

**RP451**

**GOVERNMENT OF THE REPUBLIC OF KIRIBATI**

**KIRIBATI ADAPTATION PROGRAMME  
PILOT INVESTMENT PHASE (KAP II)**

**LANDS ACQUISITION AND RESETTLEMENT  
POLICY FRAMEWORK**

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## **Acronyms and Abbreviations**

|         |   |
|---------|---|
| DLUP    | Detailed Land Use Plan                                |
| CCST    | Climate Change Study Team                             |
| CLPB    | Central Land Planning Board                           |
| EA      | Environment Assessment                                |
| ECD     | Environment and Conservation Division                 |
| GEF     | Global Environmental Facility                         |
| GLUP    | General Land Use Plan                                 |
| GOK     | Government of Kiribati                                |
| IPO     | Island Planning Officer                               |
| KLIS    | Kiribati Lands Information System                     |
| LARPF   | Land Acquisition Resettlement Policy Framework        |
| LLPB    | Local Land Planning Board                             |
| LMD     | Lands Management Division                             |
| Maneaba | traditional meeting hall                              |
| MFED    | Ministry Finance & Economic Development               |
| MELAD   | Ministry Environment Lands & Agricultural Development |
| MWE     | Ministry Works Energy                                 |
| NASC    | National Adaptation Steering Committee                |
| NDP     | National Disaster Plan                                |
| PAPs    | Project Affected Persons                              |
| PUB     | Public Utilities Board                                |
| RAP     | Resettlement Action Plan                              |
| Unimane | traditional elders                                    |
| UNDP    | United Nations Development Programme                  |

## **Figures**

**Figure 1      The Processes Integrating the KAP into the Kiribati National Strategic Plan 2004-2007**

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## **1. THE KIRIBATI ADAPTATION PROJECT**

This section provides a brief description of the Kiribati Adaptation Project (KAP) and the rationale for the formulation of a Lands Acquisition and Resettlement Policy Framework (LARF).

### **1.1 Description**

The Kiribati Adaptation Project was formulated in response to the grave concern of the Government of Kiribati and of the international community about how Kiribati will mitigate the potentially negative impacts of its vulnerability to climate change, climate variability and sea level rise. The GOK is developing the Kiribati Adaptation Programme to mainstream adaptation into national development planning with the support of the World Bank, the Global Environmental Facility, the Japan PHRD Climate Change Fund, and the United Nations Development Programme.

The KAP comprises three phases: The Preparation Phase, the Pilot Implementation Phase, and the Expansion Phase.

### **1.2 The Preparation Phase**

In 2003, the World Bank initiated the Preparation Phase of the Kiribati Adaptation Project (KAP-I) under a US\$646,000 grant funded by the Japan Special Climate Change Fund. The KAP-I design was informed by the extensive analysis of the 2000 Regional Economic Report, as well as by the results of two regional High Level Adaptation Consultations conducted in Fiji in 2002-03. These consultations concluded that adaptation, to be effective, needs to be mainstreamed into national development plans, policies and budgets, and treated as a major economic and social risk, rather than just an environmental issue.

KAP-I (2003-05) is being coordinated with a GEF National Adaptation Programme of Action (NAPA) grant through UNDP.

The project has been closely linked with the preparation of the 2004-07 National Development Strategy and Ministries' 2-3 years Operational Plans through the following process:

**First National Communications (1999) and  
National Communications Strategy  
(2003)**



**First National Consultation:  
Assessment of Island Vulnerabilities  
(completed)**

► **Second National Consultation:  
Prioritization of Coping Strategies  
(completed)**

► **Integration of Adaptation into 2004-07  
National Development Strategy  
(completed)**

► **Technical, Social and Economic Analysis of  
Adaptation Options  
(on-going)**

► **Adaptation Mainstreaming into Ministry  
Operational Plans  
(on-going)**

► **Completion of National Adaptation Programme  
of Action (NAPA)  
(planned)**

The objectives of the Preparation Phase – now drawing to a close - are to mainstream adaptation into national economic planning, to prepare a National Adaptation Programme of Action (NAPA) and to design priority pilot investments for the next Pilot Implementation Phase.

### **1.3 The Pilot Implementation Phase**

The Pilot Implementation Phase is under preparation, and it aims to consolidate the mainstreaming of adaptation into national economic planning. This phase of the project will run from 2005-08 and is expected to include the following components:

- Priority National Adaptation Investment, funding priority adaptation measures mainstreamed into the MOPs of key sectoral Ministries.
- Pilot Island Adaptation, funding pilot community-based adaptation investments in two pilot islands according to a whole-island approach. The pilot islands would be selected based on chances of success and replicability, representativeness, and degree of vulnerability, amongst other criteria.
- National Consultation and Mainstreaming, funding periodic national consultations, awareness, and consultation in islands targeted for the expansion phase, and continued mainstreaming into national economic planning.
- Program Management and Capacity Building, funding training, priority studies, and project management.

It is considered possible that some of the activities involved in the implementation of MOPs and/or Pilot Island Adaptations might require land acquisition and/or resettlement. Since the MOPs are only now being formulated, and will be adapted on an annual basis, and the Pilot Island Adaptation activities (to be funded under a Community Adaptation Grant facility) will not be identified and designed until KAP II is already under implementation, it is necessary to formulate a Land Acquisition and Resettlement Framework to provide procedures and guidelines to be followed in the event any land acquisition and/or resettlement of people is necessary under the activities of the project. This LARF is a key document for both the pilot phase and for expansion of KAP nationally, which will be effected under KAPIII.

### **1.4 Expansion Phase**

KAP-II would be followed by a long-term expansion phase (KAP-III), expected to expand adaptation investments piloted during KAP-II to the whole of Kiribati.

### **1.5 The Rationale for a Lands Acquisition and Resettlement Policy Framework**

Following the National Consultations, the CCST (Climate Change Study Team) has identified 10 priority areas for Kiribati: awareness, water resources, inundation/coastal erosion, health impacts, agriculture, family planning, fisheries, waste management, overcrowding, and miscellaneous other options.

Implementation of subprojects in these areas in the pilot islands may require land acquisition and the consequent resettlement of affected people. This framework identifies the principles to be followed in the event of land acquisition, resettlement, and compensation based on Kiribati's legislation, and the Bank's policy on involuntary resettlement.

## **2. RESETTLEMENT: PRINCIPLES AND OBJECTIVES**

The Bank's and the GOK principles and objectives of resettlement preparation and implementation are discussed in this section.

### **2.1 Resettlement Principles and Objectives**

The purpose of the Resettlement Policy Framework is to provide guidance for the process and intended outcomes of resettlement plans and activities to be applied to subprojects during subproject implementation. Involuntary resettlement can cause long-term hardship, impoverishment, and environmental damage unless appropriate measures are carefully planned and carried out. For these reasons, the overall objectives of the approach to resettlement and land acquisition under the Project are as follows:

- (a) Involuntary resettlement should be avoided where feasible, or minimized, exploring all viable alternative project designs.
- (b) Where it is not feasible to avoid resettlement, resettlement activities should be conceived and executed as sustainable development programs, providing sufficient investment resources to enable the persons displaced by the project to share in project benefits. Displaced persons should be meaningfully consulted and should have opportunities to participate in planning and implementing resettlement programs.
- (c) Displaced persons should be assisted in their efforts to improve their livelihoods and standards of living or at least to restore them, in real terms, to pre-displacement levels or to levels prevailing prior to the beginning of project implementation, whichever is higher.

The Bank's Involuntary Resettlement Policy (OP4.12) defines the affected people as those people who are directly affected socially and economically by the Bank's assisted investment projects.

The objectives of the proposed Resettlement Policy Framework are consistent with the Bank's policies. The focus of this project is in regard to the resettlement/rehabilitation of the vulnerable communities to climate change and rising sea levels.

### **3. PREPARATION OF RESETTLEMENT PLANS**

The proposed process for preparing and approving resettlement plans is based on the existing GOK policies and practice, and the provisions and guidelines of the Bank's OP and BP 4.12.

#### **3.1 The GOK Policy and Strategy**

The MELAD (Ministry of Environment, Lands and Agricultural Development) is the lead government agency responsible for co-ordinating the planning and implementation of lands acquisition and resettlement. The Ministry formulates and manages the resettlement budget and pays compensation to the affected people after the Lands Management Division has carried out a survey of the structures, trees and other assets on the site. The LMD is also responsible for surveying the house sites. The MELAD provides the secretariat for the Resettlement Committee.

#### **3.2 The GOK Resettlement Committee**

The Resettlement Committee was established by the GOK to deal with the resettlement of Tabuaeran, Teraina and Kiritimati. The Committee is responsible for developing guidelines, eligibility criteria, plans, strategies and priorities for the GOK resettlement schemes. The Committee is therefore involved in the planning and implementation of resettlement schemes. The Committee makes recommendations to the Cabinet for consideration and approval.

