

Resettlement and Livelihood Restoration Policy

26 April 2019



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



	TITLE	RESETTLEMENT AND LIVELIHOOD RESTORATION POLICY	
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Table of Contents

GLOSSARY OF TERMS	4
1. PREAMBLE	7
2. PROBLEM STATEMENT	7
3. PURPOSE AND SCOPE OF APPLICATION	8
4. POLICY STATEMENT	8
5. OBJECTIVES	8
6. GUIDING PRINCIPLES	9
7. REGULATORY FRAMEWORK AND APPLICABLE STANDARDS	10
7.1 SOUTH AFRICAN LEGISLATIVE REQUIREMENTS	10
7.2 RELEVANT TCTA POLICIES	12
7.3 INTERNATIONAL STANDARDS AND GUIDELINES	12
8. RESETTLEMENT AND LIVELIHOOD RESTORATION PROCESS	12
8.1 PHASE 1: PRE-PLANNING	13
8.2 PHASE 2: PLANNING	14
8.3 PHASE 3: IMPLEMENTATION	15
8.4 PHASE 4: COMPLETION AUDIT	17
9. INDEPENDENT REVIEW AND QUALITY CONTROL	17
10. GRIEVANCE REDRESS	18
11. POLICY IMPLEMENTATION ROLES AND RESPONSIBILITIES	18
12. POLICY REVIEW	20
13. APPROVED BY	20
APPENDIX A: POLICIES AND STANDARDS IN THE ENVIRONMENTAL MANAGEMENT SYSTEM	21
APPENDIX B: RELEVANT LEGISLATION, POLICIES AND GUIDELINES	22


COMPILED BY:	PMID	APPROVED BY:	BOARD
IMPLEMENTATION DATE:	MAY 2019	DATE:	MAY 2019
REVIEW DATE:	MAY 2022	REVISION:	0

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		DOC NO:	PMID
		PMID-P-AD-4	

ACRONYMS AND ABBREVIATIONS

CPA	Communal Property Association
DoA	Delegation of Authority
DWS	Department of Water and Sanitation
EA	Environmental Authorisation
EIA	Environmental Impact Assessment
EMPr	Environmental Management Programme
EMS	Environmental Management System
EXCO	Executive Committee
GRI	Global Reporting Initiative
IFC	International Finance Corporation
LRF	Livelihood Restoration Framework
LRP	Livelihood Restoration Plan
LRPF	Livelihood Restoration Policy Framework
PAP	Project Affected Person
PMID	Project Management Implementation Division
PoE	Panel of Experts
PS	Performance Standards
RAP	Resettlement Action Plan
RPF	Resettlement Policy Framework
TCTA	Trans-Caledon Tunnel Authority


COMPILED BY:	PMID	APPROVED BY:	BOARD
IMPLEMENTATION DATE:	MAY 2019	DATE:	MAY 2019
REVIEW DATE:	MAY 2022	REVISION:	0

	TITLE	RESETTLEMENT AND LIVELIHOOD RESTORATION POLICY	
		DOC NO:	PMID
		PMID-P-AD-4	

GLOSSARY OF TERMS


- Assets** : Property or resources owned, held or to the benefit of individuals, communities, government or other institutions, for which compensation is payable in the event of land acquisition.
- Compensation** : 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
- Cultural heritage** : Includes, cemeteries, historic sites and spiritual sites as defined in the NHRA, 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.
- Displaced project affected person** : 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.
- Economic displacement** : 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.
- Host community** : The incumbent community in the area to which physically displaced PAPs are relocated.
- In-kind compensation** : Compensation paid towards affected people or an organisation in the form of non-cash payment.
- Involuntary resettlement** : 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 (implementing authority has expropriation powers).

COMPILED BY:	PMID	APPROVED BY:	BOARD
IMPLEMENTATION DATE:	MAY 2019	DATE:	MAY 2019
REVIEW DATE:	MAY 2022	REVISION:	0

	TITLE	RESETTLEMENT AND LIVELIHOOD RESTORATION POLICY	
		DOC NO:	PMID
		PMID-P-AD-4	

- Land acquisition** : The process of acquiring land and / or servitude rights either by way of negotiated agreement or by expropriation.
- Land expropriation** : Process whereby government/expropriating authority, has a right to take land for public purposes or public interest, subject to compensation.
- Livelihood** : 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
- Livelihood Disruption** : Any change to the normal way in which livelihoods are approached or implemented and/or a change in the sustainability of a livelihood strategy because of project-related activities.
- Livelihood restoration** : Re-establishing productive livelihood of the displaced persons to a level equal to or better than before resettlement.
- Permanent displacement** : Loss of shelter, assets income streams, means of livelihood or obstructed access to resources cannot be reversed.
- Physical displacement** : 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.
- Project affected person** : Any person who, as a result of the implementation of a project, experiences health, safety, environmental, social or any other impact.
- Project social licence** : 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.
- Replacement cost** : Market value of the assets plus transaction costs and excluding depreciation costs.

COMPILED BY:	PMID	APPROVED BY:	BOARD
IMPLEMENTATION DATE:	MAY 2019	DATE:	MAY 2019
REVIEW DATE:	MAY 2022	REVISION:	0

	TITLE	RESETTLEMENT AND LIVELIHOOD RESTORATION POLICY	
		DOC NO:	PMID
		PMID-P-AD-4	

- Resettlement process** : The lifecycle of resettlement projects, subdivided into four distinct phases, namely pre-planning, planning, implementation and completion audit.
- Stakeholders** : Any and all individuals, groups, organisations, and institutions interested in and potentially affected by a project or having the ability to influence a project.
- Temporary displacement** : 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 / continue use of assets after some time (e.g. after construction).
- Valuation** : 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
- Vulnerable groups** : 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.

