

KENYA URBAN WATER AND SANITATION, OUTPUT BASED AID PROJECT (OBA) FUND FOR LOW INCOME AREAS

RESETTLEMENT ACTION PLAN (RAP) FOR PROPOSED CONSTRUCTION OF WATER SUPPLY PIPELINES IN RIAT-KOGONY- KANYAKWAR-MKENDWA UPPER ZONE A FOR KISUMU WATER AND SEWERAGE COMPANY LIMITED (KIWASCO).

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ACRONYMS AND ABBREVIATIONS

- EIA: Environmental impact assessment
- ESIA Environmental and social impact assessment
- ESMF: Environment and Social Management Framework
- ESMP Environmental and Social Management Plan
- FGD Focus Group Meetings
- GDP Gross Domestic Product
- HIV/AIDS Human Immuno Deficiency Virus
- LA Land Act
- LRCC Locational Resettlement and Compensation Committee
- NGO's Non-Governmental Organizations
- NLC National Land Commission
- OP Operational Procedures
- PAPs Project Affected Persons
- PIU Project Implementation Unit
- PRA Participatory Rural Appraisal
- RAP Resettlement Action Plan
- RPF Resettlement Policy Framework
- SCRCC Sub County Resettlement Compensation Committee
- SEBR Socio-Economic Baseline Report
- SMP Social Management Plan
- VRCC Village Resettlement and Compensation Committee
- WB World Bank

DEFINITIONS

Project: A project to construct water supply infrastructure.

-Project-Affected Area: An area, which is subject to a change in use as a result of the construction or operation of the Project.

-Project-Affected Person (PAP): Any person who, as a result of the implementation of the Project, loses the right to own, use, or otherwise benefit from a built structure, land (residential, agricultural, or pasture), annual or perennial crops and trees, or any other fixed or moveable asset, either in full or in part, permanently or temporarily. PAPs may include:

- Physically Displaced People, i.e. people subject to Physical Displacement as defined hereunder,
- Economically Displaced People, i.e. people subject to Economic Displacement as defined hereunder.

-Physical Displacement: Loss of shelter and assets resulting from the acquisition of land associated with the Project that requires the affected person(s) to move to another location.

-Economic Displacement: Loss of income streams or means of livelihood resulting from land acquisition or obstructed access to resources (land, water or forest) caused by the construction or operation of the Project or its associated facilities. Not all economically displaced people need to relocate due to the Project.

-Project-Affected Household (PAH): A PAH is a household that includes Project-Affected Persons as defined above. A PAH will usually include a head of household, his/her spouse and their children, but may also include other dependents living in the same dwelling or set of dwellings, like close relatives (e.g., parents, grandchildren).

-Compensation: Payment in cash or in-kind at replacement value for an asset or a resource that is acquired or affected by the Project at the time the assets need to be replaced. In this RAP, "cash compensation" means compensation paid in cash or by cheque.

-Resettlement Assistance: Support provided to people who are physically displaced by the Project. Assistance may include transportation, and social or other services that are provided to affected people during their relocation. Assistance may also include cash allowances that compensate affected people for the inconvenience

associated with resettlement and defray the expenses of a transition to a new locale, such as moving expenses and lost work days.

-Replacement Value: The rate of compensation for lost assets must be calculated at full replacement value, that is, the market value of the assets plus transaction costs. The replacement value must reflect the cost at the time the item must be replaced. With regard to land and structures, “replacement value” is defined as follows:

- **Agricultural land:** the market value of land of equal productive use or potential located in the vicinity of the affected land, plus the cost of preparation to levels similar to or better than those of the affected land, plus the cost of any registration and transfer taxes;

- **Household and public structures:** the cost of purchasing or building a new structure, with an area and quality similar to or better than those of the affected structure, or of repairing a partially affected structure, including labor and contractors’ fees and any registration and transfer taxes.

-Vulnerable Groups: People who by virtue of gender, ethnicity, age, physical or mental disability, economic disadvantage, or social status may be more adversely affected by resettlement than others and who may be limited in their ability to claim or take advantage of resettlement assistance and related development benefits.

-Replacement cost for houses and other structure means the prevailing cost of replacing affected structures, in an area and of the quality similar to or better than that of the affected structures. Such costs will include: (a) transporting building materials to the construction site; (b) any labor and contractors’ fees; and (c) any registration costs.

-Resettlement Policy Framework (RPF) is an instrument to be used throughout the Program implementation. The RPF sets out the resettlement objectives and principles, organizational arrangements and funding mechanisms for any resettlement that may be necessary during implementation. The RPF guides the preparation of Resettlement Action Plans of individual sub projects in order to meet the needs of the people who may be affected by the project.

