

KIRIBATI TELECOMMUNICATIONS AND ICT DEVELOPMENT PROJECT COMPENSATION FRAMEWORK 2012

1. Background

1.1 Project Description

The development objective of the Kiribati Telecommunications and ICT Development Project is to increase access to telecommunications services in Kiribati. This would be achieved through policy and regulatory support to the ICT sector as well as specific improvements to enhance connectivity in Outer Islands.

These objectives are to be realized through four components:

Component 1. ICT Policy Support. US\$ 1.2 million. The Project will provide assistance to the Ministry of Communications, Transport and Tourism Development (MCTTD) in the following areas:

- new market entry: assist in the design and conduct of a selection process for new telecommunications service provider(s), to be undertaken in coordination with TAK;
- TSKL (Kiribati phone company) transformation: assist MCTTD, in coordination with the Ministry of Finance, in identifying and implementing options for reforming/restructuring TSKL which may include the introduction of an equity investor or other strategic partner for TSKL
- ICT policy review and coordination: updating the sector policy in line with industry developments and Government objectives, including second-generation reforms and application of ICT in other sectors, and monitoring ICT sector development.

Component 2. ICT Regulatory Support US\$1.2 million. This envisages technical assistance and capacity-building for the TAK in the following areas:

- issuing licenses and other authorizations, and monitoring compliance with sector legislation and regulatory instruments;
- establishing and regulating the technical aspects of the interconnection regime;
- regulating competition;
- resolving disputes between operators, and between operators and users of telecommunications services; and
- allocating, assigning and supervising the issuance of radio spectrum and frequencies, numbering, and other technical regulation matters.

Component 3. Outer Islands Connectivity US\$2.0 million. This will finance: (i) technical assistance for:

- development of an appropriate Outer Islands connectivity policy and strategy, including technical and financial feasibility analysis, and stakeholder consultations;

- development of the necessary regulatory instruments, instructions and practical procedures to implement the regulatory regime (including legislative and licensing obligations) in relation to Outer Islands coverage;
- identification, analysis and evaluation of possible coverage extension projects and possible financing/risk-sharing mechanism (such projects might include voice and/or data; broadband/backbone infrastructure and/or access facilities); and design and implementation of awareness-raising and training programs for outer islands communities on the use of telecommunications and ICTs to improve livelihoods; and

(ii) based on the above strategy, and project identification, and, depending on the extent of commercial rollout and connectivity gaps, a subsidy for outer islands communications, to be bid competitively.

Component 4. Project Management US\$ 0.6 million. This includes support for the following inputs. The possibility of using a shared management unit with other projects will also be explored:

- project management consultants—project coordinator and facilitator, financial management consultant and procurement consultant—working together with staff to form within MCTTD;
- project audit;
- computer and office equipment to support project management; and
- incremental operating costs.

1.2 Principles and Objectives of the Compensation Framework

The World Bank Operational Policy 4.12 on Involuntary Resettlement has four main guiding principles: (1) that involuntary resettlement is to be avoided or minimised; (2) that affected people should be better off, or at least as well off as before, after the project; that (3) all persons affected by the project are to be consulted throughout the project, have the opportunity to participate in planning, and to share in project benefits; and (4) that the resettlement and land acquisition program is designed and implemented as a sustainable development program.

These principles entrain a process of early identification of stakeholders, and in particular of affected people; frank and effective public disclosure of any known impacts; consultation and participation to avoid or mitigate negative impacts identified, and to ensure that no person or impact is overlooked; fair, transparent and timely intervention to support affected people during implementation, resettlement and restoration of livelihoods; and commitment where possible to improve upon the status quo, particularly for those who may be vulnerable by reason of poverty, ethnicity, gender, age, disability, or social status.

In the present project, involuntary resettlement or land acquisition will not be undertaken. Any land acquisition will be undertaken in full consultation and in negotiation with stakeholders, in particular affected people. Thus it will be a process of negotiated acquisition. If affected people do not want the infrastructure on their land, then the subproject will need to identify another site and/or not be implemented. Subprojects will only be undertaken on sites where affected people agree to give up their land, and receive compensation for any impacts if needed. In order to do

this, it will be important to ensure that MCTTD and the service provider undertake close consultations with stakeholders in the Outer Island where the subproject will be located in order to promptly identify impacts and ensure mitigation and compensation measures, if needed, are undertaken in negotiation with affected people.