COMPILED BY:	PMID	APPROVED BY:	BOARD
IMPLEMENTATION DATE:	MAY 2019	DATE:	MAY 2019
REVIEW DATE:	MAY 2022	REVISION:	0

	TITLE	RESETTLEMENT AND LIVELIHOOD RESTORATION POLICY	
		DOC NO:	PMID
		PMID-P-AD-4	

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.

The King IV Report on Corporate Governance requires amongst others, 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. Effective resettlement and livelihood restoration, as a mitigation measure for persons displaced due to implementation of projects, is a good corporate citizen practice.


2. PROBLEM STATEMENT

In some instances, land required for the implementation of TCTA bulk raw water infrastructure projects is used for residential and/or livelihood purposes. The acquisition of such land by TCTA thus results in physical and/or economic displacement of some project affected persons (PAPs) on a temporary or permanent basis (displaced PAPs). Decades of research have shown that involuntary resettlement associated with public and private sector projects frequently results in the impoverishment of PAPs. "The most significant risks associated with involuntary resettlement are landlessness, joblessness, homelessness, marginalisation, food insecurity, increased morbidity and mortality, loss of access to common property and services, and social disarticulation."¹

In order to minimise risk, this policy must provide a framework within which resettlement and livelihood restoration should take place.

¹ Cernea, Michael M. 1997. "The "Risks and Reconstruction Model for Resettling Displaced Populations." World Development 25 (10): 1569–87.

COMPILED BY:	PMID	APPROVED BY:	BOARD
IMPLEMENTATION DATE:	MAY 2019	DATE:	MAY 2019
REVIEW DATE:	MAY 2022	REVISION:	0

	TITLE	RESETTLEMENT AND LIVELIHOOD RESTORATION POLICY	
		DOC NO:	PMID
		PMID-P-AD-4	

3. PURPOSE AND SCOPE OF APPLICATION

This policy provides a framework on how involuntary resettlement and livelihood restoration must be approached from detailed planning, implementation, monitoring and evaluation, and through to eventual closeout. The policy establishes the framework through:

- Specifying legislation, international standards and principles relevant to involuntary resettlement and livelihood restoration; and
- Outlining the requirements for the development and implementation of project-specific resettlement and livelihood restoration plans.

This policy is applicable to:

- TCTA projects that result in involuntary temporary or permanent economic or physical displacement of people; and
- All TCTA personnel and third parties it engages in any aspect of the land acquisition, resettlement and/or livelihood restoration process from policy framework development to closeout audits.

4. POLICY STATEMENT

TCTA is committed to avoiding or minimising risks associated with involuntary resettlement, taking guidance from international practices and standards developed for this purpose. To this end, TCTA needs a comprehensive and systematic Resettlement and Livelihood Restoration Policy through which it will manage the planning, implementation, monitoring and evaluation of resettlement and livelihood restoration. TCTA's Sustainability and Land Acquisition policies underpin this policy, as illustrated in Appendix A.

5. OBJECTIVES

The objectives of this policy are to:

- Clearly and concisely communicate TCTA's stance on matters relating to involuntary resettlement and livelihood restoration;
- Standardise the approach to involuntary resettlement and livelihood restoration across projects by staff, and third parties acting on behalf of TCTA;

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IMPLEMENTATION DATE:	MAY 2019	DATE:	MAY 2019
REVIEW DATE:	MAY 2022	REVISION:	0

	TITLE	RESETTLEMENT AND LIVELIHOOD RESTORATION POLICY	
		DOC NO:	PMID
		PMID-P-AD-4	

- Comply with South African legislations and related regulations. Align to codes of good practice and standards relating to involuntary resettlement and livelihood restoration where practicable and obtain projects social licences; and
- Avoid or reduce the negative socio-economic impacts associated with involuntary resettlement and livelihood disruption.

6. GUIDING PRINCIPLES

This policy is based on the following principles:

- Resettlement / livelihood restoration planning, budgeting, implementation, monitoring and evaluation shall form an integral part of TCTA's project planning and implementation.
- Involuntary physical and/or economic displacement shall in the first instance be avoided and, where not possible, minimised through consideration of alternative project design and/or process optimisation.
- Resettlement and livelihood restoration activities shall be conducted in a manner that (a) complies with South African legislative requirements and codes of good practice, (b) adheres to TCTA's values of Respect, Integrity, Excellence, as well as Growth.
- PAPs culture, practices, language preferences and level of education will be respected throughout the resettlement / livelihood restoration process.
- Interested persons and displaced PAPs will be engaged in a meaningful manner from the outset of resettlement / livelihood restoration planning to ensure they are informed of their rights and participate in the decision-making process. Consultation will continue throughout implementation and until the finalisation of the completion audit and project close-out.
- Compensation for the loss of assets, or access to assets, will be paid and/or provided according to the entitlement matrix and compensation framework agreed with the affected parties. This matrix and framework must be (a) in accordance with TCTA's Compensation Policy and fulfil the International Finance Corporation's (IFC's) Performance Standards (PS) 5 requirements, and (b) included in the approved project-specific Resettlement Action Plan (RAPs) / Livelihood Restoration Plan (LRPs) (as appropriate to project-specific conditions – Section 8.2).