The Committee is a high-level body consisting of the main GOK stakeholders under the chairmanship of the Minister of Environment Lands and Agricultural Development. The members include the Minister and Permanent Secretary of the Ministry for Line and Phoenix Development (MLPD), Permanent Secretary MELAD, Permanent Secretary Ministry of Internal and Social Affairs, Director of Lands Management, Director of Environment and Conservation Division, Director of Ministry of Education, Youth and Sport, an Economist from the Ministry of Finance and Economic Development, Chief Health Inspector, Chief Councilor (Betio Town Council), and the Chief Councilor (TUC).

The existing Resettlement Committee has the experience and the capability to deal with general resettlement issues, and it can also adequately handle any proposed lands acquisition and resettlement

for the KAP. The resettlement plan for the Resettlement Committee is drawn as a joint effort by the principal GOK stakeholders, including the Lands Management Division and the Environmental and Conservation Division of the MELAD.

The MELAD has the expertise to draw up resettlement plans in line with the Bank's RAP procedures, and it is recommended that the MELAD, in conjunction with the other GOK key stakeholders, and the respective Island Councils and communities, is given responsibility in drawing up either the RAPs or the settlement plans for each island community. The participation of island community representatives is crucial both in the planning and implementation stages of these resettlement plans.

### **3.3 The Bank's OP 4.12**

According to the Bank's OP 4.12, the resettlement plan or resettlement policy framework will include measures to ensure that the displaced (project affected) persons are

- i) informed about their options and rights pertaining to resettlement;
- ii) consulted on, offered choices among, and provided with technically and economically feasible resettlement alternatives; and
- iii) provided prompt and effective compensation at full replacement cost for losses of assets attributable directly to the project.

The critical steps in the planning and implementation process include targeting and promotion, subproject formulation, survey and appraisal, approval, implementation, and monitoring and evaluation (OP 4.12).

The following discussion covers the process for a full RAP, and at the conclusion of the section a brief explanation of the difference between a full and an abbreviated RAP is presented.

### **3.4 Targeting and Promotion**

Targeting and promotion are critical to attaining the overall goals of the Project with particular reference to the project clientele. The objective is to disseminate information about the project to the potential PAPs. The same basic process should be followed for activities to be carried out under Ministerial Operational Plans (MOPs) or under the Pilot Island Adaptation component. On those islands where it is planned that subprojects will be implemented, an initial meeting should be held before any subprojects are prepared in which Island residents meet together at the Island Council maneaba. The purpose of this meeting will be to:

- Provide an overall explanation of the project and its objectives;

- Discuss the possible impacts with respect to land acquisition and resettlement;
- Explain that all land or other assets will be acquired voluntarily, the general nature of compensation and resettlement assistance to be provided, and the mechanisms for filing and assessing grievances for activities under the project;
- Where the intent is to design activities under the Pilot Island Adaptation component, explain the general process for preparing and submitting proposals for subprojects. This should include emphasis on:
  - The preference that subprojects proposals be limited to a single proposal per village, and that the traditional decision-making mechanisms should be used to the extent possible (with the understanding that subproject selection at the village level should be a participatory process in which all members of the community are involved).
  - Emphasis on the full inclusion of women and youth in the decision-making process. It should be made clear that the process of assessment of subproject proposals will include meetings with various village level groups (including women and youth) to determine whether they have fully participated in the formulation of the subproject proposal and whether there is general village-wide support for the subproject. If either of these criteria is not met, the subproject will either be referred back to the village to achieve consensus or rejected.
  - Explanation of the expectation that each village will make a major contribution to subproject implementation in cash, labor or in-kind contributions, and that the nature of that contribution will be a determining factor in whether the proposal is accepted or rejected.
  - Explanation of the technical assistance to be made available from the Island Development Committee and the IPO for the formal process of subproject preparation and submission.
  - Emphasis on the preference for adaptation strategies that do not include hard structural solutions such as seawalls or related structures, but rather involve preservation or extension of natural protection against climate related threats, changes in behavior, improvement of existing infrastructure or practices and so on.

### **3.5 Subproject Preparation and Screening**

On each island the Island Project Officer will be the key official who will work with villages and groups within villages to prepare subproject proposals under the project. Subproject proposals should be, to the extent possible, the result of discussion and consensus at the village level leading to a proposal that has the general support of most of the village population.

Traditional decision making processes will be important in this process, though the IPO will need to emphasize the importance of full participation of all groups in the village in the process.

Once villages decide on a subproject proposal and the proposal is prepared in a form that can be submitted for evaluation, the proposal will be passed on to the Island Development Committee. The IDC will evaluate each proposal and take one of three actions. It may approve the proposal to be passed on to the Project Management Office; it may reject the proposal with explanations for the rejection, or it may return the proposal to the village with a request for further information or consultation with the village residents. During this process the IPO will satisfy him/herself that the proposal has been the result of a genuinely consultative process, and will take particular care to determine that the women and youth of the community have been fully involved and fully support the proposal. In the event that the IPO determines there has been insufficient involvement of key groups (such as women or youth) or that there is serious opposition to the choice of subproject, the proposal will be returned to the village for further development. If it proves impossible for the village to come to consensus on the best approach to take in a subproject, the subproject proposal will be rejected.

For each subproject identified for possible funding under KAPII a screening process should be carried out to identify the impact of the subproject with respect to land acquisition, resettlement, livelihood interruption or other impacts on livelihood and/or assets that will trigger the resettlement policy framework. Where impacts on the project affected people are minor – that is, where no people are displaced and less than 10% of their productive assets are affected, or where fewer than 200 people are displaced, an Abbreviated Resettlement Action Plan may be agreed with the borrower. It is expected that most subprojects under KAP II will require Abbreviated Resettlement Action Plans. Where this is not the case, a full Resettlement Action Plan must be agreed and implemented.

### **3.6 Consultations**

Consultations with the local residents will be an ongoing feature of the process of subproject formulation, submission, approval, implementation and monitoring.

Consultations with potential PAPs will be an important part of this process. Such consultations will begin with the information and awareness meetings that take place before any subproject proposals are prepared, and continue through the life of the project.

A consultation framework will be developed for each subproject that will outline exactly how the process of discussion and negotiation will take place with PAPs.

### **3.7 Reconnaissance Survey**

As a part of the preparation of subproject proposals, a survey will be conducted to identify the likely impact of the subproject with respect to land acquisition and resettlement. The results of this survey will be included in the subproject proposal submission provided to the Island Development Council. The proposal submission will need to include the following information:

1. For any voluntary contributions of individual land without compensation, a consent form which includes the name of the land donor/s, and details of the contribution (type, size, location, specified period of use etc. as appropriate). This should be signed (or thumb-printed) by the land donor/s (including the male and female heads of the household involved), and the chairperson of the Council of Unimwane.
2. For land contributions against compensation, a consent form which includes the name of the land donor/s, details of the contribution (type, size, location, specified period of use etc. as appropriate), and details of the agreed compensation arrangements. This should be signed by the land donor/s (including the male and female household heads), a nominated representative of the group making the subproject proposal, and the chairperson of the council of elders (the unimane). A sample consent form, modeled on the GOK Lease Agreement, is shown in Annex 3.
3. Where the land donated is communal land, these forms can be signed on behalf of the village by a recognized village leader.

For sub-projects where land is donated or provided against compensation, the Island Development Council will note during its appraisal of proposed sub-projects:

- i) verify with the land donor/s that the donation is indeed made on a voluntarily basis, that the donor/s is/are the legitimate owner/user of such lands, and that the land donor/s is/are fully informed of the nature of the sub-project and the implications of donating the property;
- ii) assess that the land donor does not suffer a substantial loss affecting his/her economic viability as a result of the arrangement. Where there is substantial loss the sub-project cannot be approved as proposed (the amount donated should usually not exceed 10% of his/her land or assets without appropriate compensation);
- iii) assess that the compensation arrangements are appropriate. The compensation should be

roughly equivalent to traditional compensation arrangements and sufficient to replace lost assets. Where demands are excessive, compensation inappropriate and the land donor and the community cannot agree, the IPO and/or Community Facilitators will encourage alternative sites or arrangements. The sub-project will not be approved for funding by a Small Grant until suitable alternative sites are identified and land has been voluntarily made available through the process described above. If no suitable land is made available through the Voluntary Land Contribution process, the sub-project would not be further processed.

### **3.8 Consultations with Affected People**

Consultations with the affected people are an important process during the planning, implementation and monitoring of the project or subproject. The people must be informed about their options and rights pertaining to resettlement, consulted on, offered choices among, and provided with technically and economically feasible resettlement alternatives, and provided prompt compensation at full replacement for loss of assets because of the project (OP 4.12 para.6a).

### **3.9 Disclosure of the RAP to the Affected People**

Holding a public meeting will be needed to inform the affected people about the resettlement and compensation issues.

### **3.10 Sign Compensation Contract and Pay Compensation**

The final step of resettlement implementation is payment of compensation, if necessary. Alternative forms of resettlement assistance, such as allocation of land and employment opportunities, will also be explored.

### **3.11 Source of Funding**

The source of funding must be identified so that the necessary action are planned to secure funding for the project on schedule. The funding arrangements are discussed in more detail in section 4.

