

# MIDLANDS PROVINCE



## GUIDELINES AND RECOMMENDATIONS

FOR COMPENSATION OF LOCAL  
COMMUNITIES DISPLACED BY GROWTH  
POINT EXPANSION AND RURAL  
DEVELOPMENT PROJECTS





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## 1. BACKGROUND AND PURPOSE

To promote rural development and investment in the post-independence era, the Government of Zimbabwe designated certain sites as either controlled business centres or Growth Points earmarked for urbanization. Some of these centres, whose boundaries were gazetted through Statutory Instrument 378 of 1982, have expanded so much that they have exhausted all the land within their gazetted boundaries, and hence, the need to expand beyond these boundaries. This expansion often entails encroaching into communal or resettlement land that is inhabited by local communities. In other cases, centres have not developed as expected, which sometimes led to a situation in which local communities continued to settle within gazetted boundaries. To allow urbanization and rural development to take place, some local communities have to cede part or all of their land. As a result, the affected people may lose their homes, their lands and at times part of their livelihoods or cultural heritage.

This process of expansion of Growth points and other rural development projects trigger compensation debates and at times conflicts between the local communities who have to be relocated and the local authorities intending to facilitate rural development. The current legislative and policy framework for compensation is guided by the Communal Lands Act, Land Acquisition Act, Regional Town and Country Planning Act, Manual for the Management of Urban Land and various statutory instruments, circulars and ministerial directives. The present legislative and policy framework encourages allocation of alternative land and mutual agreements between the affected communities and the authorities intending to use the land<sup>1</sup>, but does not provide specific guidelines to that effect and has gaps in terms of the following:

- No guidelines on timeframes for public notice to be given to local communities occupying earmarked land.
- No guidelines on how to conduct public consultations and negotiations and to balance power relations.
- No guidelines on valuations and impact assessments for rehabilitation of livelihoods.
- Insufficient guidelines to prevent acquisition without compensation.
- No provisions for the replacement of communal resources and local or social infrastructure.
- No provisions for the protection or replacement of cultural and heritage sites.
- No provisions for compensating disruptions and personal hardships.
- No mechanisms to safeguard particularly vulnerable groups.
- No mechanisms to consider the interests of informal settlers.

The purpose of these guidelines and recommendations is to address the identified gaps and to guide local authorities in the Midlands Province and elsewhere, who are intending to expand Growth Points or implement other rural development projects, and are faced with the challenge of compensating communities who may lose their land in the process.

This document is the result of extensive consultations and dialogues that have taken place between local communities affected by Growth Point expansion and local authorities at district and provincial levels in the Midlands Province from 2016 until 2018. As such, it represents views and opinions of this wide spectrum of the Midlands Province population.

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<sup>1</sup> Cf. Communal Lands Act (20:14) IV, 12: "(1) Where as a result of- (a) a declaration in terms of section six; or (b) the setting aside of any land in terms of section ten; or (c) the grant of any servitude in terms of section eleven; any person is dispossessed of or suffers any diminution of his right to occupy or use any land- (i) he shall, so far as is reasonable and practicable, be given a right to occupy or use alternative land; or (ii) if no alternative land is available and no agreement has been reached as to compensation, Parts V and VIII of the Land Acquisition Act [Chapter 20:10], shall apply, mutatis mutandis, in respect of such dispossession or diminution. (2) Any compensation payable in terms of subsection (1) shall be paid from the Consolidated Revenue Fund, which is hereby appropriated to the purpose."

The document has been informed by consultations and research carried out in four districts in 2016 (Mberengwa, Zvishavane, Shurugwi, Gweru) and a provincial policy dialogue, which was convened by the Midlands Provincial Administration in July 2017 and brought together local authorities, land management experts, and representatives of local communities.

As a result, a provincial policy working group was formed consisting of the Provincial Administration, Ministry of Local Government, Ministry of Lands, Midlands State University Department of Local Governance, and District Administrators, Executive Officers Planning (RDCs) and community representatives from the eight districts. The working group met regularly to discuss and develop guidelines and recommendations. The findings were presented to the Provincial Development Committee in December 2017.