COMPILED BY:	PMID	APPROVED BY:	BOARD
IMPLEMENTATION DATE:	MAY 2019	DATE:	MAY 2019
REVIEW DATE:	MAY 2022	REVISION:	0

	TITLE	RESETTLEMENT AND LIVELIHOOD RESTORATION POLICY	
		DOC NO:	PMID
		PMID-P-AD-4	

- Post-resettlement socio-economic baseline conditions will be equal or better than pre-resettlement conditions. To this end, displaced PAPs will be assisted to restore or improve their livelihoods as part of the resettlement / livelihood restoration process. PAPs will also be provided with security of tenure post-resettlement, as appropriate to the compensation offered in each project-specific case.
- Vulnerable displaced PAPs will be identified during resettlement / livelihood restoration planning. Specific measures will be designed and implemented during resettlement implementation to ensure that physical/economic displacement does not disproportionately affect these PAPs.
- The impact of resettlement / livelihood restoration on host communities will be assessed during the resettlement / livelihood restoration planning phase. Measures to promote the social and economic integration of displaced PAPs and/into the host communities will be implemented as part of the resettlement / livelihood restoration implementation phase.
- Project grievance and monitoring procedures will be established as part of project planning prior to the resettlement / livelihood restoration planning and remain in force for a predetermined period subsequent to implementation.

7. REGULATORY FRAMEWORK AND APPLICABLE STANDARDS


Resettlement and livelihood restoration activities must comply with all South African legislation and regulations read with applicable TCTA policies and procedures. Furthermore, TCTA will seek to align resettlement and livelihood restoration activities with best practice and international standards, where practicable.

7.1 SOUTH AFRICAN LEGISLATIVE REQUIREMENTS

The relevant legislations governing the application of this policy are listed below, and their relevance to this policy is outlined in Appendix B. Legislations relevant to land acquisition are outlined in the Land Acquisition Policy.

- 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)

COMPILED BY:	PMID	APPROVED BY:	BOARD
IMPLEMENTATION DATE:	MAY 2019	DATE:	MAY 2019
REVIEW DATE:	MAY 2022	REVISION:	0

	TITLE	RESETTLEMENT AND LIVELIHOOD RESTORATION POLICY	
		DOC NO:	PMID
		PMID-P-AD-4	

- Constitution of the Republic of South Africa Act, 108 of 1996
- Deeds Registries Act, 47 of 1937 (DRA)
- Extension of Security of Tenure Act, 62 of 1997 (ESTA)
- Government Immovable Assets Management Act, 19 of 2007 (GIAMA)
- Infrastructure Development Act, 23 of 2014
- Interim Protection of Informal Land Rights Act, 31 of 1996 (IPILRA)
- Labour Relations Act, 66 of 1995 (LRA)
- Land Reform (Labour Tenants) Act, 3 of 1996
- Land Survey Act, 8 of 1997
- Mineral and Petroleum Resources Development Act, 28 of 2002 (MPRDA)
- Municipal Finance Management Act, 56 of 2003 (MFMA)
- Municipal Systems Act, 32 of 2000 (MSA)
- National Environmental Management Act, 107 of 1998 (NEMA)
- National Heritage Resources Act, 25 of 1999 (NHRA)
- 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)
- Spatial Data Infrastructure Act, 54 of 2003
- Spatial Planning and Land Use Management Act, 16 of 2013 (SPLUMA)
- Subdivision of Agricultural Land Act, 70 of 1970 (SALA)

In instances where project Treaty trigger cross-border displacement, the planning process must consider the Treaty and relevant legislations of all project countries. An agreement must

COMPILED BY:	PMID	APPROVED BY:	BOARD
IMPLEMENTATION DATE:	MAY 2019	DATE:	MAY 2019
REVIEW DATE:	MAY 2022	REVISION:	0

	TITLE	RESETTLEMENT AND LIVELIHOOD RESTORATION POLICY	
		DOC NO:	PMID
		PMID-P-AD-4	

be reached with all project governments regarding the legislations that will be applied for the project, without infringing on national sovereignty of any one project country.

7.2 RELEVANT TCTA POLICIES

TCTA policies that have a bearing on the approach to involuntary resettlement and livelihood restoration are listed below. A brief synopsis of each is provided in Appendix B.

- Sustainability Policy
- Environmental Policy
- Land Acquisition Policy
- Compensation Policy

7.3 INTERNATIONAL STANDARDS AND GUIDELINES

Pertinent international standards and guidelines adopted for this policy are listed below. A brief description of each is provided in Appendix B.

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

The resettlement and livelihood restoration process must be conceptualised as consisting of four distinct phases; namely: pre-planning, planning, implementation and completion audit.

COMPILED BY:	PMID	APPROVED BY:	BOARD
IMPLEMENTATION DATE:	MAY 2019	DATE:	MAY 2019
REVIEW DATE:	MAY 2022	REVISION:	0

	TITLE	RESETTLEMENT AND LIVELIHOOD RESTORATION POLICY	
		DOC NO:	PMID
		PMID-P-AD-4	

Phase 1 is contingent on the nature and scale of the project causing the displacement, and may not be applicable to all projects.

The four phases of the resettlement and livelihood restoration process are not necessarily discrete, can be iterative and overlap depending on project-specific conditions and timing.