### **3.12 Grievance Redress Mechanism**

The mechanisms for redressing grievances will be explained to the PAPs. They will be given opportunities to review the survey results and compensation policies during the resettlement planning and

implementation. The Bank recommends that any grievance may be referred to the local authorities, and to the Court. The details of the grievance process are explained below.

### **3.13 Monitoring**

It is the responsibility of the GOK to make an assessment to determine that the objectives of the resettlement instrument has been achieved. The Bank requires that both an internal and external monitoring of the project's progress be undertaken. The details of the monitoring processes are discussed in Section 12.

## **4. RESETTLEMENT FUNDING ARRANGEMENTS**

This section describes the arrangements for funding resettlement, including the preparation and review of cost estimates, the flow of funds, and any contingency arrangements. The full costs of resettlement activities necessary to achieve the objectives of the project are included in the total costs of the project. The detail cost estimates will be based on a comprehensive inventory survey of different impacts, and actual cost for all types of compensation.

### **4.1 The Resettlement Budget.**

The resettlement budget is to include cost estimates for the planning and implementation phases, and provision for a contingency fund. Effort should be made in developing realistic cost estimates for the resettlement programme. The detailed cost estimates will be based on comprehensive inventory survey of different impacts, and actual costs for various types of compensation and resettlement assistance.

The budget must also provide for other related costs during the implementation phase, such as survey and resettlement planning, resettlement monitoring and evaluation, and overall administration.

The provision for a contingency fund of no less than ten percent of total resettlement cost will be set aside for covering cost changes due to inflation or unexpected situations that may occur during the implementation.

### **4.2 Sources of Funding**

The GOK will be responsible for providing the necessary funds for the planning and implementation of the resettlement operation. The necessary financial provision has to be presented as part of the budget by

the responsible Ministry to the Maneaba Ni Maungatabu, the Kiribati National Parliament.

The Kiribati Housing Corporation, the Development Bank of Kiribati and the Bank of Kiribati are available to provide housing loans to eligible customers should they desire them. Special consideration must be accorded to low-income displaced people, who are not able to secure funding for their house plots and houses.

There is no existing mechanism for these disadvantaged people to access soft financial deals to meet their objectives in building suitable houses for them.

#### **4.3 Flow of Funds**

The funds earmarked for the project will all be directed into the Consolidated Fund, and will be disbursed in accordance with financial regulations, budgetary and administrative procedures to the responsible Ministries and Divisions for final payment to the payees.

The documentation and receipting of these public funds will be the responsibility of respective government agencies. Thus, the money for the compensation will be paid to the MELAD after the Ministry has submitted compensation claims to the Accounting Division of the MFED (Ministry of Finance and Economic Development). The responsible officer in the Accounting Division will check that the payment is in order and that there is budgetary provision for such expenditure item in the current GOK Budget. Once the MELAD payment voucher (PV) has been checked and approved by the Accounting Division, the disbursement of the necessary funds for compensation is made to the MELAD. The Accounting Division of the MELAD then pays the compensation to the affected persons, who sign duplicate copies of the PVs. The payee retains the original PV, and the other copy goes back to the Accounting Division of the MFED.

#### **4.4 Conclusion**

The GOK has a financial framework in place for the sourcing and management of the Project funds.

### **5. CRITERIA FOR ELIGIBILITY**

This section explains the Bank's guidelines on the eligibility criteria, and that of the GOK's policy on the issue.

### **5.1 The Bank's Policies (OP 4.12)**

The Bank stresses the need for a census to be carried out to identify the persons who will be affected by the project and to determine who will be eligible for assistance. The date of the census will be the cut off date for eligibility for benefits under the resettlement plan. Anyone who moves into an area affected by the subproject after the census date will not be eligible for benefits. The PAPs should receive compensation for loss of assets other than land (OP 4.12, para.15-16).

### **5.2 The GOK Policy**

The GOK pursue policies, which are consistent with the Bank's directives outlined above. The project's Administering Authority normally carries out a census to identify the PAPs and the extent of their compensation claims.

The procedures for establishing the eligibility criteria are done in consultation with the PAPs and the local authorities, particularly the Island Councils. The Island Councils consist of representatives of non-government organizations on the islands, including the women, the Church, the youth and traditional elders (unimane).

### **5.3 Eligibility Criteria for KAP**

Following the national consultations, the CCST identified ten priority subprojects under the KAP: public awareness, water resources, inundation/coastal erosion, health impacts, agriculture, family planning, fisheries, waste management and overcrowding.

In view of the above prioritization, the individual Island Council, in consultation with the villages, will determine its own criteria for eligibility under the KAP. The ultimate objective of the exercise is to improve the situation of the vulnerable communities.

### **5.4 Promoting Advancement for Vulnerable Communities**

The Bank advocates exploring all viable alternative project designs to avoid, where feasible, or minimize displacement (BP 4.12). The rehabilitation and promotion of quality life in these vulnerable communities in their existing localities appears the most viable option to pursue.

The most vulnerable areas require better land use planning, and a layout plan for the settlements properly mapped out with provision of sites and services will considerably improve community life. Security of tenure for the tenants may necessitate drawing up of suitable forms of voluntary land agreements, such

as the lease and sub-lease agreements, with landowners. These land arrangements must comply with existing legal requirements.

## **6.       LEGAL FRAMEWORK**

This section reviews existing legislation in Kiribati on land acquisition and resettlement related issues, examines current Bank policy requirements, and proposals for bridging any discrepancies between them.

### **6.1      Kiribati Constitution**

Section 8 of the Kiribati Constitution provides that no property of any description shall be compulsorily acquired unless such acquisition is necessary in the interests of defence, public safety, public order, public morality, public health, town or country planning or the development or use of any property for a public purpose.

Any acquisition of private land must be adequately compensated within a reasonable time.

The Constitution also provides that any disagreement over the amount of compensation shall be resolved in the High Court.

### **6.2      National Disaster Act 1993**

The objective of the Act is to provide for the organization and management needed to ensure mitigation of, preparedness for, response to and recovery from disasters in Kiribati. "Disaster" is defined in the Act as the actual or imminent occurrence of an event which endangers the safety or health of any community or persons in Kiribati, or which threatens to destroy any property in Kiribati, arising from natural and artificial causes.

Under the current allocation of ministerial responsibilities, the Office of the Beretitenti (Office of the President) is responsible for disaster management. The National Disaster Council, whose members are appointed by the Beretitenti, provides advice to the Beretitenti. The Council must also prepare a National Disaster Plan to be approved by the Cabinet. Section 9 provides that there shall be a National Disaster Management Office to carry out disaster management and to deal with routine disaster-related matters.

The local governments are also required to establish their own respective Disaster Committees.

Section 21 of the Act provides for the payment of compensation and remuneration for any action taken under the National Disaster Plan.

The Act also stipulates that funds or aid-in-kind received towards the disaster must be used specifically for those purposes, unless the government and the donor agree for use of the funds for other purposes.

### **6.3 State Acquisition of Lands (Cap 95B)**

The involuntary acquisition of land for resettlement/rehabilitation must be done in accordance with the provisions of the Constitution and the State Acquisition of Lands Ordinance.

The Minister of Environment, Lands and Agricultural Development is required to serve a notice of intention to acquire the land to the landowners and all other persons with interests in the land six months before the acquisition takes place.

The Ordinance lays down specific guidelines to the Court when assessing compensation. The market value of the land must be taken into account; the damage sustained by the landowner by reason of loss of trees or other crops; any damage to the landowner's property or earnings caused by reason of having to move from the land; and the expense to the landowner of moving his home or business from the acquired land.

The compensation should be made by the GOK, and the amount of compensation must be agreed between the two parties. If there is no agreement between the parties, any party may refer the matter to the High Court for determination.

### **6.4 The State Lands Act 2001**

The Act provides that a contract is made between the State and the registered landholder of State land given to the landholder and his family for settlement purposes. The family is defined as consisting of the landholder, spouse, their children, grandchildren and the couples' parents. The land can only be transferred within the family. The Act stipulates that the settlement should be conceived and executed as a sustainable development programme. The Act prohibits the sale of the land, and the land can be taken away from the family if it is abandoned for a period of six months. The State has a right of reversion on the land and discretion to re-allocate the plot to another family.

The State Lands Act does not affect lands registered under the Native Lands (Cap 61).

## **6.5 Native Lands (Cap 61)**

The Native Lands (Cap 61) contain the Lands Code and important provisions on the alienation of native land, including leases, sub-leases and sale. In essence the Act proscribes the alienation of native land to a person who is not a native. However, the Act does allow alienation of native land to the Crown, a council, the Housing Corporation, a society registered under the Co-operative Societies Ordinance of the National Loans Board.

## **6.6 Restriction on Alienation of Non-Native Lands Cap 63**

The Ordinance restricts the alienation of non-native land, either by sale or lease. The GOK must be given first refusal to possess the land, which may be compulsorily acquired, if necessary.

## **6.7 Lands Registration (Nikunau) Validation Act 1992**

The Act provides for the appointment of a Commission to compile a replacement lands register for the island of Nikunau. The Commission would base its work on minutes of the Nikunau Lands Magistrate Court, the High Court and outcomes of consultations with the village people in their village maneaba, and submissions from the general public.