If there is loss of land, trees or crops the aim will be to replace like for like, and if this is not possible, to compensate for lost land, assets and income. The GOK has revised its compensation rates for crops and trees, such rates will be used for this project. Land lease rates are updated in Kiribati every three years.

1.3 Project Impacts on Land and Mitigation Measures

Component 3 project activities may involve subsidies for backbone/broadband infrastructure to improve connectivity in the Outer Islands. This process will be voluntary in nature and will occur on land held by landowners or government land if available. Communities would identify their telecommunication needs in conjunction with service providers, and would voluntarily identify land to host the necessary small infrastructure (such as antennas). The provider and landowner may then negotiate land access agreements that are acceptable to both parties. Without landowner support the infrastructure would not be able to be built.

The location and scope of Component 3 project activities will only be defined once communities in the Outer Islands and service providers identify specific telecommunication needs and how these can be addressed. Impacts on land use are expected to be minimal given the small nature of the infrastructure. Compensation plans, based on negotiation with landowners, will be prepared at the subproject level following the provisions laid out in this Compensation Framework.

Impacts on land may include:

- Provision of broadband/backbone telecommunications infrastructure. In an effort to increase telecommunications connectivity in the Outer Island, local communities and service providers may agree on specific infrastructure to be installed. Small parcels of land may need to be acquired to establish infrastructure such as antennas or towers. The land needed is expected to be minimal given the small nature of the infrastructure.
- Temporary use of land. The installation of infrastructure, as noted above, could require the temporary use of land while necessary equipment is brought in to the site. Agreements on temporary land use would be required.

Any temporary land use and minor land acquisition will be voluntary and based on the informed consent and in negotiation with the affected landowner. The project will not finance projects that are likely to result in involuntary resettlement or involuntary land acquisition, or that would result in the destruction of physical assets (such as houses).

2. Eligibility Criteria

2.1 Criteria Defining Displaced Persons

Eligibility of an individual for compensation assistance will relate to their:

- Loss of land, whether an owner, lessee or informal occupant
- Loss of trees or other plants, whether on owned, leased or informally accessed land

The following categories of persons might be affected by land acquisition:

- a. Persons whose land (whether they have titled or not) is acquired permanently or used temporarily by the Project.
- b. Persons whose crops and or trees are affected irrespective of whether or not they have titles to the land;
- c. Community people whose access to a common property resource is affected (temporarily or permanently).

2. Legal Review

2.1 Relevant Legal Framework and Procedures

- The Native Lands Ordinance 1956, revised 1977, refers to the Gilbert Islands. It establishes the principle of indefeasibility of native title to land (S.4), though land may be alienated by the Crown (S.5(2)). The law recognises the concept of lease of native land, as is the case with Bonriki Airport land. Lease may normally only be by native to native referred to as native leases, or to the State and any other entity or foreigner, these are referred to as non native leases and may not exceed a term of 99 years. Before registering a lease, the Court must be satisfied that the terms are fair to both parties, and that the lessor has sufficient land left to support the family (S.11(2)). Payment of land rent is prescribed (S.15), and payment of compensation is envisaged for damage by the lessee, or for unlawful occupation (Ss.24 and 35). The Ordinance allows for improvements on leased land with the permission of the owners, though does not address the issue of ownership of these assets or improvements on termination of the lease and reversion of occupancy to the title holder or another lessee.
- The Gilbert and Phoenix Islands Lands Code subordinate to the Ordinance is largely a codification of customary land inheritance practices for the Gilbert and Phoenix Islands, allowing for variation between islands that reflect local custom as it stood in 1956. It provides for transmission of land rights to kin, giving a larger share to senior males than other males, and a larger share to senior females than to other females. In any case, the share of males is to be larger than the share of females. Provision is made for gift of landed property in recognition of acts of kindness or service (Ss.3-6). Generally gift or sale during the lifetime of the owner is subject to there being sufficient left to support the immediate family (S.14). This proviso endorses the principle of adequacy of livelihoods contained in the Ordinance.
- The Land Planning Amendment Act 2000 allows a family to subdivide land for sale to either a family member or an outsider, so long as the subdivision complies with a land use plan, and the subdivided parts are of adequate size for their purpose (S.4). Indefeasibility provisos are unchanged. The Native Lands Amendment Act 2000 S.3(2) reinforces that a subdivision must allow sufficient remaining land to support the family. These two amendments, together with the Magistrates Court (Amendment) Act, 2000 broaden the range of stakeholder interests recognised in a land transaction (owners, lessees, sub-lessees, neighbours and purchasers). This recognises the principle that non-title holders can be stakeholders. The Magistrates Court (Amendment) Act, 2000 provides for timely public disclosure of a hearing (S.65B.(1)(e)(i)) and for court attendance by all parties with an ownership interest. This aligns with the resettlement principle that stakeholders have a right to information and participation.