8.1 PHASE 1: PRE-PLANNING

The socio-economic impact of displacement must be determined during the project-specific pre-feasibility or feasibility phases, otherwise during the Environmental Impact Assessment (EIA) process. Resettlement / livelihood restoration pre-planning must be undertaken if:

- The extent or footprint of economic and/or physical displacement is not known;
- Resettlement / livelihood restoration is undertaken in a phased manner; and/or
- Resettlement / livelihood restoration implementation may be delayed for strategic, business or project purposes.

If any of the abovementioned circumstances are encountered, a Resettlement Policy Framework (RPF) (in the event of physical and economic displacement) or Livelihood Restoration Policy Framework (LRPF) (in the event of economic displacement only) must be developed, as appropriate.

The policy framework documents must include, as a minimum:

- Description of project components that will trigger land acquisition and resettlement / livelihood restoration;
- Estimated land take area and number of PAPs that stand to be physically and/or economically displaced;
- Legal framework that must govern the resettlement and livelihood restoration processes, including valuation methods to determine compensation amounts;
- Eligibility criteria for inclusion in the resettlement and livelihood restoration process, as well as entitlement matrix;
- Organisational arrangements for the delivery of entitlements and compensation;
- Description of the expected consultation process, grievance redress mechanism, arrangements for funding and implementation timeline; and
- Provisional monitoring and evaluation protocols to be implemented.

COMPILED BY:	PMID	APPROVED BY:	BOARD
IMPLEMENTATION DATE:	MAY 2019	DATE:	MAY 2019
REVIEW DATE:	MAY 2022	REVISION:	0

	TITLE	RESETTLEMENT AND LIVELIHOOD RESTORATION POLICY	
		DOC NO:	PMID
		PMID-P-AD-4	

8.2 PHASE 2: PLANNING

During the planning phase, one or several of the following planning documents shall be developed, with the number of documents determined by the project's land access schedule:

- Temporary land access agreement – in the event that land is required for a limited period agreed upon with displaced PAPs;
- RAP – in the event of permanent physical and economic displacement; and/or
- LRP – in the event of economic displacement only.

Information required for the compilation of a project-specific plan (temporary land access agreement, RAP and/or LRP) must be collected by means of desktop studies, household-level surveys and consultations with PAPs and other relevant stakeholders (e.g. CPAs, traditional leadership structures, local governmental representatives).

The project-specific plan shall, as a minimum, include:

- Description of the project, resettlement-related project impacts and PAPs;
- Efforts made to minimise displacement, including their results;
- Applicable legislation, TCTA policies and international guidelines, including gap analysis of local legislative requirements, policy requirements and requirements of international standards and recommendations to address gaps;
- Detailed socio-economic baseline profile and census of all displaced PAPs and community assets, including an asset inventory, identification of vulnerable PAPs and details about the cut-off date or moratorium imposed for the project;
- Detailed account of the consultation activities undertaken as part of the planning process, including records of attendance and minutes of consultations, segregated by gender;
- Entitlement and compensation framework, including categories of affected PAPs, eligibility criteria to be applied during the resettlement process, entitlements and compensation (aligned with TCTA's Compensation Policy), and measures specific to vulnerable PAPs;
- Approach to and strategies for livelihood restoration;
- Project Grievance redress and dispute resolution mechanism;

COMPILED BY:	PMID	APPROVED BY:	BOARD
IMPLEMENTATION DATE:	MAY 2019	DATE:	MAY 2019
REVIEW DATE:	MAY 2022	REVISION:	0

	TITLE	RESETTLEMENT AND LIVELIHOOD RESTORATION POLICY	
		DOC NO:	PMID
		PMID-P-AD-4	

- Detailed monitoring and evaluation requirements, including performance monitoring, impacts monitoring, completion audit and reporting requirements;
- Organisational and institutional arrangements, as well as roles and responsibilities for implementing the project-specific plan, in accordance with the Land Acquisition Policy.
- Implementation schedule and budget, aligned with the process outlined in the Land Acquisition Policy.

The planning phase will be considered complete once:

- The RAP / LRP has been disclosed to and accepted by displaced PAPs and relevant project stakeholders as defined in the planning document;
- Necessary revisions have been made to the planning document based on PAP and stakeholder feedback during disclosure; and
- TCTA Executive Committee or Board depending on the quantum and/or nature of the compensation, as per the delegation of authority, has approved and signed off the planning document.

8.3 PHASE 3: IMPLEMENTATION

The implementation phase involves the execution of the planning document in line with the implementation schedule detailed therein and approved during the planning phase. Implementation must commence immediately after the completion of the planning phase; however, if there is a delay of 12 months or more between the two phases, verification of the displaced PAPs and valuation of assets must be done.

The project implementation programme must inform the timing of execution and be decided upon in consultation with the affected parties and relevant specialists. The best practicable option must be applied in the interest of limiting negative impacts and risks, and enhancing the likelihood of success.

The implementation team must be multi-disciplinary as required by the project-specific conditions and as defined in the planning document. The team must function under the leadership of the TCTA Social Specialist, with support from TCTA Land Acquisition, Environment, Engineering and Project Management disciplines as required.