On completion of the Commission's work, the findings would be published for public inspection and objections. Thereafter, the new Nikunau Lands Register becomes indefeasible. The Nikunau Lands Magistrate's Court is empowered under the Act to make the necessary amendments and corrections.

Each island has its own Lands Register which identifies the land plots and the registered owners and interested parties of the said plots on the whole island. Each island has its own Magistrate Lands Court to deal specifically with land matters for the island.

## **6.8 Land Registration (South Tarawa) Validation Act 1997**

The Land Registration (South Tarawa) Validation Act 1997 gives legality to the process of compiling a new list of registered landowners in South Tarawa, the area that extends from Bairiki village to Tanaea islet.

The South Tarawa Lands Register is important in the identification of registered landowners, the site location and size of the land plots likely to be used for resettlement.

## **6.9      Rent Review (Cap 90)**

The Rent Review Ordinance (Cap 90) provides the procedures for the determination of land rentals in respect of leased lands.

## **6.10     Foreshore and Reclamation (Cap 35)**

The Foreshore and Reclamation Ordinance deals with the ownership of the foreshore and provides for the carrying out of reclamation schemes. Under this law, the foreshore belongs to the Government, subject to the public right of passing over it and any private rights over it. The Minister of MELAD may designate certain parts of the foreshore so that no coral, sand or mud can be taken without getting a licence from the Director of Lands.

The law also provides that any reclamation work must be approved by the Minister, subject to a public notice being issued in relation to the work so that affected interests may submit their concerns of the proposed work to the Minister.

The protection of the foreshore by the construction of seawalls, embankments or similar structures, and the reclamation of the foreshore for resettlement purposes are subjected to the Foreshore and Reclamation Ordinance.

## **6.11     Land Planning (Cap 48)**

The Land Planning Ordinance (Cap 48) deals with areas designated by the Minister.

The Ordinance provides for a Central Land Planning Board and a local land planning Board. Consisting of members appointed by the Minister, the CLPB draws a General Land Use Plan (GLUP) for the designated area. The procedures for drawing up the GLUP are provided for in the Ordinance, and require extensive public consultation and scrutiny.

Once the GLUP has been approved by the CLPB, the GLUP is submitted to the Local Land Planning Board (LLPB).

The Teinainano Urban Council (TUC) is the LLPB for South Tarawa, and is required to make a Detailed Land Use Plan (DLUP). The DLUP is again subjected to public scrutiny for a fixed period before it goes back to the CLPB. The CLPB may then approve the draft plan with or without amendment before the plan becomes the DLUP for the designated area.

Part IV of the Ordinance deals with Development Planning and the procedure for obtaining planning permission. "Development" is defined in the Ordinance as the carrying out of any building or works on the land. Such development must be considered and approved by the Local Board before it is carried out. An application must be accompanied by plans or drawings indicating the site and description of the proposed development. A resettlement scheme will fall under the residential land use classification.

Any person who is not happy with a decision of the Local Board may appeal to the Central Board. The ultimate appellate body on contentious planning issues is the High Court.

#### **6.12 Local Government Act 1984 and the relevant by-laws**

Island Councils are established under the Local Government Act 1984, and are given prescribed powers and duties, many of which relate to the resettlement planning and implementation. The Island Councils consist of elected councilors from each village or wards and representatives of women groups, youth groups and unimane associations on the island.

The Island Councils have also been closely involved in previous resettlement schemes, namely the rehabilitation of Council selected emigrants from the relatively overcrowded islands in the Gilbert Islands group to the sparsely populated islands of Tabuaeran and Teraina in the Line Islands group.

All the Island Councils are an essential component of the institutional framework of the KAP project at the island level. They have been active participants in the consultation process, and their direct involvement will be retained during the life of the project.

#### **6.13 Environment Act 1999 and Regulations**

The provisions of the Environment Act are relevant to the land acquisition and resettlement issues. The general environmental principles of sustainable development (6.1b), the environmental management and conservation of biological diversity (6.2b), development control (13-17), review assessment (26-27) and monitoring (28) are provided for in the Act.

The Environment Act also provides for a Schedule of prescribed developments (13.1) to comply with a comprehensive system of development activity using the technique of environmental impact assessment.

#### **6.14 Housing Corporation (Cap 40A)**

The Kiribati Housing Corporation (KHC) was established as a corporate body in 1979. The functions of the KHC include the operation of Housing Loan Scheme, assistance in providing the housing needs for government employees, the provision of assistance for other persons to undertake and carry out housing schemes in Kiribati. The law defines housing scheme as a proposal for the construction of several houses, laying out of roads, provision of drainage and other public services, open spaces and amenities.

The KHC should be an active participant in the planning and implementation of a housing scheme for the displaced people.

#### **6.15 Public Finance (Control and Audit) (Cap 79)**

The Public Finance (Control and Audit) (Cap 79) provides a legal framework for the management and auditing of public funds and other funds appropriated for the planning and implementation of the acquisition/resettlement operations.

#### **6.16 Public Health and Regulations (Cap 80)**

The provision of public health services and compliance with public health regulations are essential to the future sustainability of any resettlement.

The outdated Public Health Regulations 1926 still requires good sanitation, cleanliness, proper waste management and provision of good potable drinking water. These requirements are not always enforced, and life quality of resettled communities needs closer public health scrutiny and improvement.

#### **6.17 Public Utilities (Cap. 83)**

The Ordinance provides for the establishment of a Public Utilities Board (PUB) and charged with the responsibility of providing electricity, water and disposal of sewage. The provision of these essential services in the planning and implementation of resettlement areas is crucial to the development and enhancement of community life.

#### **6.18 Conclusion**

Kiribati has the necessary Constitutional and legal framework in place to satisfy the Bank's requirements.

The Kiribati Constitution and laws are quite explicit on the compensation for the acquisition of private land needed in the public interest, namely the rehabilitation of I-Kiribati adversely affected by the project.

## **7. VOLUNTARY LANDS AGREEMENTS**

The common forms of voluntary land use agreements in Kiribati, which are likely to be applied in implementation of the MOPs and of Component 2 of the Pilot Island Adaptation, are the leases, sub-leases, licenses, house plots, renting, land purchase, and land exchanges.

### **7.1 Lease Agreement**

A lease is an agreement whereby the landowner (lessee) agrees to allow his/her land or part of his/her land to be used by some other person (lessee) in return for an agreed amount of money in the form of rent.

A lease agreement shall be valid if it is done in accordance with the provisions of the Lands Code. The nature of lease agreements varies from agreement to agreement depending on the nature of the parties involved in the lease agreement.

### **7.2 Types of Leases**

The Native Lands Cap 61 distinguishes between a Native and a Non-Native Lease.

#### **7.2.1 Native Lease**

A Native Lease is a lease of native land to another native where the term of the lease must not exceed 21 years and the size of leased land not more than 5 acres.

A Native is defined in the Ordinance as an aboriginal inhabitant of the Gilbert Islands or a descendant of an aboriginal inhabitant. A native lease agreement must be submitted to the Magistrate Lands Court before it is approved.

The Magistrate Lands Court shall only approve the lease agreement if the Court is satisfied that the land is the registered property of the lessee, and the terms of the agreement are fair to both parties. The Court must also ensure that the lessee has sufficient land remaining to support himself and his family.

A Native Lease is usually registered in the Register of Native Leases, which is kept by the Court. There is a Magistrate Lands Court and Register of Native Leases for each of the main Kiribati islands.

#### **7.2.2 Non-Native Lease**

A Non-Native Lease is any lease agreement other than a Native Lease. Non-Native leases include a lease to a native for longer than 21 years and a lease to a non-native for any period of time.

Before a Non-Native lease is formally approved by the Magistrates Lands Court, the Court must be satisfied that the lessee is the registered landowner, and that the lessee is allowed to lease the land in accordance with the provisions of the Lands Code.

Once the Court has approved the Non-Native Lease Agreement, the Lease Agreement must have the statutory endorsement of the Minister responsible for the Lands. The Minister must satisfy himself that the terms of the Non-Native Lease are fair to both parties, that the lease is in the correct form, and the lease fees have been paid. Compliance with these requirements ensures that lease is registered in a Register of Non-Native Leases.

The Register of Non-Native Leases includes government leases, Church leases, and Council leases.

Government leases occupy most of the lands in Betio, Bairiki, Bikenibeu, Bonriki and Buota (all on the main island of Tarawa). The displacement of people from the most vulnerable places, because of rising tide and climate change, raises the point of security of tenure for the displaced persons.

The lease agreement or the sub-lease arrangement gives the displaced persons the most secure form of tenure.

#### **7.3 Terms of the Lease Agreement**

A Lease Agreement Form contains the terms of the agreement relating to the identification of the parties in the lease agreement, the site location and size of the leased plot, the obligations and responsibilities of the lessee and the lessee, which include matters on compensation, monitoring and grievance redress.

Compensation arrangements are usually agreed before the signing of lease agreements.

The Rent Review Act 1975 provides the legal framework for the compensation, monitoring and grievance redress of the parties to a lease agreement.