This process was also informed and inspired by the dialogues and negotiations about compensation between the Mberengwa Rural District Council and the Gorongwe community, which took place between 2013 and 2016 and led to the signing of a Memorandum of Understanding in November 2017, which resolved a long-lasting conflict about the expansion of the Mataga Growth Point. The Memorandum of Understanding set an example and is annexed to this document.

These guidelines and recommendations were finalized by the provincial working group in June 2018. In October, the document was launched by the Provincial Administration, signed by the working group members and presented to government officials and stakeholders from the Midlands Province. The document shall be adopted as best practice across the province and shared with national level policy makers.

The processes have been supported by the Centre for Conflict Management and Transformation, a Zimbabwean nongovernmental organization that works to transform the ways in which societies deal with conflict – away from adversarial approaches and towards collaborative problem solving.

## **2. DEFINITIONS AND GUIDING PRINCIPLES**

Compensation refers to financial payments and/or replacement of land and structures awarded to local communities who suffer economic, social and cultural losses in a bid to pave way for Growth Point expansion or other rural development projects. In reaching fair and adequate compensation for losses of local communities who are affected, local authorities should be guided by the following principles<sup>2</sup>:

### **2.1 Equivalence**

Affected people should receive compensation that neither enriches nor impoverishes them. Appropriate measures should ensure that those affected, and particularly the vulnerable, are not disadvantaged.

### **2.2 Balance of interests**

Compensation should safeguard and promote the rights and interests of affected people without jeopardizing the public interest.

### **2.3 Flexibility**

Within reasonable limits, local authorities should be flexible enough to determine and compensate losses beyond legal requirements, since it is difficult for lawmakers to foresee all special scenarios.

### **2.4 Fairness and transparency**

The distribution of negotiating power between local authorities and affected people should be as equal as possible. Negotiations should be based on an open exchange of information.

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<sup>2</sup> The guiding principles are informed by FAO 2008: Compulsory acquisition of land and compensation, 23.

### **3. COMPENSATION PROCEDURES**

This section only refers to procedures with regards to compensation, not to the administrative procedures to be followed in terms of compulsory acquisition of land, excision of communal land, and gazetting of boundaries, which are provided by the Manual for the Management of Urban Land (cf. Ministry of Local Government, Public Works and National Housing: Manual for the Management of Urban Land).

#### **3.1 Public notice of intent**

Local communities residing in an area which is earmarked for Growth Point expansion or other rural development projects should be given sufficient notice to prepare to move to alternative land and or to be incorporated into the Growth Point, as the case may be. The public notice of intent should be given to the occupants of the land that is earmarked for expansion before the application for excision of such land is submitted to the Ministry of Local Government. Every individual household to be affected should be furnished with a written notification of the public interest and intention to develop the land, in the language of their understanding. In addition, earmarked boundaries should be marked with physical signs.

Whenever possible, notification to the affected communities should be given not later than one year in advance of the planned development. In any case, the notice should provide sufficient time for compensation procedures to be concluded before the affected people are relocated. This will also give the affected communities and local authorities an opportunity to negotiate and to seek professional advice, if an agreement cannot be reached.

The notification should provide timelines for the intended acquisition, including a timeline for compensation negotiations between the authorities and the affected households and communities to take place. If valuations and impact assessments shall be carried out to inform negotiations, the notice should also provide a timeframe, during which affected households and communities may declare the improvements they made on the land earmarked for expansion, and inspections and assessments are carried out

#### **3.2 Valuations at household level**

Negotiations are more likely to be successful, if the authorities and the affected households and communities are given an official timeframe to gather information and evidence to support their arguments for compensation values, before negotiations take place. The purpose of such a valuation phase is to list, assess and (if financial compensation is considered) value assets, structures and improvements that affected households may lose due to the Growth Point expansion (cf. 4.2).