The team must conduct performance and impact monitoring throughout the implementation phase, as detailed in the planning document. Monitoring indicators must be developed at the

COMPILED BY:	PMID	APPROVED BY:	BOARD
IMPLEMENTATION DATE:	MAY 2019	DATE:	MAY 2019
REVIEW DATE:	MAY 2022	REVISION:	0

	TITLE	RESETTLEMENT AND LIVELIHOOD RESTORATION POLICY	
		DOC NO:	PMID
		PMID-P-AD-4	

outset of the implementation phase and updated accordingly. It should be noted that indicators can differ per project. These indicators must be informed by:

- Relevant TCTA policies;
- TCTA's Environmental Management System (EMS) procedures, specifically the Objectives, Indicators and Targets Procedure;
- Project-specific loan and other agreements;
- Conditions attached to the Environmental Authorisation; and
- Environmental Management Programme (EMPr).

Performance monitoring must include an assessment of the following:

- Physical progress against the implementation schedule, budget and action plans;
- Community consultations;
- Project grievance procedure in place and functioning (claims addressed);
- Compensation payments, transferral of entitlements and resettlement / livelihood restoration funding are disbursed in a fair, transparent manner and as intended;
- Resettlement or livelihood restoration is implemented in line with the principles, procedures and timeframes detailed in the planning document;
- Progress with income restoration and development activities are undertaken as part of livelihood restoration; and
- Monitoring and evaluation reports are submitted.


Impact monitoring indicators must provide an assessment of:

- Demographic, social and economic effects of resettlement;
- Impact of and responses to the sustainability of livelihood restoration measures; and
- Adaptability of PAPs, especially vulnerable PAPs.

Evaluation of monitoring activities must provide an assessment of implementation progress and performance against monitoring indicators. Reporting must include:

- Evaluation of performance and impact monitoring results against indicators;

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IMPLEMENTATION DATE:	MAY 2019	DATE:	MAY 2019
REVIEW DATE:	MAY 2022	REVISION:	0

	TITLE	RESETTLEMENT AND LIVELIHOOD RESTORATION POLICY	
		DOC NO:	PMID
		PMID-P-AD-4	

- Corrective actions proposed, implemented and their effectiveness;
- Identification of current and emerging risks and issues;
- Assessment of overall implementation compliance with the planning document; and
- Recommendations to improve future resettlement and livelihood restoration planning and implementation processes in the interest of continual improvement.

The implementation phase will be considered complete when the RAP and LRP have been implemented as planned, and PAPs have been provided with adequate opportunity to re-establish livelihoods, as determined in the planning document.

8.4 PHASE 4: COMPLETION AUDIT

Upon completion of the implementation phase and as part of the project's close-out, an independent resettlement specialist, who has not been involved in the previous phases of the resettlement and livelihood restoration process, must undertake a completion audit. The audit must assess whether the outcomes of the RAP / LRP comply with South African legislative requirements, standards and codes of good practice, specifically regarding the restoration of livelihoods and overall living standards of PAPs after resettlement / livelihood restoration implementation.

9. INDEPENDENT REVIEW AND QUALITY CONTROL

In addition to the monitoring, evaluation and audit activities required during phases 3 and 4 of the resettlement and livelihood restoration process, the following independent review and quality control must be undertaken:

- Ongoing inspections by the Social Monitor, as part of social audits;
- Periodic review, advice, guidance and independent assurance of the resettlement and livelihood restoration process by a Panel of Experts (PoE), as deemed necessary by the implementation management team;
- Audits at the end of each phase; and
- Annual audits conducted by an independent external auditor.

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REVIEW DATE:	MAY 2022	REVISION:	0

	TITLE	RESETTLEMENT AND LIVELIHOOD RESTORATION POLICY	
		DOC NO:	PMID
		PMID-P-AD-4	

10. GRIEVANCE REDRESS

As part of resettlement and livelihood restoration planning, a grievance redress mechanism must be designed, including as a minimum:

- Institutional arrangements;
- Procedure for recording and processing grievances;
- Mechanisms for adjudicating grievances and appealing judgements; and
- Schedule for steps in the grievance redress mechanism.

The grievance redress mechanism must allow for impartial adjudication of grievances and promote resolution of grievances at community-level.

PAPs must be informed of the grievance redress mechanism during initial consultation as part of the planning phase, and prior to the commencement of census, socio-economic and asset surveys. Feedback from PAPs on the grievance mechanism must be taken into consideration prior to the finalisation and implementation of the mechanism.

Detailed records of grievances must be kept, including the name and contact details of the aggrieved PAPs, date, detailed description of grievances, responsible person for resolution, outcome achieved, and the date feedback is provided to the aggrieved PAPs.

11. POLICY IMPLEMENTATION ROLES AND RESPONSIBILITIES

Role	Responsibility
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 project-specific RAPs and LRPs, in line with the DoA
Executive Committee	- Review and comment on the policy - Recommend the policy for board approval - Provide management assurance to Board on the implementation of the policy
Policy Committee	- Review and comment on the policy - Recommend the policy for EXCO consideration

COMPILED BY:	PMID	APPROVED BY:	BOARD
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	TITLE	RESETTLEMENT AND LIVELIHOOD RESTORATION POLICY	
		DOC NO:	PMID
		PMID-P-AD-4	

