCO must approve the agreed and signed process for exhumation, re-interment and compensation prior to implementation.

### 9.8.3 MOTIVATION

The exhumation and re-interment of the remains is a culturally, and emotionally-sensitive matter. Therefore the project-specific committee must ensure that these are to be conducted in a culturally, appropriate manner.

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## 9.9 COMPENSATION FOR UNTRACEABLE GRAVES

### 9.9.1 DESCRIPTION

Applicable in cases where graves reported by PAPs cannot be located as burial occurred far in the past and graves do not have markings.

### 9.9.2 ACTION

Project-specific committees must engage with the affected families in consultation with the local traditional leadership and/or authority, and advise on a culturally-sensitive and appropriate process to be followed in the event of untraceable graves. Proposals for compensation in these circumstances may include ritual ceremonies, specified tokens to recognise the deceased or solatium for families. TCTA will incur the cost for the agreed compensation.

### 9.9.3 MOTIVATION

Disturbance of burial grounds is a culturally- and emotionally-sensitive matter regardless of whether the grave can be located or not. Some PAPs struggle to find closure on matters related to untraceable graves. In the interest of inclusivity, transparency and respect, these PAPs must be considered for compensation, as per the guidance project-specific committees provide.

## 9.10 CULTURAL BELIEFS AND RELIGIOUS PRACTICES

### 9.10.1 DESCRIPTION

Applicable in cases where heritage, cultural and religious sites are on the land TCTA acquires for a project.

### 9.10.2 ACTION

TCTA may incur the costs of professional fees for the verification of identified sites, as well as the provision of in-kind compensation. TCTA must further engage relevant government authorities to advice on the appropriate mitigation actions and compensation measures for the verified sites of heritage, cultural or religious significance where valuation precedents do not exist.

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### 9.10.3 MOTIVATION

International guidelines and standards, as well as South African legislative requirements inform the prescribed compensation action.

## 10. POLICY IMPLEMENTATION ROLES AND RESPONSIBILITIES

<b>Role</b>	<b>Responsibility</b>
Board of Directors	To review and approve the policy
Human Capital, Social and Ethics Committee	Review and comment on the policy Recommend the policy for Board approval Review, comment and approve compensation agreements, in line with the DoA
Executive Committee	Review and comment on the policy Recommend the policy for Board approval Give management assurance to Board on the implementation of the policy Review and approve compensation related to informal land rights holders and grave-related compensation
Policy Committee	Review and comment on the policy Recommend the policy for EXCO consideration
PMID Executive Manager	Review and comment on the policy Recommend the policy for EXCO consideration Give management assurance to EXCO on the implementation of the policy Review, comment and recommend compensation related to informal land rights holders and grave-related compensation

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<b>Role</b>	<b>Responsibility</b>
Head of Environment	<p>Ensure consistent, effective and efficient implementation of the policy</p> <p>Enforce compliance with the policy</p> <p>Give strategic guidance for the implementation of the policy in project-specific cases</p> <p>Ensure review of the policy, when needed</p>
Social Specialist	<p>Ensure consultant / third party compliance with the policy</p> <p>Manage day-to-day compensation activities related to social matters</p> <p>Review, comment on and recommended for approval compensation agreements, as appropriate</p> <p>Facilitate compensation negotiations and payments related to social matters in collaboration with the project manager, land acquisition manager, environmental manager and third-party resettlement specialist, as appropriate</p> <p>Report on compensation matters as part of management reporting</p>
Land Acquisition Manager	<p>Give support to the Project Manager and Social Specialist to ensure consistent, effective and efficient implementation of the policy</p> <p>Review and comment on project-specific compensation agreements to ensure alignment with the Land Acquisition Policy</p> <p>Facilitate compensation negotiations and payments related to land acquisition matters, in collaboration with the project manager, social specialist, environmental manager and third-party resettlement specialist, as appropriate</p> <p>Acquire land for resettlement (replacement land for in-kind compensation)</p>

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<b>Role</b>	<b>Responsibility</b>
Project Manager	<p>Ensure integration of this policy into the overall project planning, execution and close-out</p> <p>Review and comment on project-specific compensation agreements</p> <p>Oversee compensation negotiations and payments in collaboration with the social specialist, land acquisition manager and third-party resettlement specialist, as appropriate</p>
Other Divisions	<p>Give input and support as required</p> <p>Provide subject-matter expertise to support compensation negotiations and agreements as required</p>


## 11. POLICY REVIEW

PMID is the custodian of this policy.