The agreed land rentals are paid annually, and must be reviewed every five years by both parties. If the parties are unable to reach agreement, the matter may be resolved through Court action by either party.

An important aspect of these lease agreements relates to the principle of sub lease.

#### **7.4 Sub-Lease**

A sub-lease is an arrangement whereby the lessee leases part of the leased land, or the whole leased land, to a third party (the sub-lessee).

The procedure for obtaining a GOK sub-lease is by application to the Minister for Lands who will consider and make a decision on the application.

Prior to the Minister considering the sub-lease application, the Planning Board for planning permission vets the application. This is followed by a survey of the site and preparation of survey diagram. The applicant then prepares the sub-lease documentation, signs it and the application is forwarded for Ministerial approval. Once approved, the sub-lease is registered and given a number. The sub-lease rent is calculated, and the applicant is informed of the grant of a sub-lease (KLIS, p.15).

#### **7.5 Licenses**

A License is a right to occupy land, usually for a short period, granted by the landowner. The arrangement may be either compensatory or gratuitous. A license issued with a provision for compensation is more secure than a gratuitous license.

#### **7.6 Village House Plots**

House Plots are sites allocated to the householder, normally in the village area, by the colonial administration to build a house and remain on the site provided that the householder will follow a prescribed course of action listed hereunder:

- The householder may lease a house site from the landowner and pay rentals
- The householder may allow the use of his land, pit or pond by the landowner on a reciprocal basis as long the landowner provides a house site

- The householder may wish to make a permanent exchange with the landowner a piece of land, pit or bond in return for a house site
- The householder may wish to purchase the house site from the landowner

The mutual arrangement between the landowner and the householder should be made before the Lands Court. In the absence of such legal arrangement, the Court shall decide on what should be done.

#### **7.7 Customary Land Exchanges**

Customary land exchanges often take place between two landowners. The exchanges may involve lands on the same island or different islands. The transaction must be done in the court before the lands in question are registered under their respective new owners.

The Island Councils may also be involved in land exchanges with private landowners.

#### **7.8 Land Purchase**

The purchase of land is becoming a common practice in Kiribati because of socio-economic reasons. In most cases, the landowner sells land to meet social and economic objectives. The buyer normally buys land for development purposes.

The Native Lands Ordinance dictates the purchase of land. The land cannot be sold without the prior consent of the other interested parties in the land, including the family members and the children.

#### **7.9 Security of Tenure**

The most important consideration for any rehabilitation of displaced people is security of tenure. It is therefore proposed that formal voluntary land agreements are encouraged in any resettlement scheme. In the case of State owned lands the provisions of the State Land Act 2002 will apply. With respect to the acquisition of private lands in the urban area, either the Islands Councils or the GOK makes a head lease agreement with the registered landowners and subsequently make sub-lease arrangements with the resettled people.

The provision of a legal framework in leasing and sub-leasing private land guarantees security of tenure for tenants commensurate with adequate compensation for the landowners. There are also legal requirements for the attainment of good health and the provision of financial means of enabling the displaced people to achieve a better life prior their displacement.

## **8. VALUATION OF AFFECTED ASSETS**

This section discusses the methods of valuing affected assets as practiced by the Government of Kiribati and the Bank guidelines on the valuation of affected assets. The Government of Kiribati uses the principles of replacement cost for loss of assets and compensation rates for trees, crops, and agricultural pits. These principles are compatible with the Bank's policies for the use of replacement cost and compensation in the determination of compensation for loss of property and agricultural produce.

### **8.1 The Bank's Guidelines**

The Bank method for conducting valuation of properties for PAPs is based on replacement cost<sup>1</sup> and compensation is calculated accordingly.

The replacement cost approach is based on the premise that the costs of replacing productive assets that have been damaged because of project activities or improper on-site management can be measured. The approach involves direct replacement of expropriated assets and covers an amount that is sufficient for asset replacement, moving expenses and other transaction costs.

### **8.2 GOK Methods of Valuation: legal and administrative framework**

There are legal and administrative frameworks in place for conducting valuation of project affected assets, including loss of property and trees. The methods of replacement cost and compensation are used by the GOK in determining compensation.

The current schedule of rates of compensation is shown in Annex 3. These include compensation rates for different types of assets, including agricultural plants and physical assets.

### **8.3 Compensation Procedures and Civil Works Schedule**

The Lands Management Division normally administers compensation after due consultations with the affected persons. The payment is normally paid after a comprehensive survey and inventory of the affected assets have been made, and legal owners identified.

<sup>1</sup> Replacement cost is the method of valuation of assets that helps determine the amount sufficient to replace lost assets and cover transaction costs. In applying this method of valuation, depreciation of structures and assets should not be taken into account. For losses that cannot easily be valued or compensated for in monetary terms (e.g., access to public services, customers, and suppliers; or to fishing, grazing, or forest areas), attempts are made to establish access to equivalent and culturally acceptable resources and earning opportunities. Where domestic law does not meet the standard of compensation at full replacement cost<sup>29</sup>, compensation under domestic law is supplemented by additional measures necessary to meet the replacement cost standard (OP 4.12, footnote 11).

#### **8.4 Compensation Rates for Loss of Crops and Trees**

Cash compensation is paid for all crops and trees that are found on the land that have been acquired. The compensation rates are determined by Cabinet taking into account the fruit-bearing ability of trees. The compensation rates for the different kinds of trees and crops are shown in the Schedule of Rates provided in Annex 3.

#### **8.5 Compensation for Houses**

The compensation for houses is made after the necessary consultations have been made with the owners and the GOK Civil Engineer. The Civil Engineer provides the estimated replacement cost of the house. The law requires that the market value of the land and the building be taken into consideration for compensation purposes of such assets.

#### **8.6 Compensation for Project**

Compensation for the resettlement projects will be made in accordance with existing GOK practice which is consistent with the Bank's guidelines on compensation.

### **9. ORGANISATIONAL PROCEDURES**

This section discusses the organisational procedures in relation to the delivery of entitlements and the implementation process. The planning and implementation processes involve a variety of tasks to be carried out mainly by the GOK and its agencies. The participation of the people affected is an essential component of these activities. The institutional framework of these GOK ministries and agencies, and their respective functions in relation to the formulation of a lands and resettlement framework are described and discussed here.

#### **9.1 The National Disaster Management Office**

The National Disaster Act 1993 provides the legal framework for the setting up of the management strategies to deal with disaster-related issues. The Office of the Beretitenti is responsible for the implementation of the Act, including the crucial role in the ultimate control and the coordination of activities of government ministries and agencies in carrying out their statutory functions and responsibilities in disaster management and in the land acquisition and resettlement issues.

The National Disaster Act 1993 provides for the establishment of the National Disaster Management Office and the National Disaster Council. The National Disaster Management Office is located in the Office of the President and serves as the secretariat for adaptation and disaster management.

The National Disaster Council, appointed by and accountable to the Minister, provides advice on all disaster-related matters, including the coordination of Government and non-government agencies, relating to disaster mitigation, preparedness, response and recovery. The Council is also charged with the preparation and formulation of a National Disaster Plan.

The National Disaster Plan must be approved by Cabinet, and be reviewed periodically. All government ministries and agencies and non-government agencies that are formally assigned responsibilities under the National Disaster Plan must make their own plans and other arrangements necessary to fulfill such roles.

The Lands Acquisition and Resettlement Policy Framework is an important component of the NDP.

The National Disaster Management Office works in collaboration with other government ministries and divisions with the technical capability and capacity to deal with the lands acquisition and resettlement related issues. The key government ministries include the Ministry of Works and Energy (MWE), the Ministry of Internal and Social Affairs (MISA), the Ministry of Finance and Economic Development (MFED) and the Ministry of Environment Lands and Agricultural Development (MELAD).

Their statutory functions and relationship to the lands acquisition and resettlement framework are discussed below.

### **9.2 The Ministry of Internal Affairs and Social Development (MISA)**

The MISA is the parent government body for local governments and their development programmes, including resettlement activities. MISA will liaise with all the Island Councils on the planning and implementation of the KAP and its subprojects. The Island Planning Officer or the designated Island Project Officer will work closely with MISA on the project. MISA will also cooperate with other government agencies during the planning and implementation of the KAP programme.

### **9.3 The Ministry of Environment Lands and Agricultural Development (MELAD)**

The MELAD is constitutionally responsible for the formulation and management of government policies in

relation to lands acquisition, environmental and conservation matters, and agricultural development. MELAD is the home of the GOK Resettlement Committee, which coordinates official activities in relation to lands acquisition and resettlement, and environmental screening. With its expertise on environmental, land management and agricultural development, the MELAD will take a leading role in the drawing up of RAPs under the project.

#### **9.3.1 Lands Management Division**

The LMD of MELAD is ultimately responsible for the payment of entitlements to those affected in the project. This responsibility can be delegated to the Islands Councils to administer payment of compensation entitlements to the PAPs on each island.

The LMD pays annual land rentals for government leases and sub-leases, compensation for crops, trees, and for loss of assets incurred in the course of implementing a government project. The LMD also pays compensation for the excavation of sand and gravel from private property.