Role	Responsibility
PMID Executive Manager	<ul style="list-style-type: none"> - Review and comment on the Policy - Recommend the Policy for EXCO consideration - Provide management assurance to EXCO on the implementation of the Policy - Review, comment and approve project-specific RAPs and LRPs, in line with the DoA - Approve compensation payments and settlement claims, subject to limits set in the DoA
Head of Environment	<ul style="list-style-type: none"> - Ensure consistent, effective and efficient implementation of the policy - Enforce compliance with the policy - Provide strategic guidance for the implementation of the policy in project-specific cases - Ensure review of the policy as required
Social Specialist	<ul style="list-style-type: none"> - Compile and/ or review the resettlement / livelihood restoration scope of work in all documentation - Ensure consultant / third party compliance with the policy - Manage third party resettlement specialists and day-to-day activities - Manage resettlement and livelihood restoration budgets and day-to-day activities - Review, comment on and recommended for approval all project-specific RAPs and LRPs - Implement project-specific RAPs and LRPs in collaboration with the project manager, land acquisition manager and third-party resettlement specialist, as appropriate - Report on resettlement and livelihood restoration matters as part of management reporting
Land Acquisition Manager	<ul style="list-style-type: none"> - Provide support to the Project Manager and Social Specialist to ensure consistent, effective and efficient implementation of the policy - Review and comment on project-specific RAPs and LRPs to ensure alignment with the Land Acquisition Policy - Support the implement project-specific RAPs and LRPs in collaboration with the project manager, social specialist and third-party resettlement specialist, as appropriate - Acquire land for resettlement purposes (replacement land for in-kind compensation)
Project Manager	<ul style="list-style-type: none"> - Ensure integration of this policy into the overall project planning, execution and close-out - Review and comment on project-specific RAPs and LRPs - Oversee the implementation of project-specific RAPs and LRPs in collaboration with the social specialist, land acquisition manager and third party resettlement specialist, as appropriate

COMPILED BY:	PMID	APPROVED BY:	BOARD
IMPLEMENTATION DATE:	MAY 2019	DATE:	MAY 2019
REVIEW DATE:	MAY 2022	REVISION:	0

	TITLE	RESETTLEMENT AND LIVELIHOOD RESTORATION POLICY	
		DOC NO:	PMID
		PMID-P-AD-4	

Role	Responsibility
Other TCTA Divisions	<ul style="list-style-type: none"> - Provide resettlement and livelihood restoration input and support as required - Provide subject matter expertise to support the resettlement and livelihood restoration process as required

12. 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.

13. APPROVED BY

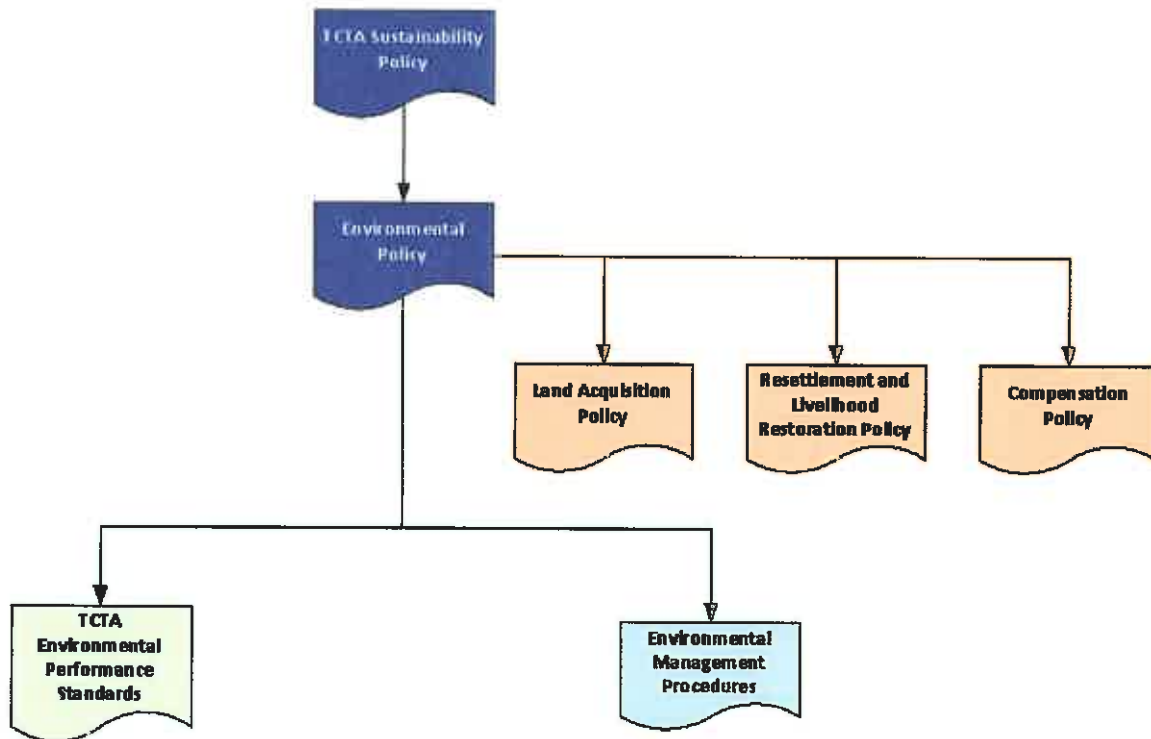
Name	Designation	Signature	Date
Zodwa Manase	Chairperson : Board		29 April 2019