The policy will be reviewed once there are relevant legislative and international standards amendments.

A holistic policy review must be undertaken every three years to facilitate its continuous improvement.

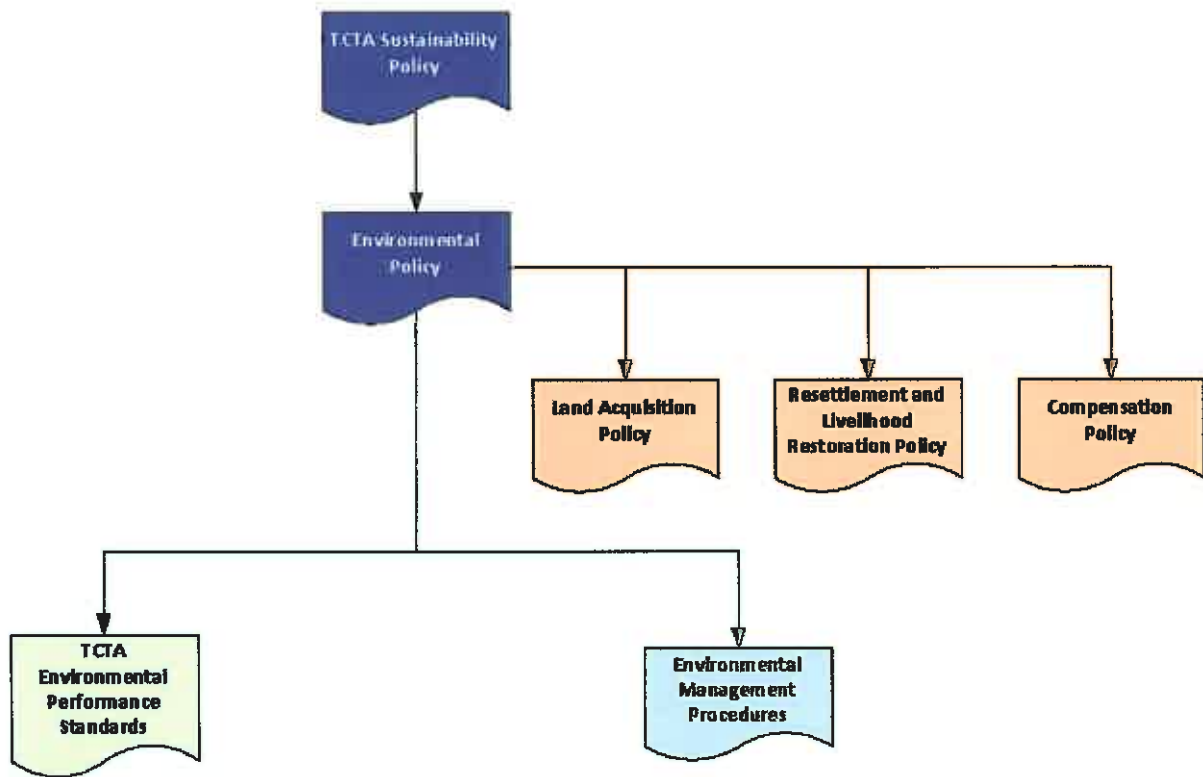
## 12. APPROVED BY

<b>Name</b>	<b>Designation</b>	<b>Signature</b>	<b>Date</b>
Zodwa Manase	Chairperson: Board		29 April 2019