The rates for land lease rentals are determined by agreement between the lessee and the leasee. The Government decides the compensation rates for destroyed crops and aggregates unilaterally without consultation with the interested parties.

The LMD is the competent government agency to be involved in land dealings with landowners if the Government is to provide house sites for the displaced persons.

The LMD has trained and qualified surveyors to map out land boundaries and the demarcation of house sites required for a resettlement scheme.

The LMD staff is always involved in on-going consultations with various stakeholders on land matters, including landowners, developers and settlers. The Kiribati Land Information System (KLIS) provides basic information on the key processes involving land. The LMD had also undertaken public awareness programmes utilising the services of mass media.

The LM D has the institutional capability and capacity to deal effectively with lands acquisition and resettlement issues.

### **9.3.2 Environment and Conservation Division**

The Environment Act 1999 requires that development projects be subjected to an Environmental Assessment (EA).

Any land acquisition and/or resettlement must therefore be subjected to an EA. The ECD staff are already active participants in the main Adaptation Project and are aware of the necessity of an EA for any proposed resettlement scheme.

### **8.3.3 Agricultural Development**

The Agriculture Division had been supportive of previous resettlement operations within the country, and the Division should be able to mobilize the necessary resources, including technical assistance, to assist in the agricultural development of newly developed areas for resettlement.

### **9.4 Public Utilities Board**

The provision of basic services, such as water, power and sewerage, are essential to the development and management of a healthy and environmentally friendly settlement.

The provision for sites and services is crucial to the long-term sustainability of a new settlement. The financial implications for these must be taken into account.

The PUB is already stretched with current commitments, and any extra load must be complemented with the injection of the necessary resources into the PUB.

### **9.5 Civil Engineering Division**

The Civil Engineering Division of the Ministry of Works and Energy has been responsible for the design of coastal protection work, house plans, road works and valuation of property.

### **9.6 Ministry of Finance and Economic Development**

The GOK financial inputs into the Project have to be included in the fiscal Budget to be appropriated by the Maneaba Ni Maungatabu. The Project Budget will be controlled and managed by the Administering Authority, but the Accounting Division of the MFED will direct the actual disbursements.

Financial contributions from the Bank and other sources will be managed in accordance with the appropriate provisions of the Public Finance (Control and Audit) 1977.

#### **9.7 Conclusion**

The formulation of a Lands Acquisition and Resettlement Framework entails an appreciation of the multiplicity of tasks to be carried out by the various stakeholders in the public service as well as in the private sector.

The GOK, through its various ministries and divisions, has the constitutional and legal mandate to carry out its responsibilities and obligations, in relation to the lands acquisition and resettlement requirements. The existing management strategies and procedures applied by the GOK are consistent with the policies of the Bank.

It is proposed that wherever possible, all of these statutory functions and responsibilities are delegated to the local government level involving the Island Councils and the island communities, and the non-government organizations.

### **10. PROPOSED PROCESSES FOR DELIVERY OF ENTITLEMENTS AND IMPLEMENTATION**

The following discussion is about the actual institutional responsibilities under the project for the screening process to identify the PAPs, actual drawings of the resettlement plan, implementation responsibilities such as payment of entitlements and allocation of new sites, and monitoring.

#### **10.1 Subproject Screening**

For activities envisioned under MOPs it will be the responsibility of the respective ministry to work through the Island Council to establish a consultation process. This process will involve consultations with the Island Council itself as well as with any people on the island who are likely to be affected by the suggested project or subproject. This work will be carried out operationally in close cooperation with the Island Project Officer who will serve as the main liaison with the local people.

With respect to the Pilot Island Adaptation component, the Island Project Officer will do the formulation of subproject application documents, but assistance is often augmented by contracted NGOs and governmental organisations. The formulation step is designed to ensure the preparation of a subproject

proposal that will be essentially complete and ready for appraisal or technical evaluation by the Island Development Committee. It is therefore important for the project formulator to screen social impacts at this point in the subproject cycle, assess the number of PAPs, assess alternative locations for the subprojects if possible, identify the means for compensation, and put in place plans for monitoring the subprojects.

## **10.2 Consultation with the Island Council and Village Communities**

Whether for MOP activities or activities under the Pilot Island Adaptation component, consultation with the Island Council and village communities will take place in the early process of resettlement planning and screening. The IPO will be assisted by the Ministry of Internal Affairs and Social Development and the Ministry of Environment, Lands and Agricultural Development, key government stakeholders in the project, to establish contacts with island leaders to introduce the project, potential resettlement impacts, and strategy or approach for compensation and rehabilitation. These early meetings will allow the exchange of opinions and collection of comments useful for the project.

During the course of these joint meetings the people will be informed of a preliminary survey to be conducted on the island to identify the people and communities to be affected by the project.

## **10.3 Preliminary Survey**

This survey will be conducted by the IPO with representatives of the community, including the women and young people. The survey will identify those households and areas likely to be affected by the proposed project, and will do a basic mapping of the affected areas. The survey will visit every affected household and the affected people will review the results.

Following the completion of site selection, it is then necessary to carry out detailed inventory and social and economic survey within the affected area.

## **10.4 Socio-Economic Survey of Settlement Impacts**

An independent consultant can do this survey. The survey will provide information on the following:

- Number of residents, households affected by the project and residents who may have to relocate.
- Age, occupation, education, job location, standard of living, length of stay of all people living in the area.
- Type, size, condition, status, and value of land and building and other assets prior to project

- Positive and negative impact towards residents, cultural assets and environment
- information on vulnerable groups or persons for whom special provisions may have to be made;
- Expectations, perceptions and aspirations of residents affected by the project
- Current rule of law, including customary law, on land ownership, asset and loss valuation and compensation.

#### **10.5 Develop an Abbreviated Resettlement Action Plan**

Where impacts on the project affected people are minor – that is, where no people are displaced and less than 10% of their productive assets are affected, or where fewer than 200 people are displaced, an Abbreviated Resettlement Action Plan may be used. An independent consultant can draw this plan with assistance by the MISA and MELAD.

An outline of preparing an abbreviated plan includes:

- (a) a census survey of displaced persons and valuation of assets;
- (b) description of compensation and other resettlement assistance to be provided;
- (c) consultations with displaced people about acceptable alternatives;
- (d) institutional responsibility for implementation and procedures for grievance redress;
- (e) arrangements for monitoring and implementation; and
- (f) a timetable and budget.

#### **10.6 Consultation with Affected People**

The KAP Office and the appropriate local and central governmental organisations will review the RAP. The comments from the KAP, central and local government agencies and the PAPs will be incorporated in the final abbreviated RAP.

#### **10.7 Disclose the RAP Policy to the Affected People**

A meeting with the Island Council to discuss the adopted RAP takes place followed by a subsequent meeting with the PAPs and their village communities.

#### **10.8 Sign Compensation Contract and Pay Compensation to the PAPs**

The final step of resettlement implementation is payment of compensation. The Island Council treasurer on the island can do this in collaboration with the Lands Management Division of the

MELAD. In place of compensation, the Island Council and the IPO will ensure that the PAPs receive the alternative compensation (equivalent size plot of land with the same land use capacity and / or other forms of compensation). All compensation and resettlement assistance will be paid/implemented before implementation of the subproject begins.

#### **10.9 Resettlement Funding, Cost Estimate, and Contingencies**

The resettlement budget for the proposed project components is the responsibility of the Island Councils where the subprojects and the PAPs are located. In order to ensure that the resettlement programme for each island is implemented smoothly efforts will be made in developing realistic cost estimates for the resettlement programme. The detailed cost estimates will be based on comprehensive inventory survey of different impacts, and actual costs of compensation.

In order to ensure smooth implementation of the resettlement programme, the resettlement budget will also include other related costs, such as survey and planning, monitoring and evaluation, technical training and overall administration. A contingency fund of 10% of the total resettlement cost will be set aside for covering unforeseen expenses during the implementation phase.

The preparation of the resettlement budget will have to be done by the KAP Project Office in cooperation with the appropriate government agencies, including the MISA, the MELAD and the MFED.

#### **10.10 Grievance Redress Mechanisms**

The affected people will be given several opportunities to review the survey results and compensation policies during the planning and implementation processes. In the course of the implementation, disputes may arise which require independent resolution. The affected will be informed of their rights and the grievance redress mechanisms available to them. These mechanisms include traditional forms of conflict resolution, legal and political means. These mechanisms are discussed in detailed in Section 11 below.

### **11. GRIEVANCE MECHANISM**

There are traditional, administrative, political and legal mechanisms available in Kiribati for the resolution of grievances aired by the affected or the displaced persons in the planning and implementation of a project.

### **11.1 The Maneaba System**

The involvement of the village elders or *unimane* under the *maneaba* system in resolving grievances over community projects has proven to be most effective. The *maneaba* system is a meeting of the village people, notably the *unimane*, in the traditional meeting hall (*maneaba*) to discuss village or island matters. The traditional authority and very strong influence of the Council of Unimane, in a mediating role, is still an effective instrument for conflict resolution, particularly in the outer islands. This should be the first recourse for anyone with a grievance related to resettlement, land acquisition or related concerns.