Valuations can be carried out by using self-assessments forms and inspections for verification by the responsible authorities. Valuations shall be done by a qualified and independent authority appointed or approved by the Ministry of Local Government, Public Works and Urban Development. At the beginning of the valuation phase, the affected people should be informed about

- the purpose and process,
- the considered assets and improvements,
- the principles and methods employed.

The affected people should know how to submit claims and be consulted during inspections. The results of the valuations should be shared with the affected households in written form and they should have the opportunity to appeal the findings within a specified timeframe.

### **3.3 Community impact assessment**

Negotiations are more likely to be successful, if an assessment as to the social, economic, cultural and environmental impact of the Growth Point expansion or rural development project on the affected community and households is conducted. This assessment should determine:

- who lives on the land that is earmarked,
- the (customary) rights they enjoy, community resources and local or social infrastructure they depend on for their livelihoods,
- their public facilities as well as their cultural and heritage sites etc. (cf. 4.3).

Impact assessments may be carried out through public consultations between the local authorities and the affected community. Impact assessments should be done or facilitated by a qualified and independent authority, commission or contractor agreed upon by both the local authorities and the affected people.

The affected people should actively participate in such assessments and the results should be shared with them in written form. The affected people should have the opportunity to appeal the findings within a specified timeframe.

### **3.4 Negotiations for compensation**

Both the local authorities and the affected communities should have equal negotiation powers and access to information. Local authorities should provide assistance to the affected communities so that they understand proposals and can effectively participate in negotiations. To this end, local authorities should inform the affected communities of their rights, including the right to occupy and use land in accordance with the Communal Lands Act, and the right to appeal to the Administrative Court in accordance with the Land Acquisition Act, if no agreement can be reached. In line with the principle of equivalence and in order to reach an agreement as soon as possible, authorities should make compensation offers which are sufficient to rehabilitate lost livelihoods.

For proposals and negotiations to be successful, it is recommended to base them on the results of valuations and impact assessments carried out and approved by both sides before commencing negotiations. If no valuations or impact assessments took place, the parties must start negotiations by estimating and negotiating a list of expected losses of the affected households and communities to be considered for the drafting of compensation proposals.

Local authorities should propose fair and adequate compensation models, plans and budgets based on assessing the specific case and designing an appropriate mix of any of the following components:

- resettlement of affected people on alternative land (cf. 4.1)
- compensation of immovable household assets, structures and improvements due to be lost (cf. 4.2)
- replacement of communal developments, local and social infrastructure, and cultural heritage sites due to be lost (cf. 4.3)
- socio-economic programmes to provide access to alternative sources of livelihoods (cf. 4.4)
- allowances for disruptions, personal hardships and any other losses or expenses reasonably incurred due to the process (cf. 4.5)

Proposals should be negotiated by the local authorities and the affected people or representatives chosen by the affected people. Both sides should be equally represented. Negotiations should be facilitated by a qualified and independent authority, commission or contractor agreed upon by both sides. Resettlement, replacement and compensation measures as well as timelines and budgets for implementation must be clearly spelled out and agreed upon by both the local authorities and the affected households and communities.

Any agreement or settlement should be reviewed by the involved parties and formally adopted as Memorandum of Understanding, which is supported by a full council resolution. The Memorandum of Understanding shall become part of the applications and development plans submitted to the Ministry of Local Government by the local authorities.

### **3.5 Timeline for implementation**

Local authorities should only take possession of the land occupied by the affected communities after the agreed resettlement and replacement processes have been concluded and/or after occupants have been paid the agreed amount of the value agreed as compensation. The agreement should include the payment schedule and the interest rate applicable to unpaid compensation. The responsible authorities should pay the affected communities according to the agreed upon payment schedule and put measures in place to ensure that all the affected households, upon receiving the agreed compensation, relocate within a minimum possible time. Gazetting of new boundaries should be done after the affected people have been resettled and have received the agreed compensation.