- The State Acquisition of Lands Ordinance 1954, revised 1979, (S.5), establishes the right of the Minister to acquire lands for public purposes. It prescribes certain conditions, including notice to the owner by prescribed means, right of entry on to land for the purposes of survey for public works with compensation for any damage caused, and a six month period after service of notice before possession (S.8). It establishes a road reserve of nine metres to either side of the centre line of a highway (S.10(2)), from which any tree or structure may lawfully be removed. It establishes the mechanism for land valuation by the Chief Land Officer (S.16), compensation, and appeal to the High Court. Loss of other assets, or rent due to the land acquisition is recognised in fixing compensation (S.17). Loss of property value is also recognised. If part of a person's land was acquired for a road reserve, and the owner finds that it is not possible to dispose of the balance at its previous market value, S.12 provides for the Minister to be required to acquire the remnant at its pre-project value. All notices served under the Ordinance are to be gazetted (S.9 (3)). An amendment, the State Acquisition of Lands (amendment) Act 2001 introduces two new paragraphs to S.16 of the 1977 Ordinance to allow the value of state improvements already made on land under government acquisition to be offset against the fixed improvements element of its market valuation for purposes of compensation. This establishes the principle that an owner is not compensated for improvements that he or she has not made.
- The State Land Act 2001 applies to the Phoenix and Line Islands and on any other islands, where land is state owned. Its intention is to provide for orderly voluntary resettlement of families on family plots to ease overcrowding. The Act clarifies (S.19) that the lands it covers are not native lands. Occupancy by anyone other than a family member of the holder of title to a family plot is deemed trespass, and there is no recognition of any right attached to informal occupancy. There is no separate provision for state acquisition of family plot land, though if abandoned, the plot reverts to the State (S.11). The Act's relevance to the CF is in the principles it underscores of adequacy of livelihoods in the case of transfer (S.17(4)(a) and (c)), and of compensation for 'no more than the current value of improvements' (S.9) should the plot be transferred from one legal title holder to another. An amendment the following year, the State Lands Act (Amendment) 2002 broadens the definition of the owner's family (brothers, sisters and parents of the husband and wife) to include the children of siblings.
- The Land Registration Grievance Tribunal Act 2002 was established to manage outstanding claims to land registration due to errors, oversights, incorrect information or process in the Gilbert Islands, where earlier records were lost. The Tribunal does not have the independent power to make awards to a successful griever without written consent, (S.4(3)). Instead, it is for the Government to consider what should be done in the circumstances of each case. The Act recognises the legal concepts of grievance in the functions of the Tribunal (S.4) and sets up a consensus-based mechanism to resolve them. This is a useful concept and precedent for resettlement issues.

2.3 Compensation for food crops and economic trees

The Native Lands Ordinance 1956 (revised 1977) and the State Acquisition of Lands Ordinance 1954 (revised 1979) include provisions for ensuring that affected people are compensated for any losses to the value of their land, trees, crops or livelihoods. A new valuation for trees, crops and structures was undertaken in 2011 (financed by the World Bank) and it was adopted by the

Kiribati government to apply to all of the country as of late 2011. In addition there are rates for leased lands that are reviewed every three years. The Department of Lands under the Ministry of Environment, Lands and Agriculture Development (MELAD) is responsible for compensating for loss asset only on existing Government lease lands. Loss assets as result of new implemented projects are the responsibility of the project and the implementing Ministry.

2.4 Compliance with Bank Requirements

Both World Bank principles and I-Kiribati law recognise the right of the State to acquire land subject to certain conditions, or to restrict private access to land and other assets for the greater public good. However in this project land will only be acquired voluntarily or by negotiated settlement. In any case, some differences between I-Kiribati law and World Bank policies are noted below.