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**Appendix A : Policies and Standards in the Environmental Management System**



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## Appendix B : Detailed Legislative Framework, Policies and Guidelines Applicable to Compensation Policy

**Table B-1: Applicability of South African legislation**

Legislation	Requirements / relevance
Arbitration Act, 42 of 1965	Provides for inclusive mechanism to unlock disputes amongst parties with the view to find mutual agreement that is binding. Moreover, allows aggrieved parties to refer the disputes to the Arbitration Foundation of South Africa (AFSA) for a speedy resolution and as such, constitute alternative dispute resolution mechanism. Note that all parties rights to refer any dispute for intervention by the Court remains reserved.
Basic Conditions of Employment Act, 75 of 1997	<p>TCTA will acquire portions of land or entire properties from landowners and has a social responsibility to ensure that workers and residents on that land do not bear the negative social impacts of infrastructure development. In this regard, the provisions in the Act related to the notification process regarding termination of employment will apply. In the case of farm workers, the notice period is four weeks. Regarding accommodation linked to employment, the Act stipulates that:</p> <p>(1) If the employer of an employee who lives in accommodation that is situated on the premises of the former or that they supplied terminates the contract of employment of that employee —</p> <p>(a) before the date on which the employer was entitled to do so in terms of section 37; or</p> <p>(b) In terms of section 38, the employer is required to provide the employee with accommodation for a period of one month, or if it</p>

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	<p>is a longer period, until the contract of employment could lawfully have been terminated.</p> <p>(2) If an employee elects to remain in accommodation in terms of subsection (1) after the employer has terminated the employee's contract of employment in terms of section 38, the remuneration that the employer is required to pay in terms of section 38 is reduced by that portion of the remuneration that represents the agreed value of the accommodation for the period that the employee remains in the accommodation.</p>
Communal Property Association Act, 28 of 1996	CPAs are established for the purposes of acquiring, holding and managing property on the basis agreed by members of a community in terms of a written constitution. TCTA has a duty to engage CPAs in the process of acquiring land under their management.
Conservation of Agricultural Resources Act, 43 of 1983 (as amended)	Provides for the conservation of the natural agricultural resources of the Republic by the maintenance of the production potential of land, by the combating and prevention of erosion and weakening or destruction of the water sources, and by the protection of the vegetation and the combating of weeds and invader plants.
Constitution of the Republic of South Africa, 108 of 1996, Chapter 2, Bill of Rights (Section 24)	Provides for the right to a safe environment that is protected in a manner that prevents pollution and ecological degradation, promote conservation and secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.
Constitution of the Republic of South Africa, 108 of 1996,	Prohibits compulsory acquisition of property except in accordance with the law of general application. Notable provisions include:

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<p>Chapter 2, Bill of Rights (Section 25)</p>	<p>Section 25(2)(a) – property may be expropriated for public purpose or in the public interest</p> <p>Section 25(2)(b) – subject to compensation</p> <p>Section 25(3) – the amount of compensation must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including:</p> <p>Current use of the property; and</p> <p>Market value of the property.</p>
<p>Constitution of the Republic of South Africa, 108 of 1996, Chapter 2, Bill of Rights (Section 26)</p>	<p>Provides for the right to have access to adequate housing, including the right to due process with regard to court ordered eviction and demolition.</p>
<p>Extension of Security of Tenure Act, 62 of 1997</p>	<p>Aims to give security of tenure for vulnerable occupiers of rural and peri-urban land, and to allow for the acquisition of land by vulnerable occupiers. The Act:</p> <p>Protects occupiers against unfair evictions by the land owner.</p> <p>Provides for legal evictions under certain circumstances.</p> <p>Sets out the rights and duties of owners and occupiers.</p> <p>Protects people living on land belonging to someone else by giving them a basic level of tenure security. This means that the occupiers have the right to continue living on and using this land, including the right to graze cattle and draw water. The land owner cannot cancel or change the occupiers' rights without their consent, unless there is good reason, and the occupiers have had a chance to answer complaints against them.</p>