## **4. COMPENSATION COMPONENTS**

### **4.1 Resettlement on alternative land**

If alternative land in form of communal land or resettlement land is available, the resettlement of agricultural households and communities on such land may restore their main source of livelihood without much disruption. It is however crucial to consider and negotiate the following measures to ensure that resettlement will not disadvantage the affected people:

- The land previously occupied by the affected people should be assessed and alternative land provided whose location, size, soil quality can reasonably replace the land lost.
- In providing alternative land, authorities must make due consideration to natural resources such as water sources and forests lost by communities and where possible, consider offering them alternative land which provides similar resources.
- Whenever possible, the alternative land provided to the affected people should be at a minimum possible distance from the land from which they are displaced and/or provide equivalent access to infrastructure, markets and commercial activities.
- The resettlement of affected communities should be done in such a way that there is a minimum of disruptions to the social bonds between them. Chieftainships and other structures of traditional jurisdictions should be retained.
- If households are resettled within a different community, adequate measures should be taken to facilitate their integration (e.g. no language barriers at local schools).
- The allocation of land should be in line with government policies on gender equity and sensitivity and local authorities should facilitate timely issuing of settlement permits.

## **4.2 Compensation of immovable household assets, structures and improvements**

Compensation for immovable household assets, structures and improvements should either be calculated based on market value (willing buyer, willing seller) or replacement costs (inputs e.g. materials, time, labour). The value determined should be sufficient to enable the affected to re-establish their livelihood:

- Buildings, houses, sanitation and other improvements should be replaced or compensated based on market value or at least the replacement costs.
- Agricultural improvements or developments (demarcation and fencing, access routes, drainage and irrigation systems, water harvest systems, terracing etc.) should be replaced or compensated based on the input costs of reorganizing farming operations accordingly.
- Trees and perennial crops should be replaced and/or compensated by calculating the annual produce of such trees/perennial crops multiplied by the number of years it would take to produce other trees/perennial crops
- Land under cultivation should be replaced by providing inputs and assistance for cultivation of alternative land and/or by compensating the value of lost profits on the projected harvest according to the crop's current market price.

## **4.3 Replacement of community developments, local and social infrastructure, and cultural heritage sites**

Especially, resettlement on alternative land may result in loss of access to local community developments, infrastructure and cultural sites. Affected communities should be settled in an area which fulfills the minimum standards for rural resettlement and adequate measures should be considered and negotiated to assess and replace such losses:

- Access to or replacement of social infrastructure and public facilities: roads, schools, health centres/clinics, community centres, markets, sanitation etc.
- Access to or replacement of community developments: wells and boreholes, dip tanks, irrigation schemes, storage facilities, co-operative and commercial facilities etc.
- Access to or replacement of cultural heritage sites: churches/places of worship, religious sites/sacred grounds, cultural centres etc.
- Where the affected people lose grave or heritage sites, the authority intending to expand should, where possible, ensure that the grave site is not destroyed and remains accessible to be visited in accordance with their traditional practices. If such access cannot be proved, an allowance for exhumation should be granted.

## **4.4 Socio-economic programmes to provide access to alternative sources of livelihoods**

If equivalent alternative land is not available, affected agricultural households and communities might have to be offered less adequate land or urban residential stands as compensation. As a result, the affected people may lose their main source of livelihood and adequate compensatory measures should be considered and negotiated to support them in accessing alternative sustainable sources of livelihood:

- If urban residential stands are allocated, measures shall be considered and proposed to waiver development costs and facilitate timely approval of plans. Allocation of stands should be in line with government policies on gender equity and sensitivity<sup>3</sup>.

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<sup>3</sup> "In line with Government Policies on gender equity and sensitivity, all residential stands allocated to persons who are married should be allocated jointly in the name of both spouses. This prevents the sale of a matrimonial home without the consent of both spouses. It should be noted that where a married woman wishes to acquire a property in her own right, she should not be prevented from doing because of the 'one person, one stand' rule. A single woman should not be discriminated against in the allocation of residential stands" (Ministry of Local Government, Public Works and National Housing: Manual for the Management of Urban Land, VII B).