- World Bank safeguards policy calls for wide public disclosure of intent to acquire land or assets with resettlement impacts. I-Kiribati land acquisition law prescribes mechanisms for directly informing only the affected owner(s), though notices under the State Acquisition of Lands Ordinance 1977 must be gazetted. However, the principle of public disclosure is recognised in land planning law, and in the Magistrate's Court Amendment Act 2000, which mandates disclosure about impending hearings through broadcasting and other modern media.
- While I-Kiribati law relies on affected individuals other than the land owner to seek redress if affected by land acquisition, World Bank policy places the onus on the project proponent to ensure that all affected persons are identified. This helps to avoid the risk of exclusion of the poorer and weaker, who may not have formal ownership of an affected asset and may lack the resources to pursue redress. I-Kiribati law does not address, but does not exclude compensation of informal occupants under some circumstances, though in law they are generally regarded as trespassers and may be subject to legal action.
- There is no conflict on the principle that displacement or damage must be compensated, and that there should be a transparent appeal process. The State Acquisition of Land Ordinance provides for negative impacts of compulsory acquisition of part of a parcel on the value of the remnant land. The provision applies only to land acquired for roads, but the principle could be invoked by people whose informal access to their property is affected by the project, if their property loses value as a result. The State Acquisition of Lands Act (Amendment) 2002 explicitly excludes payment of compensation for improvements that the State itself made on land it acquires. World Bank policy would recognise lost livelihoods derived from use of such improvements, for example, a workshop operating in a shed erected by the State, abandoned on affected land. I-Kiribati legal principle sets compensation at no more than current value, while World Bank policy enjoins full restoration or improvement of pre-project livelihoods at replacement cost. Any settlement above current value, in terms of the World Bank policy to improve upon livelihoods, should be related to vulnerability status rather than to market or other current value.

- While World Bank principles explicitly require that Affected Persons have a voice in resettlement options, and access to a grievance mechanism, this is implicit in local law, in the provisions for appeal against land acquisition or valuations of assets. Both bodies thus accept grievance and valuation mechanisms and appeals processes.
- Under the Land Registration Grievance Tribunal Act 2005, I-Kiribati law allows Government discretion to decide what should be done in individual cases of a successful suit, where World Bank policy enjoins consistent policy and process, in the interests of transparency.
- Since squatters are often the most vulnerable, World Bank policy recognises informal use of land and assets as a basis for compensation, where I-Kiribati law addresses trespass, damage, and penalties for incursion if a case is brought. Nothing prohibits recognition of tolerated trespass, but resettlement provisions in this event will be handled carefully so as not to be interpreted locally as an encouragement to flout property rights, while acknowledging, if applicable, loss of value due to the project.
- World Bank policy encourages the project proponent to involve affected persons or groups in impact monitoring. This phase of the project cycle is not addressed in I-Kiribati law, though there is no impediment.

Differences are thus in emphasis rather than in kind; there is no direct contradiction or conflict between I-Kiribati law and World Bank principles in relation to the provisions of this Compensation Framework.

3. Compensation Framework

3.1 Objectives and principles

The Compensation Framework provides guidelines for addressing land use and any destruction of economic trees and crops under Component 3 of the Kiribati Telecommunications and ICT Development Project. It is expected that these impacts will be limited. The following key principles will guide the implementation of the project:

1. Participation in Component 3 activities (backbone/broadband infrastructure in the Outer Islands) will be voluntary. Infrastructure will only be installed after consultations, and in negotiation, with communities and affected people.

2. Consultations with communities will be required in order to propose Outer Islands projects for subsidies. These consultations will:

- i) Include a representative cross-section of the community and landowners, and will be structured in ways that maximize input from community members.
- ii) Provide communities and affected landowners with information on the sub-project goals and impacts (both negative and positive), including impacts on land use or potential damage to food and economic trees.
- iii) Provide communities/landowners with an opportunity *to reject or accept the implementation of the subproject.*

iv) Provide communities/landowners with an opportunity to provide input in the design of the sub-projects.

3. The Telecommunications and ICT Development Project will not support any projects that have the following impacts on the use of land and property:

- a) Proposed sub-projects that involve involuntary resettlement.
- b) Proposed sub-projects that involve involuntary land acquisition.
- c) Proposed sub-projects that involve the destruction of physical infrastructure.

4. Any land/asset acquisition must be done in consultations with landowners and due diligence must be conducted to ensure there are no outstanding land disputers or claims to the land. If the land is under dispute then it cannot form part of the subproject.

