**Title:** Resettlement implementation -Practical lessons learned from Lesotho

1. **Background**

The $362.6 million Lesotho Compact financed by the United States Government Millennium Challenge Corporation (MCC) has required Millennium Challenge Account - Lesotho (MCA-L), responsible for the implementation of investments, to comply with the World Bank Operational Procedures OP4.12 for Involuntary Resettlement (2008), which requires extensive consultations with all stakeholders especially Project Affected Persons (PAPs) under different projects. Involuntary resettlement of populations was necessitated by development including construction of health facilities, water connections and land reform project. Specific projects are health sector project which focuses on construction and renovation of outpatient departments (OPDs) and Health Clinics in all ten districts of Lesotho. There are also water sector projects which comprise of Metolong Authority responsible for construction of Metolong Dam, Wetlands Project Implementing Unit (PIU) which is concerned about conservation of wetlands at 3 pilot areas, WASCO and Department of Rural Water Supply (DRWS) with the former supplying water to urban areas while the later supplies water and sanitation facilities in the rural areas. Land Reforms has regularization activity which focuses on opening pathways and vehicular way for people who previously could not easily access their land.

People who are directly affected by the projects are called PAPs and they comprised of women and men of different ages and children. Affected areas were both individually and communally owned. As part of resettlement planning MCA-L ensured that all PAPs were consulted , made adequate provision for funding, implementation arrangements, monitoring and redress of grievances. This presentation will share examples of practical lessons and challenges encountered while implementing resettlement under different projects and the solutions adopted by MCA-L team and its partners in an effort to ensure the best possible outcomes for the PAPs.

1. **Regulatory framework**

All MCA-L projects are governed by a number of national legal instruments and international guidelines and policies. The sections below gives an outline of some of the instruments.

* 1. *Constitution of Lesotho, 1993*

Article 17 of the Constitution of Lesotho provides that persons with an interest in or right over property that is compulsorily acquired have the right to access to the High Court to determine the interest or right, the legality of acquisition of the property and the amount of any compensation to which such persons are entitled to and to obtain timely payment of the compensation. This means that it recognises a persons’ entitlement to information on land acquisition for development projects and compensation.

### Legal Capacity of Married Person’s Act, 2006

The Act provides for removal of minority status of married women by repealing the marital power which previously the husband had over the wife and her property. This means that a married woman can now enter into a contract, register immovable property in her name, act as an executrix of deceased estate and a trustee of an estate. The Act further provides for equal powers of spouses if they are married in community of property. In consultation with each other, the spouses can “dispose of the assets of the joint estate; contract debts for which the joint estate is liable; and administer the joint estate” (GOL: page 464). The Act clearly stipulates acts which require other spouse’s consent, such as receiving money by way of compensation for loss of any income.

### The Land Act, 2010

The Land Act, 2010 is the principal legislation under which property is acquired for public purposes. The Act stipulates that “whenever it appears to the Minister that any land held under a lease is required for public purpose or the creation of servitudes, the Minister shall, after consultation with the local authority having jurisdiction and the lessee, by notice published in the Gazette declare the land to be so require” (GOL:416). Some activities which constitutes circumstances under which land can be expropriated for public purposes include: providing roads, water supply, hospitals and water conservation by means of watersheds. The Act further stipulates the entitlement of a person deprived of property to receive compensation. A period of three months from the date of the declaration notice is provided for the submission of compensation claims. Provision is made for extension of the time within which compensation claims may be made, as well as for recourse to other legal avenues where agreement cannot be reached on the compensation amount or where compensation payments have not been made within six months of the submission of a claim. An affected land occupier may also request the acquisition of his/her entire landholding where the remaining landholding is less than 500m2. The Act states that compensation “shall in all cases of compulsory acquisition be made before conclusion of expropriation” (GOL:422).

* 1. *International guidelines and policies*

MCA-L is guided by a number of documents including World Bank’s Operational Policy (OP) 4.12 on Involuntary Resettlement which stipulates that projects should avoid or minimize unfavorable impacts, carry out resettlement process in ways which would not compromise sustainability of development projects, projects should promote participation of PAPs during planning and implementation of resettlement programs and support PAPs in their efforts to improve their livelihoods and standard of living or at a minimum to restore PAPs’ standard of living to pre-project levels.

Other key documents include MCC Guidance on the implementation of resettlement activities which states that “resettlement activities required for project implementation be completed before the affected land, asset or resource is taken for construction or other project use. In particular, taking of land and related assets may take place only after appropriate compensation and other assistance as contemplated by the RAP has been provided to the PAP”(2008:3). MCC Gender Policy stipulations promotion of gender equity and meaningful participation of all beneficiary groups under MCC funded projects, especially vulnerable groups.

1. **Practical lessons learned**

In order to carry out the resettlement process, resettlement consultants were contracted for all projects. The responsibilities of resettlement consultants were to develop RAPs and assist in the implementation of RAPs (MCC Guidance on the implementation of resettlement activities:2008). During the inception phase, meetings were held with resettlement consultants to highlight MCC guidelines and national legislations as outlined above. Key among highlights were: ensuring identification of all PAPs especially women and other vulnerable groups; keeping records (socio economic data) of PAPs disaggregated by gender; carrying out targeted efforts to ensure meaningful participation of all PAPs (regardless of their age and gender) during the resettlement process and exploring social and cultural factors which may exclude women and other vulnerable groups from participating actively in resettlement planning and implementation.