- Providing or facilitating access to alternative commercial activities (market stands, construction work etc.).
- Accommodation in existing livelihood support projects or activities (vocational training, gardening projects, provision of small plots in surrounding irrigation schemes etc.)
- Vulnerable households (e.g. elderly, women, youth, single-headed households, people living with disability or health issues) may be particularly affected and face specific challenges in replacing their means of livelihood. Adequate social, communal and developmental programmes should be provided and/or attracted to support them (e.g. government programmes like BEAM, food for work etc.).

#### **4.5 Consideration of disruptions and any other losses or expenses incurred due to the process**

Due to the disturbances and disruptions of resettlement or loss of livelihood sources people often endure personal hardships and damages. Inhabitants of communal lands may also lose cultural sites and intangible heritage. The involuntary nature of the process may also lead to personal distress affecting people emotionally, culturally and spiritually. Some of these losses are specific to the people affected and may be difficult to value, but could be considered and acknowledged in the overall compensation package:

- Consideration due to the involuntary nature of the process, disruptions of livelihoods, personal distress etc.
- Coverage of expenses for moving property and, if applicable, acquiring alternative accommodation.
- Coverage of temporary losses of earnings (loss of harvest etc.) or loss of main sources of livelihood (loss of agricultural land etc.).
- Support for obtaining legal or professional advice and preparing required documents upon request by the affected communities.
- Any other expenses incurred as a direct consequence of the process.

### **5. COMPENSATION FOR INFORMAL SETTLERS**

Local authorities should ensure that the land tenure of affected households has been substantiated and formally registered, and assist with issuing required documents (certificates of occupancy, settlement permits etc.).

Local authorities should also take measures to prevent or remove informal settlers within earmarked or gazetted boundaries designated for other purposes. However, in some cases informal settlers have been tolerated and their settlement condoned for an extended period and at times decades. In such cases, the responsible local authorities should, on a case by case basis, after due consideration to all the factors and complexities that exist, decide which informal settlers may become eligible to be treated and compensated like formal settlers. In such considerations, local authorities should pay due attention to the minimum duration of tenure.

If informal settlers have not been found to be eligible to compensation, local authorities may consider on a case to case basis, if they should be given any other kind of special assistance on human grounds, especially if they are poor, have no alternative possibility for accommodation or were unwillingly and unknowingly driven into informality or illegality.

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## **Memorandum of Understanding**

**Between**

**Mberengwa Rural District Council  
(hereunder called “Council” )**

Represented by Mr. Julius Mashavakure in his capacity as the Chief Executive of Mberengwa Rural District Council

**and**

**Gorongwe Community  
(Chipedza and Chagwiza Villages)**

Represented by Mr. Samuel Nkomo in his capacity as the Chairperson of Gorongwe Committee Chairperson

## 1. Preamble

- a) The Gorongwe community is the currently occupies the land adjacent to Mataga growth point, (Mataga-Ngungumbane road to the south and Mutorahuku stream to the west).
- b) The RDC as the planning authority holds in trust all communal land under the jurisdiction of Mberengwa district.
- c) The parties believe that the expansion of Mataga growth point will be in their mutual benefit.
- d) The parties recognise that various arrangements regarding the expansion need careful review but they will each endeavour in good faith to the detailed terms of the agreement.

## 2. Commencement date

The agreement shall commence on the date of the last person signing thereof.

## 3. Purpose of the Agreement

This Memorandum of Agreement sets out terms and conditions by which **Mberengwa Rural District Council** and the Gorongwe **community members (Chipedza and Chagwiza villages)** have agreed to resolve the Mataga Growth Point expansion conflict.

## 4. Gorongwe community roles and responsibilities

- That 79 Gorongwe community members shall cede their land upon receiving their allocation of stands at the growth point.
- That the Gorongwe community members shall pay service charges (rates) for their stands as prescribed by the local authority. (See attached schedule for service charges)
- That the Gorongwe community members shall not be allowed to sell the allocated stands but shall be allowed to transfer buildings.