COMPILED BY:	PMID	APPROVED BY:	BOARD
IMPLEMENTATION DATE:	MAY 2019	DATE:	MAY 2019
REVIEW DATE:	MAY 2022	REVISION:	0




TITLE	RESETTLEMENT AND LIVELIHOOD RESTORATION POLICY	
	DOC NO:	PMID
	PMID-P-AD-4	

APPENDIX A: POLICIES AND STANDARDS IN THE ENVIRONMENTAL MANAGEMENT SYSTEM



COMPILED BY:	PMID	APPROVED BY:	BOARD
IMPLEMENTATION DATE:	MAY 2019	DATE:	MAY 2019
REVIEW DATE:	MAY 2022	REVISION:	0

	TITLE	RESETTLEMENT AND LIVELIHOOD RESTORATION POLICY	
		DOC NO:	PMID
		PMID-P-AD-4	

APPENDIX B: RELEVANT LEGISLATION, POLICIES AND GUIDELINES

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	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 with regard to 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: <ul style="list-style-type: none"> (1) If the employer of an employee who resides in accommodation that is situated on the premises of the employer or that is supplied by the employer terminates the contract of employment of that employee — <ul style="list-style-type: none"> (a) before the date on which the employer was entitled to do so in terms of section 37; or (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 is a longer period, until the contract of employment could lawfully have been terminated. (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.
Communal Property Association Act, 28 of 1996 (CPA)	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 resettlement and livelihood restoration processes on land under their management.
Conservation of Agricultural Resources Act, 43 of 1983 (as amended) (CARA)	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.

COMPILED BY:	PMID	APPROVED BY:	BOARD
IMPLEMENTATION DATE:	MAY 2019	DATE:	MAY 2019
REVIEW DATE:	MAY 2022	REVISION:	0

	TITLE	RESETTLEMENT AND LIVELIHOOD RESTORATION POLICY	
		DOC NO:	PMID
		PMID-P-AD-4	


Legislation	Requirements / relevance
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, Chapter 2, Bill of Rights (Section 25)	Prohibits compulsory acquisition of property except in accordance with the law of general application. Notable provisions include: <ul style="list-style-type: none"> - Section 25(2)(a) - property may be expropriated for public purpose or in the public interest - Section 25(2)(b) - subject to compensation - 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: <ul style="list-style-type: none"> ▪ the current use of the property; ▪ the history of the acquisition and use of property; ▪ the market value of the property; ▪ the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and ▪ the purpose of expropriation.
Constitution of the Republic of South Africa, 108 of 1996, Chapter 2, Bill of Rights (Section 26)	Provides for the right to housing, including the right to due process with regard to court ordered eviction and demolition.
Deeds Registries Act, 47 of 1937 (and amended regulations)	Provides for the registration of land (title deeds) for the purposes of tenure security. Sections 31 and 32 pertain to the transfer of expropriated land and registration of expropriated servitude rights, respectively. According to international standards, physically displaced PAPs are also entitled to security of tenure after resettlement; this Act provides the mechanism through which this can be secured.
Extension of Security of Tenure Act, 62 of 1997	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: <ul style="list-style-type: none"> - Protects occupiers against unfair evictions by the land owner. - Provides for legal evictions under certain circumstances. - Sets out the rights and duties of owners and occupiers. - 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.

COMPILED BY:	PMID	APPROVED BY:	BOARD
IMPLEMENTATION DATE:	MAY 2019	DATE:	MAY 2019
REVIEW DATE:	MAY 2022	REVISION:	0

	TITLE	RESETTLEMENT AND LIVELIHOOD RESTORATION POLICY	
		DOC NO:	PMID
		PMID-P-AD-4	


Legislation	Requirements / relevance
	<ul style="list-style-type: none"> - 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>In 2001, ESTA was amended to specifically allow occupiers to bury family members on the land where they lived.</p> <p>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>
Government Immovable Assets Management Act, 19 of 2007	Provides for the management of immovable assets held by a national or provincial government. Management of community assets on acquired land is the responsibility of TCTA prior to handover to Department Water and Sanitation. International standards require communal assets to be compensated according to the same principles that apply to individually-owned assets.
Infrastructure Development Act, 23 of 2014	Provides for the facilitation and coordination of public infrastructure development, prioritising planning, approval and implementation of strategic infrastructure projects (SIPs). Projects implemented by TCTA are designated SIPs. The Act makes provision for expropriation of land or any related right required for the implementation of SIP projects.
Interim Protection of Informal Land Rights Act, 31 of 1996 (IPILRA)	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.
Labour Relations Act	Provides for compensation of economically displaced employees
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 Act.
Land Survey Act, 8 of 1997	Provides requirements according to which land acquired for TCTA projects must be surveyed for registration in the Surveyor General's Office. Also applicable to the provision of certain in-kind compensation (e.g. land for land) to secure tenure for the PAP.
Mineral and Petroleum Resources Development Act, 28 of 2002 (MPRDA)	Requires a mining right or permit to be obtained for the extraction of mineral resources, including resources extracted from borrow pits. Accordingly, depending on the size and duration of use of a borrow pit, TCTA may have to apply for such a right or permit, and produce