### **11.2 The Administrative Procedure**

After the Council of elders, the next recourse for aggrieved parties, during the planning and implementation of the project, is the Administering Authority for the project. Hence, the need for constant dialogue and communication between the Administering Authority and the project-affected communities cannot be over emphasized.

The Administering Authority may not always be in situation to resolve the grievance, and the matter may be referred to the appropriate government agency to deal with the matter.

The intervention of political resolution is not always desirable, but sometimes it is unavoidable.

### **11.3 Political Mechanism**

The politicians cannot escape being involved in project complications if the administrative machinery is unable to assist. The project-affected people will then enlist the services of the local Member of Parliament or the Minister responsible to help them solve their problems.

### **11.4 Legal Redress**

The legal means of resolving grievances is usually the last course of action for the PAPs. There are existing laws, which provide access for the PAPs to refer their grievances to the Court for an independent judgement.

The Kiribati Constitution safeguards the interests of the PAPs in relation to compensation over their acquired property.

The Rent Review Cap.90 provides that any disagreement on lease rentals between the parties shall be referred to the magistrate's court (section 5).

The Proceedings by and against the Republic (Cap. 76A) gives the right for a person to sue the Republic (section 3) to liabilities in tort committed by its servants or agents, and a breach of duties in regard to the ownership, occupation, possession or control of property (section 4).

The Office of the People's Lawyer, funded from public funds, can provide free legal advice and represent the PAPs in litigation matters.

#### **11.5 The Bank Guidelines on Grievance Mechanism**

The Bank requires that appropriate and accessible grievance mechanisms be established for the PAPs and their communities. Specifically, OP 4.12 requires that there should be affordable and accessible procedures for third-party settlement of disputes arising from resettlement, and that grievance mechanisms should take into account the availability of judicial recourse and community and traditional dispute settlement mechanisms. These criteria are met under the laws, regulations and practices of the Republic of Kiribati.

#### **11.6 Conclusion**

The grievance mechanisms provided by the traditional, administrative, political and legal processes have proven to be appropriate and accessible to the ordinary I-Kiribati and meet the requirements of OP 4.12. The PAPs should know their customary and legal rights to pursue justice in the course of being adversely affected in a development project.

### **12. PAP'S PARTICIPATION IN PROJECT**

This section describes the mechanism for consultations with, and participation of, displaced persons in planning, implementation and monitoring of the Project.

#### **12.1 National Consultations**

There have been two separate National Consultations during the preparation of the KAP-I focusing on public awareness and commitment for the Project.

The consultations involved the main stakeholders throughout the country, including Island Council representatives, traditional elders (unimane), women and youth. The respective Island Planning Officers were participants during the second National Consultation.

The outcomes of the Second National Consultations included the prioritization of vulnerabilities identified by the key island stakeholders, identification of the coping strategies for the identified vulnerabilities, and the classification of adaptation strategies.

#### **12.2 Island and Village Consultations**

Following the National Consultations, the Island Planning Officers and the Council representatives returned to their respective islands where they held Island-level discussions on the project and its implications for those likely to be affected on their own islands.

#### **12.3 Legal Public Notices**

The law requires that the planning and implementation of any project must be preceded by the issuance of public notice so that the affected people in the project are given the opportunity to submit their objections or comments to the appropriate authorities before a project is carried out. These mandatory public notices relate to land use planning, involuntary acquisition of lands, foreshore reclamation, and environmental assessment for projects.

#### **12.4 Enhancing Active Participation of PAPs**

The local governments and GOK ministries involved in the lands acquisition and resettlement are to be encouraged to comply with the Bank's guidelines and the GOK's existing statutory requirements for the issuance of appropriate public notices during the planning and implementation of the projects.

The enhancing of the active participation of the PAPs in the planning, implementing and monitoring of the Project will ensure the long-term success and viability of the Project and its components.

#### **12.5 Conclusion**

The consultative mechanisms with the PAPs exist in the legal and administrative frameworks of the central and local government systems.

The participation of the PAPs will be more meaningful if they are directly involved and invited to be active participants in the process rather than indirect participants. The participation of the PAPs in the planning, implementing and monitoring of the project must be enhanced by the project management team.

## **13. PROJECT MONITORING**

The arrangements for monitoring the Project by the GOK or the appointment of independent monitors to assess and evaluate the resettlement project are discussed hereunder.

### **13.1 The Bank's Guidelines.**

The Bank requires that there is adequate monitoring and evaluation of the activities carried out in the resettlement instrument. The Bank requires internal and external resettlement and evaluation exercises to be carried out in order to monitor resettlement implementation and ensure that affected people are compensated adequately.

The internal monitoring system, to be done by the Project Administering Authority, aims to have an overview of the resettlement progress during project implementation. A monthly report for this purpose will be prepared. A quarterly overall resettlement progress report for the project will be submitted to the Bank.

### **13.2 GOK Monitoring**

The National Development Co-ordinating Committee provides an internal monitoring system whereby projects are reviewed quarterly to measure progress, both in terms of physical progress and financial costs. The Committee comprises all Permanent Secretaries, and reports directly to the Cabinet.

Another monitoring device is through the political machinery when the Parliament debates the Budget, which provides the Project funding.

The Members of Parliament with interest in the project can also raise questions or motions on the project during the meeting of Parliament.

Monitoring the progress of a project is an important activity that needs to be done to ensure that the objectives of the project are fulfilled, and that the public funds and the overseas development assistance

for the project are spent properly and are well justified.

### **13.3 Independent Monitoring**

As the GOK will be the principal administering authority on the projects, it is imperative that an independent monitoring mechanism is put in place to allow an objective and unbiased monitoring and assessment of the project activities. To this end, it is proposed that a non-government organisation and independent assessors are appointed to carry out an independent monitoring of the project.

## **14 CONCLUSION & RECOMMENDATIONS**

This section reviews the overall findings in relation to the current GOK Resettlement Policy and the World Bank's Resettlement Policy. A comparison of the two policy frameworks is summarised and recommendations are made to ensure that the GOK's resettlement and lands acquisitions policy framework meets the requirements of the World Bank.

### **1. Principles and Objectives**

The principles and objectives of resettlement policies of the World Bank and the GOK are synonymous, but are more explicit in the Bank's documents in contrast to the GOK's implicit references.

It is proposed that the GOK adopts a more lucid pronouncement of its policies on lands acquisition and resettlement.

### **2. Resettlement Plans**

The GOK and the Bank follow prescribed procedures in the planning and implementation process. These include targeting and information dissemination, subproject formulation, survey and appraisal, approval, implementation, monitoring and evaluation (OP 4.12).

It is recommended that the GOK, through the Resettlement Committee, adapts its procedures to the more comprehensive and explicit procedures required by the Bank as outlined in the OP 4.12

### **3. Resettlement Funding**

The GOK does provide for a resettlement budget administered by the MELAD. It is important to take note

of the Bank's requirement for a national budget to take into account the full costs of compensation as a result of Project implementation.

#### **4. Eligibility Criteria**

The eligibility criteria promoted by the Bank looks closely at the needs of the disadvantaged, particularly the women, the young people and the poor. This is in line with the current GOK's policy of enhancing growth and ensuring equitable distribution of resources.

#### **5. Legal Basis**

Generally, there are no significant discrepancies between the GOK and the Bank's legal requirements, which may warrant significant legal amendments from the GOK perspective.

The GOK has existing legislation to comply with the Bank's requirements. There is statutory provision for both voluntary and involuntary land dealings, organizational procedures, valuation of assets and compensation procedures, and grievance redress mechanisms.

#### **6. Valuation of Assets**

Both the Bank and the GOK use the methods of replacement cost and compensation costs in the valuation of assets affected in the course of project implementation.

#### **7. Organisational Procedures**

The GOK, through its various agencies at the central and local government levels, has the statutory mandate to carry out its responsibilities and obligations relating to the lands acquisition and resettlement operations. The current management strategies and procedures practiced by the GOK are consistent with Bank's policies.

Whilst the general resources, capability and expertise are not always available at the local government level, it is proposed that the implementation process on the lands acquisition and resettlement exercise are delegated to the appropriate personnel and organizational groups at the island/village level.

It is recommended that the MELAD and the MISA conduct a joint training programme on the concept and application of the Lands Acquisition and Resettlement Policy Framework for the benefit of people to be actively involved in the project implementation.

#### **8. Grievance Redress Mechanisms**

The Bank requires that appropriate and accessible grievance mechanisms be established for the PAPs.

The Project Management may wish to institute a mutually agreed grievance redress mechanism with the PAPs as an initial step before other grievance redress mechanisms, including court action, are sought.

It is recommended that such a Project/PAP redress grievance arrangement is agreed during early consultations between the parties.

#### **9. PAP Participation**

The Bank strongly emphasizes the need for the full and meaningful participation of the PAPs and their communities from the Project inception to its implementation. The GOK and the local governments are legally bound to comply with public awareness, publicity and education of Project related issues.

It is recommended that more public awareness on the Project is made through the media.