## 5. MRDC roles and responsibilities

### 5.1 Inclusion of the Gorongwe community members in the Chaora and Chamakudo irrigation schemes as a way of supporting the livelihoods of the community after takeover of their land

- Council shall facilitate the inclusion of the Gorongwe community members affected by the expansion of the Growth point into the Chaora and Chamakudo irrigation schemes.
- Council shall engage relevant Government Departments and Ministries to ensure the 79 affected community members are incorporated in the Chaora and Chamakudo irrigation schemes.
- Council shall engage relevant Government Department and Ministries to find out if the affected community members can be treated as a special case in the distribution of food aid until their inclusion into the Chaora Irrigation scheme.
- Council shall engage relevant Government Departments and Ministries to find out if the affected community member's children can be incorporated in government school fees assistance programs such as BEAM until their inclusion into the Chaora Irrigation scheme.

### 5.2 Compensation in the form of residential stands

- That the beneficiaries shall be classified into three groups, A, B & C
  - Group A:** being community members who had their fields completely affected by the expansion.
  - Group B:** being community members whose fields were partially affected by the land takeover.
  - Group C:** being young married couples living with group A beneficiaries.

## Allocation of stands and number of stands per beneficiary

Group	No of people per group	No of stands	Allocation per member (# of stands) See attached list of community members	Time Frame
A	41	82	2	May-June 2015
B	28	28	1	July-August 2015
C	10	10	1	September-October 2015

### 5.2.1 Conditions for compensation in the form of residential stands

- That all land that was left by people who were compensated and relocated to Bungwe will not be part of the agreement.
- That the stand sizes shall be 30 x 15 metres (450 square metres).
- That Council shall waiver development costs (see attached schedule of development costs).
- That all plans shall be approved by Council and community to develop standard houses.
- That Council shall prepare plans to the Gorongwe community members who are interested at a negotiated cost of US\$75.00 per plan.
- That Council shall approve plans to the Gorongwe community members at a negotiated cost of US\$65.00 per plan.
- That Council shall take the opportunity to allocate stands to people, who are not part of the Gorongwe community who had applied and paid for their stands but had not been allocated stands due to the conflict.
- That groups A, B & C beneficiaries homesteads will not be affected by the current expansion and that the boundaries will be Mataga-Ngungumbane road to the south and Mutorahuku stream to the west.

### 5.3 Allocation of land for the construction of a Flea market as a source of livelihoods

- That Council shall provide a site/stand for the establishment of a flea market for the Gorongwe community members affected by the expansion of the Growth Point.
- That the Gorongwe community shall pay the necessary rates and licenses as per government policy for the development of the flea market.

## 6. Details of beneficiaries

The beneficiaries will include Gorongwe community members from groups A, B & C, as stated in the agreement, who are directly and indirectly affected by the expansion of the growth point (*See annex I for the list of beneficiaries*).

## 7. Dispute resolution

In the event of a dispute, the parties may approach the District Administrator or any other independent arbitrator appointed by both parties.

## 8. Conditions of the agreement

- That this document shall be kept as a security item for both parties and that both parties shall refer to the document in the event of any misunderstandings or disagreements that may arise in the implementation of the MOU.
- That the community shall be free to consult Council or whoever in the office of the CEO when the timeframe stated in the document has not been observed.

- That Council shall follow the same procedure with regard to any further expansion of the growth point.
- That both parties will be free to engage legal advice when necessary.
- That a committee made up of the District Administrator, Councillor Ward 18, 2 committee members representing the community, and the Centre for Conflict Management and Transformation, shall periodically monitor review the implementation of the agreement.

## **9. Declaration**

That all parties hereby accept the conditions set up in the agreement and several conditions in our part to be observed. This MOU represents the good faith intentions of the parties to proceed with the expansion of the Growth Point but is legally binding and creates legal obligations on either parties.



Produced by a Midlands Working Group  
on the compensation of local communities  
displaced by the expansion of  
Growth Points and other Development Projects

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