5. If the infrastructure is to be located on community-held land and the community voluntarily give up the land the following principles must be followed:

- a) **The beneficial nature of the donation.** The communities must be clear net beneficiaries from the services offered by the sub-project.
- b) **The voluntary nature of the donation.** The offer of land use would be entirely voluntary with no evidence of individual users and communities pressured to offer the land. Voluntary offering of land will be documented and filed by both community members and the subproject implementer.
- c) **Protection of vulnerable groups.** Individuals vulnerable to adverse impacts from loss of land use will not be impacted under the subproject.
- d) **The documentation of the agreement.** The offer of land would be documented and validated by communities and the subproject implementer. Copies of the agreement would be filed with communities and with MCTTD.

6. The installation of infrastructure should avoid and minimize the destruction of food gardens, trees and economic crops. If the destruction of food gardens, trees and economic crops cannot be avoided, compensation will be provided to the owners of the food gardens and/or economic crops. Compensation rates will be guided by the guidelines set forth in Kiribati (valuation rates as of late 2011).

3.2 Procedures: Preparing Compensation Plans

Once the sub-projects have been identified and asset loss (damage to food and economic crops) is recognized as an impact of the sub-project, the service provider implementing the subproject will be required to document the agreement on compensation in a Compensation Plan. The Compensation Plan will include the following:

1. Confirmation that consultations with affected people has occurred and the impacts on land use have been discussed.
2. A census survey to identify project affected peoples (i.e. those suffering from the impacts of damage to food or economic crops). The survey will identify project affected people and assess the value of impacted assets. The census should include: the number of individuals and households affected; details on

the affected assets; and income sources of the affected people such as farm-based income, labour, and informal sector activities.

3. Specific details on compensation for economic trees and food crops and/or land lease arrangements per project affected person.
4. Detailed procedures for delivery of compensation (including a timeline) and the institutional responsibility for delivering compensation.
5. Arrangements for monitoring and implementation, including a timetable and detailed cost estimate.
6. A description of grievance redress mechanisms available to project affected people based on traditional and existing systems.

It is important to note that relevant government agencies such as the Department of Lands in MELAD and— the Ministry of Internal and Social Affairs (MISA) should be consulted and properly involved throughout this process. These responsibilities are further outlined in the next section.

4. Management Arrangements and Responsibilities

4.1 Institutional responsibilities

MCTTD will be responsible for enforcement of the Compensation Framework. Jointly with the service provider MCTTD will be responsible for assessing land/assets needing to be acquired, preparing compensation budgets, ensuring there is adequate budget for any compensation of affected assets, overseeing the preparation of Compensation Plans by the service providers, overseeing the grievance mechanism of the service provider, ensuring compensation entitlements are promptly delivered to impacted people *before any impacts occur*, and liaising with other ministries as needed (such as MELAD and MISA). The service providers in charge of project subcomponents, working with MCTTD, are responsible for liaising with landowners over land issues and compensation agreements, ensuring grievance mechanisms are in place, preparing compensation plans, and, as described above, working with MCTTD in all aspects of the Compensation Framework .

4.2 Costs and Funding Arrangements

All operational costs and payments relating to compensation for the loss of economic trees and food crops, and land leases – if applicable, should be funded by the GOK.

4.3 Monitoring

Monitoring activities will be undertaken by MCTTD and relevant ministries (such as MELAD and/or MISA) if necessary. The monitoring should verify/assess the following:

1. Verify that the baseline survey of project affected peoples is carried out, damaged assets have been valued, and compensation has been paid in accordance with the provisions of the Compensation Framework and Compensation Plan.
2. Assess the delivery of compensation to ensure timely and fair payments.

3. Assess the implementation and functioning of grievance mechanisms. This will include monitoring the nature of grievances lodged to identify trends, monitoring stakeholder satisfaction with outcomes, and tracking the responsiveness to grievances.

4.4 Grievance mechanisms

The service provider for the subcomponents will be in charge for setting up a grievance mechanism in consultation with affected people, MCTTD and MISA (if applicable).

Based on traditional systems in place in Kiribati, complaints and grievances related to any aspect of the project such as damage to assets and compensation payments should be handled as follows:

1. Affected people should present any complaints and grievances directly, or through their unimane and/or Island Council representative, to the service provider.
2. The service provider will record the grievances and the proposed solution and respond to the affected person within seven days.
3. If the grievances cannot be resolved the affected person should submit their grievance to MCTDD either directly or through their unimane and/or Island Council representative, who should record and address the grievance and respond to the affected person within 14 days.
4. If grievances still cannot be resolved they should be taken by the affected person to the Island Court.