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	<p>Gives special protection to occupiers who have lived on the land for 10 years, and who are 60 or older, or who are living with a disability</p> <p>In 2001, ESTA was amended to allow occupiers to bury family members on the land where they lived. Under the new section 6(2) (dA), an ESTA occupier was given the right: "To bury a deceased member of his or her family who, at the time of that person's death, was residing on the land in which the occupier is residing, in accordance with their religion or cultural belief, if an established practice in respect of the land exists."</p>
Interim Protection of Informal Land Rights Act, 31 of 1996	The Act includes an interim method to protect people with insecure tenure from losing their rights to and interests in land, while waiting for long-term tenure reform. The main point of this Act is to ensure that there is legal recognition and protection of the various kinds of land rights existing in South Africa. The Act requires that consultation with people with insecure tenure should be as though their rights have already been formalised.
Land Reform (Labour Tenants) Act, 3 of 1996	Provides for security of tenure of labour tenants and those persons occupying or using land as a result of their association with labour tenants. Section 16 of the Act makes provisions for labour tenants to acquire in their own land right and/or rights therein which they were already entitled to occupy or use. TCTA should be mindful of the rights that accrue to these people under this Act.
Municipal Systems Act, 32 of 2000 (as amended)	Sets out legislation that enables municipalities to uplift their communities by ensuring access to essential services and seeks to boost effective local government by establishing a framework for municipal planning, performance management and use of

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	resources. The Act also ensures that municipalities put in place service tariffs and credit control policies that take the needs of the poor into account.
Municipal Finance Management Act, 56 of 2003	Regulate financial management of the municipalities, to ensure that expenditure is curbed and is within the prescribed legislative frame work applicable to municipalities.
National Environmental Management Act, 107 of 1998	<p>Developers are obliged to:</p> <p>Integrate the principles of environmental management into the making of all decisions which may have a significant effect on the environment;</p> <p>Minimise negative impacts, maximise benefits, and promote compliance with the principles of environmental management;</p> <p>and</p> <p>Ensure adequate and appropriate opportunity for public participation in decisions that may affect the environment.</p>
National Heritage Resources Act, 25 of 1999	<p>Provides for the formal protection and management of South Africa's heritage resources, promotes good management of the national estate, and ensures community participation in the protection of national heritage resources. The national estate includes, but is not limited to:</p> <p>Places, buildings, structures and equipment of cultural significance;</p> <p>Places to which oral traditions are attached or which are associated with living heritage;</p> <p>Historical settlements and townscapes, landscapes and natural features of cultural significance,</p> <p>Geological sites of scientific or cultural importance;</p>

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	<ul style="list-style-type: none"> <li>- Archaeological and paleontological sites;</li> <li>- Graves and burial grounds; and</li> <li>- Sites of significance relating to South African history and movable objects.</li> </ul> <p>The Act is enforced by the South African Heritage Resources Agency (SAHRA), through which permits must be obtained in the event of disturbing any of the national estate.</p>
National Water Act, 36 of 1998	Provides for the protection, use, development, conservation, management and control of water resources. The most notable provision of the Act is Section 64, by which the Minister of Water and Sanitation may authorise TCTA to expropriate land required for the implementation of projects.
Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 19 of 1998	The Act prohibits unlawful evictions and sets out fair procedures for the eviction of “unlawful occupiers”. TCTA must be mindful of the processes required to lawfully evict any persons from its acquired land.
Property Valuation Act, 17 of 2014	Provides for the establishment, functions and powers of the Office of the Valuer-General for the regulation of the valuation of property identified for land reform, or any other reason (Section 12 (1) (b)).
Public Finance Management Act, 1 of 1999	Regulates financial management in the national, provincial, and local government as well as state entities, to ensure efficient management of all revenue, expenditure, assets and liabilities. It is incumbent upon TCTA personnel to be mindful of the requirements of the Act, especially with regard to the need to prevent fruitless and wasteful expenditure in their line of work.