Once they were on board, resettlement consultants developed Resettlement Action Plans (RAPs) for affected areas. RAP development entailed:

* Holding general public gatherings to inform the communities about the likely impacts that came as a result of projects. These gatherings were organized through area chiefs and participation of all groups is encouraged.
* Once households which were likely to be affected by the projects were identified, the consultants collected data on female, male and child headed households and on elderly and targeted efforts such as holding one on one sessions with each household were done. Previously, land issues were handled mostly by males, but lately women and men have equal rights to own land in Lesotho and this right is upheld by the Legal Capacity of Married Persons Act of 2006 and Land Act of 2010. Therefore, the consultants ensured that both spouses who are married in community of property are consulted before any decisions were reached.
* PAPs were given information on forms of compensation: cash and land for land compensation, to enable them to make informed decisions. Specific efforts were made to ensure that both women and men benefit from compensation (MCC Gender Policy:2006). For instance, when PAPs agreed to give their land to the projects, joint agreement forms were designed and signed by spouses unlike previously whereby only male households’ signatures would be regarded as representing the whole family, to the disadvantage of married women who were regarded as minors.

Before RAP implementation, all RAPs were shared with MCA-L for review and MCC for approval. Once approved, resettlement consultants continued to assist with RAP implementation which entailed:

* Establishing from PAPs the preferred mode of payment: cash, cheque or compensation to be deposited into the bank account. Paying cash was not a preferred option by MCA-L, therefore, some PAPs opted for checks and agreed on the name to be reflected on the check under land regularization activity. However, under Metolong Authority, it was decided that compensation would be deposited into PAPs bank accounts, but a high percentage of PAPs did not have bank accounts and had to be assisted by the project to open them. As they opened accounts, they were encouraged to open joint accounts to ensure that both spouses benefit from compensation. Some spouses even opted for separate cash compensation to avoid the risk of spending of compensation by one partner without another’s knowledge. The biggest lesson to ensure compliance with OP4.12 also stemmed from looking after the needs of PAPs especially an elderly woman under health project who was taken by ESA Section of MCA-L to a bank where her money had been deposited and was assisted to understand the “electronic” transfer of funds. The bank was 200 miles away.
* As part of income restoration programs, PAPs were provided with financial management training before they received cash compensation under all projects except WASCO project. The projects collaborated with BEDCO and Lesotho Post Bank to provide PAPs with ideas on starting small businesses and investment options. It is yet to be established whether any of the PAPs invested their money or started businesses at 3 months intervals as part of monitoring. Apart from the training, some PAPs are benefiting from employment opportunities generated by the project around their communities.
* In the case of spouses married in community of property, projects ensured that all PAPs get legal right to land allocated as part of resettlement package. For instance, the projects ensured that spouses received joint land titles, unlike previously when only a male household held’s name was the only one reflected on the land title.

1. **Monitoring**

As part of monitoring of resettlement activities under different projects, Environmental and Social Assessment (ESA) section compiled PAPs satisfaction reports for 6 health centers to be relocated and land regularization activity. The reports concluded that PAPs were fully informed and meaningfully consulted on resettlement planning and implementation (RAP implementation reports:2011). PAPs are yet to be provided with information on reinstatement of fences under land regularization activity, once fences are reinstated, ESA section will determine the level of satisfaction of all PAPs especially vulnerable groups.

1. **Challenges**

* One of the risks which was identified is social impact of dislocation of PAPs under different projects. However, not much was done to establish the impact of dislocation on women, men and children. For instance, whether or not it broke social networks which were important especially to female PAPs, whether it resulted in PAPs’ exposure to Gender Based Violence (GBV), prostitution, alcoholism or affected the schooling of children of the affected households. .
* Although PAPs are entitled to information on different forms of compensation, the majority (90%) of them opted for cash compensation. This has proved problematic in that they used up all their money within a short space of time and therefore become impoverished. By giving PAPs cash compensation, projects overlooked the fact that most of the land taken was the primary source of income and livelihood and this is also inconsistent with World Bank’s Operational Policy (OP) 4.12 on Involuntary Resettlement guidance.
* Although it was ensured that cash compensation was given in the preferred name (as suggested by the PAPs), there were no efforts to reflect the names of both spouses on the checks. Therefore, there was a risk that violence could be used when the money is used, which was not necessarily followed up by the projects.
* Although projects such as Metolong Authority assisted some PAPs to open bank accounts to receive compensation, they also learned that the PAPs did not have identification documents and had to be assisted to apply for passports and the project incurred these extra costs.

**Conclusion**

A variety of challenges were addressed, for example, under urban and peri urban water supply project, a method had to be devised in case impacts extended beyond the 6-meter (standard) construction ROW. Under all projects, MCA-L emphasised the importance of managing expectations and ensuring that PAPs use their compensation money wisely. When operationalizing MCC Gender Policy, MCA-L in partnership with implementing entities developed ways to ensure that both men and women were meaningfully engaged during consultation process and final agreements.

**References**

* GOL, 1993. Lesotho Constitution
* GOL, 2006. Legal Capacity of Married Persons Act
* GOL, 2010. Land Act
* MCA-L. 2010. Motete RAP and 5 HCs RAPs under health sector project
* MCA-L, 2011. RAPs for 3 pilot areas under land reform project
* MCA-L, 2012. RAPs for different packages under WASCO project
* MCC Gender Policy, 2006
* MCC Guidance on the Implementation of Resettlement Activities, 2008
* Metolong Authority, 2010. Metolong RAP
* World Bank, 2001. Operational Policy 4.12