#### **10. Monitoring**

The Bank advocates the conduct of internal and external forms of Project monitoring to be undertaken. The GOK has its own inherent monitoring mechanisms; however, the provision of an independent evaluation exercise of the Project must also be executed by the GOK.

It is recommended that a consultant or an NGO be contracted to carry out an independent evaluation of the Project.

## **REFERENCES**

- Crocombe, R.G.      Land Tenure in the Atolls, IPS, USP, Suva, 1987
- Government of Kiribati    Kiribati Land Information System (KLIS), Land Management Division, MHARD, June, 2000
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- Republic of Kiribati    Constitution 1979
- The Laws of Kiribati 1981 (Revision) Volume III Caps. 69-103 and Supplement
- The Proceedings by and against the Republic CAP. 76A
- Public Finance (Control and Audit) CAP.79
- Rent Review CAP.90
- University of the South Pacific School of Law PacLII

**ANNEX 1      TERMS OF REFERENCE**

## **ANNEX 2        METHODOLOGY**

This section describes the process followed in the preparation of the Policy Framework.

The following tasks were undertaken in the collection of data:

- Consultations with the National Coordinator, the Steering Committee and Bruce Harris, the Senior Sociologist at the World Bank
- Review of literature, including the review of relevant official documents of the Government of Kiribati and the World Bank.
- Consultations with the key GOK officials, including the Secretary MELAD Tukaabu Teroroko, SAS MELAD Tebao Tanieru, SAS MFED Kabure Temareti, and Director of Lands Management Tebutonga Ereata.
- Consultations with targeted community stakeholders, including landowners, developers, and likely displaced people.
- The use of the Internet to examine the land acquisition and resettlement policy framework exercises in other developing countries.

### **Consultations with Project Team**

The Terms of Reference for the Lands Acquisition and Resettlement Framework were discussed with the World Bank Project Team, and Bruce Harris, the Senior Social Scientist at the World Bank, made available a CD containing key Bank documents, the BP 4.12 on Involuntary Resettlement and OP 4.12 Involuntary Resettlement (Revised April 2004), during his recent visit to Tarawa. The TOR appears as Annex 1.

I attended a National Adaptation Steering Committee (NASC) meeting that was useful in allowing me to focus on the parameters of the study.

### **Review of Literature**

A review was made of the relevant GOK files and documents, the Bank's OP 4.12 and the BP 4.12 documents, relevant Kiribati laws, and books on Kiribati land tenure.

### **GOK Documents**

The Ministry of Environment Lands and Agricultural Development (MELAD) gave me access to documents, which explained the current GOK resettlement principles and objectives.

The minutes of the Resettlement Committee were also studied.

The GOK Resettlement Policy files and documents in relation to the recent relocation of outer island people from the Gilbert Islands group to the Tabuaeran and Teraina in the Northern Line Islands were examined. The rehabilitation of people to the western islands was induced by over-population as opposed to climate change.

The Lands Management Office (LMO) kindly provided files and documents on land management issues, such as land leases and compensation rates.

Sample copies of the lease agreement and sub-lease agreement were examined and noted. These can be sighted as Annex 3 and Annex 4.

The LMO produces a Kiribati Lands Information System (KLIS), a valuable manual in understanding the various processes involved in the types of voluntary land agreements discussed in Section 3 of the Report.

### **Review of Legislation**

A review of the relevant laws on lands acquisition and resettlement issues was also made. These included the Native Lands Ordinance (Cap.61), the Land Planning Ordinance, the Local Government Act 1984, Public Utilities Ordinance (Cap.83), Proceedings by and against the Republic (Cap.76A), and the Public Finance (Control and Audit) (Cap.79).

### **Land Tenure in the Atolls**

A useful simple description of land tenure in Kiribati is found in the Land Tenure in the Atolls (1987).

### **Consultations with Government Officials**

Discussions were held with the Permanent Secretary for MELAD (Tukabu Teroroko), the Senior Assistant Secretary MELAD (Tebao Tanieru), Director of Lands (Tebutonga Ereata), Senior Assistant Secretary, Ministry of Internal and Social Affairs (Manikaoti Timeon) and Senior Assistant Secretary, Ministry of Finance and Economic Development (Kabure Temareti). These officials had been closely involved in the GOK resettlement planning and implementation, and are current representatives of their own Ministries on the Resettlement Committee.

The Permanent Secretary MELAD explained the Terms of Reference of the Resettlement Committee, which is chaired by the Minister MELAD.

Tebutonga Ereata is principal adviser on general land matters and he explained GOK policies not readily available in documents. Kabure Temareti was involved in the planning and implementation of the resettlement of Tabuaeran and Teraina. They provided background information on the GOK principles on past resettlement operations.

### **Consultations/Interviews with Community Stakeholders**

Consultations and informal interviews were also carried out with community and non-government organizations. These included dialogue with the old men or *unimane* and office bearers of the Tokatarawa Association, and the Clerk of the Teinainano Urban Council (TUC). Some of these people were participants in the National Consultations on the Kiribati Adaptation Project, and were fully conversant with the issues.

In discussions with the *unimane*, they commented that the most likely places to be adversely affected by rising tide and climate change are the reclaimed and accreted lagoon areas on South Tarawa, which historically were tidal flats.

### **The Internet**

The use of the Internet to view similar Lands Acquisition and Resettlement Frameworks in other developing countries was made.

The website on the USP Vanuatu Law Pac11 provides a useful update of Kiribati laws.

**ANNEX 3      SAMPLE OF LEASE AGREEMENT**

**REPUBLIC OF KIRIBATI  
LEASE AGREEMENT**

NAME OF LANDOWNER (LESSEE) :

ADDRESS:

NAME OF TENANT (LESSEE):

NAME & NUMBER OF LAND:

ISLAND

VILLAGE

SIZE

AGREED RENT

RENT PER ACRE

TERM OF LEASE

**CONDITIONS OF LEASE AGREEMENT**

1. This lease is subject to Part VI of the Native Lands Ordinance Cap 61 and the Rent Review Ordinance Cap 90.
2. The tenant agrees to pay the landowner the rent due in the first week of January each year.
3. The rent shall be reviewed in accordance with provisions of the Rent Review Cap 90.
4. During the term of the lease, the tenant shall be entitled to the exclusive of all land, trees, plants and fixtures and shall pay all rates and taxes which may be payable in respect of the demised land
5. The tenant shall not sublet the demised land or any part thereof.
6. The land shall not be assigned or transferred without the consent of the landowner or the

community.

7. The tenant shall not do or permit or suffer to be done on the land or in the buildings on the land anything in contravention of any bye-laws of the Local government Council or any statutory or other provisions or regulations now or hereafter in force.
8. The landowner and the tenant shall include their successors in title.
9. Any dispute arising from the above provisions will have to be settled amicably between the parties. In the event of failing to reach mutual agreement between the parties concerned, the matter shall be referred to the Court.

#### **ANNEX 4 SCHEDULE RATES OF COMPENSATION**

These compensation rates for crops and buildings were decided by Cabinet on the 6<sup>th</sup> August, 1992.

The annual leased land rentals were determined by the GOK and landowners' representatives on the 29<sup>th</sup> November 2004.

These compensation rates and land rentals are current as at 1<sup>st</sup> May 2005.

| ASSET                      | RATES    |
|----------------------------|----------|
| <b>COCONUT TREE</b>        |          |
| Fruit bearing              | \$50.00  |
| Non-bearing with trunk     | \$25.00  |
| Non-bearing without trunk  | \$10.00  |
| <b>PANDANUS TREE</b>       |          |
| Fruit bearing              | \$23.00  |
| Non-fruit bearing          | \$12.00  |
| Newly planted              | \$00.50  |
| <b>TE BERO TREE</b>        |          |
| Fruit bearing              | \$10.00  |
| Non bearing                | \$03.00  |
| Newly planted              | \$00.50  |
| <b>BREADFRUIT TREE</b>     |          |
| Fruit bearing BOKEKE       | \$200.00 |
| Fruit bearing              | \$120.00 |
| Non bearing                | \$ 60.00 |
| Non bearing without trunk  | \$05.00  |
| <b>BWABWAIA TREE</b>       |          |
| Fruit bearing              | \$12.00  |
| Non bearing above 3ft high | \$02.50  |

|                      |                   |
|----------------------|-------------------|
| BWAUKIN PER SQ.METRE | \$03.00           |
| BANANA               |                   |
| Fruit bearing        | \$10.00           |
| Non bearing          | \$03.00           |
| KUMARA               | \$5.00 per sq.m   |
| BUILDING             |                   |
| Permanent            | \$100.00 per sq.m |
| Semi-permanent       | \$ 50.00 per sq.m |
| Local building       | \$ 35.00 per sq.m |
| BWABAI PIT           |                   |
| Filling              | \$02.08 per sq.m  |
| BWABAI PLANT         | \$00.90 per lb.   |

|                            |                     |
|----------------------------|---------------------|
| ANNUAL LEASED LAND RENTALS |                     |
| Commercial                 | \$1,807.20 per acre |
| Residential                | \$1,480.82 per acre |
| Outer Islands              | \$ 532.50 per acre  |