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Restitution of Land Rights Act, 22 of 1994	Provides for the restitution of land rights in respect of persons or communities that were dispossessed of their right to land under racially based discriminatory laws of the past. Section 7 (A) (a) requires that consent must be obtained from the Regional Land Claims Commission (RLCC) prior to commencing with the development of land subject to a land claim.
South African Human Rights Commission Act, 40 of 2013	Provides for the composition, powers, functions and functioning of the South African Human Rights Commission (SAHRC). The SAHRC's mandate is to promote the respect for, and protection, development and attainment of human rights, as well as to monitor and assess the observance of human rights in the country. TCTA is committed to upholding human rights at all times during the course of implementing bulk infrastructure projects.
Water Services Act, 108 of 1997	Provides the regulatory framework for the operation of water services institutions and intermediaries, relative to the provision of basic water and sanitation services. The Act becomes applicable to land acquisition and resettlement if TCTA receives a ministerial mandate (with expropriation powers) to implement water schemes under this Act.

**Table B-2: Synopsis of relevant TCTA Policies**

<b>Policy</b>	<b>Requirements / relevance</b>
Sustainability Policy	Supports the realisation of TCTA's business strategy which commits it to improving livelihoods and contributing to sustainability and transformation. Furthermore, TCTA upholds the constitutional right to an environment protected for the benefit of

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<b>Policy</b>	<b>Requirements / relevance</b>
	present and future generations thought the prioritisation of protecting natural environments and resources, human rights, and by facilitating socio-economic transformation in receiving environments.
<b>Environmental Policy</b>	Commits TCTA to plan and implement its operations with consideration of environmental sensitivity, in a socially responsible manner, and to prioritise avoidance and limitation of negative impacts on the biophysical and social environment. Further commits TCTA, its employees and other service providers to practice responsible environmental and social management in an ethical, competent and legitimate manner in line with the duty of care principle expressed in NEMA.
<b>Land Acquisition Policy</b>	Provides a framework for the high-level process according to which land (or rights to land) is acquired for the implementation of projects, from the pre-construction phase (during which project-specific resettlement plans are compiled) to land handover, and registration or transfer of land / rights.
<b>Resettlement and Livelihood Restoration Policy</b>	Provides a framework for how land acquisition and involuntary resettlement-related matters must be approached and dealt with from the time the need for land acquisition and involuntary resettlement is identified through to its detailed planning, implementation, monitoring and evaluation, and eventual closeout.

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**Table B-3: Description of international standards and guidelines**

Guidelines	Requirements / relevance
Equator Principles III	<p>The Equator Principles is a credit risk management framework for determining, assessing and managing environmental and social risks in project finance transactions. It comprises a set of principles adopted by the Equator Principles Financial Institutions to ensure that the projects they finance are developed and implemented in a manner that is socially responsible and environmentally sound.</p> <p>Equator Principle 3 "Applicable Social and Environmental Standards" requires that, for all projects located in countries not on the EP Designated Countries List, project sponsors must adhere to the IFC PSs.</p>
IFC PS, 2012	<p>The IFC, a member of the World Bank Group, has adopted a suite of PSs on social and environmental sustainability. The IFC applies these PSs to manage project-related social and environmental risks and impacts, as well as to enhance development opportunities in its private sector financing. The IFC PSs are widely regarded as international best practice with regard to the management of impacts associated with large project developments.</p> <p><b>PS 1 - Assessment and Management of Environmental and Social Risks and Impacts:</b> provides guidance on (i) integrated assessment to identify the environmental and social impacts, risks, and opportunities of projects; (ii) effective community engagement through disclosure of project-related information and consultation with local communities on matters that directly</p>