COMPILED BY:	PMID	APPROVED BY:	BOARD
IMPLEMENTATION DATE:	MAY 2019	DATE:	MAY 2019
REVIEW DATE:	MAY 2022	REVISION:	0

	TITLE	RESETTLEMENT AND LIVELIHOOD RESTORATION POLICY	
		DOC NO:	PMID
		PMID-P-AD-4	

Legislation	Requirements / relevance
	supporting documentation such as an Environmental Management Plan and/or Social and Labour Plan.
Municipal Finance Management Act, 56 of 2003	Provides for valuation and transfer of assets related to resettlement and livelihood restoration
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 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.
National Environmental Management Act, 107 of 1998	Developers are obliged to: <ul style="list-style-type: none"> - Integrate the principles of environmental management into the making of all decisions which may have a significant effect on the environment; - Minimise negative impacts, maximise benefits, and promote compliance with the principles of environmental management; and - Ensure adequate and appropriate opportunity for public participation in decisions that may affect the environment.
National Heritage Resources Act, 25 of 1999 (NHRA)	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: <ul style="list-style-type: none"> - Places, buildings, structures and equipment of cultural significance; - Places to which oral traditions are attached or which are associated with living heritage; - Historical settlements and townscapes, landscapes and natural features of cultural significance, - Geological sites of scientific or cultural importance; - Archaeological and paleontological sites; - Graves and burial grounds; and - Sites of significance relating to South African history and movable objects. <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.

COMPILED BY:	PMID	APPROVED BY:	BOARD
IMPLEMENTATION DATE:	MAY 2019	DATE:	MAY 2019
REVIEW DATE:	MAY 2022	REVISION:	0

	TITLE	RESETTLEMENT AND LIVELIHOOD RESTORATION POLICY	
		DOC NO:	PMID
		PMID-P-AD-4	

Legislation	Requirements / relevance
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.
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 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 always upholding human rights during the implementation of bulk infrastructure projects.
Spatial Data Infrastructure, 54 of 2003	Provides for the determination of standards and prescriptions regarding the facilitation of sharing spatial information. The Act is applicable insofar as it prescribes the standards spatial data must adhere to, to be considered suitable for sharing.
Spatial Planning and Land use Management Act, 16 of 2013	Provides a framework for spatial planning and land use management for inclusive developmental, equitable and efficient spatial planning. Land use schemes in TCTA's project areas, including resettlement areas, should be considered during project planning processes.
Subdivision of Agricultural Land Act, 70 of 1970 (SALA)	The Act serves to control the subdivision of agricultural land in order to prevent agriculturally useful land being fragmented into uneconomic portions. It does this by prohibiting the subdivision of agricultural land, save with the consent of the Minister of Agriculture.

COMPILED BY:	PMID	APPROVED BY:	BOARD
IMPLEMENTATION DATE:	MAY 2019	DATE:	MAY 2019
REVIEW DATE:	MAY 2022	REVISION:	0

	TITLE	RESETTLEMENT AND LIVELIHOOD RESTORATION POLICY	
		DOC NO:	PMID
		PMID-P-AD-4	

Table B-2: Synopsis of relevant TCTA Policies

Policy	Requirements / relevance
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 present and future generations through the prioritisation of protecting natural environments and resources, human rights, and by facilitating socio-economic transformation in receiving environments.
Environmental Policy	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.
Land Acquisition Policy	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.
Compensation Policy	Provides a compensation framework according to which PAPs are compensated, allowing for a consistent approach across different projects geared towards equitable compensation and restoration of livelihoods.

Table B-3: Description of international standards and guidelines


Guidelines	Requirements / relevance
Equator Principles III	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. 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.
IFC PS, 2012	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. - PS 1 - Assessment and Management of Environmental and Social Risks and Impacts: provides guidance on (i) integrated assessment

COMPILED BY:	PMID	APPROVED BY:	BOARD
IMPLEMENTATION DATE:	MAY 2019	DATE:	MAY 2019
REVIEW DATE:	MAY 2022	REVISION:	0

	TITLE	RESETTLEMENT AND LIVELIHOOD RESTORATION POLICY	
		DOC NO:	PMID
		PMID-P-AD-4	

Guidelines	Requirements / relevance
	<p>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 affect them; and (iii) the client's management of environmental and social performance throughout the life of the project.</p> <ul style="list-style-type: none"> - PS 5 - Land Acquisition and Involuntary Resettlement: 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. - PS 7 – Indigenous Peoples: 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. - PS 8 – Cultural Heritage: aims to protect cultural heritage from the adverse impacts of project activities and support its preservation.
World Bank Environmental and Social Framework, 2017	<p>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 support projects, with the aim of ending extreme poverty and promoting shared prosperity.</p> <p>The relevant Environmental and Social Standards (ESS) are:</p> <ul style="list-style-type: none"> - ESS 1: Assessment and Management of Environmental and Social Risks and Impacts - ESS 5: Land Acquisition, Restrictions on Land Use and Involuntary Resettlement - ESS 7: Indigenous Peoples / Sub-Saharan African Historically Underserved Traditional Local Communities - ESS 8: Cultural Heritage - ESS 10: Stakeholder Engagement and Information Disclosure
World Bank Operational Policy 4.12: Involuntary Resettlement	<p>Emphasises that involuntary resettlement should be avoided or minimised, and where it is not feasible 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.</p>

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IMPLEMENTATION DATE:	MAY 2019	DATE:	MAY 2019
REVIEW DATE:	MAY 2022	REVISION:	0

	TITLE	RESETTLEMENT AND LIVELIHOOD RESTORATION POLICY	
		DOC NO:	PMID
		PMID-P-AD-4	

Guidelines	Requirements / relevance
International Bill of Human Rights	<p>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 rights.</p> <p>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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IMPLEMENTATION DATE:	MAY 2019	DATE:	MAY 2019
REVIEW DATE:	MAY 2022	REVISION:	0