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Guidelines	Requirements / relevance
	<p>affect them; and (iii) the client's management of environmental and social performance throughout the life of the project.</p> <p><b>PS 5 - Land Acquisition and Involuntary Resettlement:</b> requires that if involuntary resettlement cannot be avoided, it should be properly managed, through careful planning and implementation of mitigation measures, to minimise the socio-economic impacts arising from land acquisition or restriction of land use. Use of negotiated settlements (compensation packages) that meet the requirements of this PS is encouraged to avoid expropriation and use of government authority to enforce relocation. It further requires that livelihood restoration be undertaken.</p> <p><b>PS 7 – Indigenous Peoples:</b> aims to ensure that the development process fosters full respect for the human rights, dignity, aspirations, culture, and natural resource-based livelihoods of Indigenous Peoples, and requires the establishment of an ongoing relationship based on Informed Consultation and Participation (ICP) and achievement of Free, Prior, and Informed Consent (FPIC) of the Affected Communities of Indigenous Peoples for the proposed development.</p> <p><b>PS 8 – Cultural Heritage:</b> aims to protect cultural heritage from the adverse impacts of project activities and support its preservation.</p>
World Bank Environmental and Social Framework, 2017	Sets out the World Bank's commitment to sustainable development, through a Bank Policy and a set of ten Environmental and Social Standards that are designed to

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	<b>TITLE</b>	<b>PROJECT COMPENSATION POLICY</b>	
			<b>DOC NO:</b> PMID
			<b>PMID-P-AD-01</b>

<b>Guidelines</b>	<b>Requirements / relevance</b>
	<p>support projects, with the aim of ending extreme poverty and promoting shared prosperity.</p> <p>The relevant Environmental and Social Standards (ESS) are:</p> <p>ESS 1: Assessment and Management of Environmental and Socials Risks and Impacts</p> <p>ESS 5: Land Acquisition, Restrictions on Land Use and Involuntary Resettlement</p> <p>ESS 7: Indigenous Peoples / Sub-Saharan African Historically Underserved Traditional Local Communities</p> <p>ESS 8: Cultural Heritage</p> <p>ESS 10: Stakeholder Engagement and Information Disclosure</p>
World Bank Operational Policy 4.12: Involuntary Resettlement	Emphasises that involuntary resettlement should be avoided or minimised, and where it is not practicable to do so, the negative impact arising therefrom should be addressed, through good faith, open and transparent consultations / negotiations. Restoration of livelihoods should be undertaken. This would include, without limitation, provision of replacement housing / agricultural assets in a manner that ensures that the affected communities / individuals are not left in a worse position after resettlement.
International Bill of Human Rights	Human rights are the rights to which all individuals are entitled, regardless of their race, sex, age, colour, national or social origin, religion, and/ or other social status. These rights are enshrined in the 'Universal Declaration of Human Rights' of 1948, which acknowledges the universality, indivisibility, interdependence and interrelatedness of fundamental human

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	<p>rights. Human rights are further codified in the (a) International Covenant on Civil and Political Rights, and (b) International Covenant on Economic, Social and Cultural Rights. Together these documents are known as the International Bill of Rights.</p> <p>International best practice requires that companies should respect and support the protection of international human rights. Business should integrate sound human rights commitments into their company policies and decision-making processes and assess actual and potential human rights impacts of their activities and relationships.</p>
Global Reporting Initiative (GRI) Standards	Promotes sustainability reporting on economic, environmental, social and governance performance by businesses and governments, and expects companies to go beyond basic legal compliance.
King IV	The King Report on Corporate Governance provides guidelines for the governance structures and operation of companies in South Africa. It requires companies to be responsible corporate citizens by focussing not only on the financial aspects of business, but also on the social and environmental impacts caused by its business operations.

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**SCHEDULE 1**

Description	Amount
Minimum consideration payable to each and every affected PAP's and individual TA's.	R5-000.00
<p>"MC" denotes minimum consideration as of date of policy approval</p> <p>"CPI" denotes consumer price index percentile</p> <p>"n" denotes number of years</p> <p><math>MC \times (1 + CPI)^n</math></p>	

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