-Census: means a field survey carried out to identify and determine the number of Project Affected Persons (PAP) or Displaced Persons (DPs) as a result of land acquisition and related impacts. The census provides the basic information necessary for determining eligibility for compensation, resettlement and other measures emanating from consultations with affected communities and the relevant stakeholders.

-Cut-off date: Cut-off date – Date of completion of the census and assets inventory of persons affected by the project. Persons occupying the project area after the cutoff date are not eligible for compensation and/or resettlement assistance. Similarly, fixed assets (such as built structures, crops, fruit trees, and woodlots) established after the date of completion of the assets inventory, or an alternative mutually agreed on date, will not be compensated.

-Displaced Persons: mean persons who, for reasons due to involuntary acquisition or voluntary contribution of their land and other assets under the program, will suffer direct economic and or social adverse impacts, regardless of whether or not the said Displaced Persons are physically relocated. These people may have their: standard of living adversely affected, whether or not the Displaced Person will move to another location; lose right, title, interest in any houses, land (including premises, agricultural and grazing land) or any other fixed or movable assets acquired or possessed, lose access to productive assets or any means of livelihood.

-Involuntary Displacement: means the involuntary acquisition of land resulting in direct or indirect economic and social impacts caused by: Loss of benefits from use of such land; relocation or loss of shelter; loss of assets or access to assets; or loss of income sources or means of livelihood, whether the Displaced Persons has moved to another location or not.

-Involuntary Land Acquisition: is the possession of land by government or other government agencies for compensation, for the purposes of a public program against the will of the landowner. The landowner may be left with the right to negotiate the amount of compensation proposed. This includes land or assets for which the owner enjoys uncontested customary rights.

-Land: refers to agricultural and/or non-agricultural land and any structures thereon whether temporary or permanent and which may be required for the program. Land acquisition” means the possession of or alienation of land, buildings or other assets thereon for purposes of the program.

-Rehabilitation Assistance: means the provision of development assistance in addition to compensation such as land preparation, credit facilities, training, or job opportunities, needed to enable the program Affected Persons and Displaced Persons to improve their living standards, income earning capacity and production levels; or at least maintain them at pre-program levels.

-Resettlement and Compensation Plan: also known as a “Resettlement Action Plan (RAP)” or “Resettlement Plan” - is a resettlement instrument (document) to be prepared when program locations are identified. In such cases, land acquisition leads to physical displacement of persons, and/or loss of shelter, and /or loss of

livelihoods and/or loss, denial or restriction of access to economic resources. RAPs are prepared by the party impacting on the people and their livelihoods. RAPs contain specific and legal binding requirements to resettle and compensate the affected party before implementation of the program activities commences.

-Replacement cost: means replacement of assets with an amount sufficient to cover full cost of lost assets and related transaction costs. The cost is to be based on Market rate (commercial rate) according to Kenya law for sale of land or property. In terms of land, this may be categorized as follows; (a) **-Replacement cost for agricultural land:** means the pre- program or pre-displacement, whichever is higher, market value of land of equal productive potential or use located in the vicinity of the affected land, plus the costs of: (b) preparing the land to levels similar to those of the affected land; and (c) any registration and transfer taxes;

In determining the replacement cost, depreciation of the asset and the value of salvage materials are not taken into account, nor is the value of the benefits to be derived from the Project deducted from the valuation of an affected asset.

-Host population – People living in or around areas to which people physically displaced by a project will be resettled who, in turn, may be affected by the resettlement.

-Involuntary resettlement – Resettlement is involuntary when it occurs without the informed consent of the displaced persons or if they give their consent without having the power to refuse resettlement.

-Land expropriation – Process whereby a public authority, usually in return for compensation, requires a person, household, or community to relinquish rights to land that it occupies.

Stakeholders – Any and all individuals, groups, organizations, and institutions interested in and potentially affected by a project or having the ability to influence a project.

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EXECUTIVE SUMMARY

This is the Resettlement Action Plan (RAP) for proposed construction of and laying of water supply pipelines by Kisumu Water and Sewerage Company Limited (KIWASCO) to be funded under the Kenya Urban Water and Sanitation Output Based Aid (OBA) Project Fund for low income areas which is a program of the World Bank. The RAP has been prepared based on the principles and procedures of the Resettlement Policy Framework (RPF) prepared for Output Based Aid Project sub project investments.

Project Description

KIWASCO was established in the year 2003 with a mandate to provide quality water and sewerage services to Kisumu and its environment. KIWASCO has applied for an OBA subsidy for its Water Supply Improvement and Coverage Expansion Project. The scope of works includes the laying of water pipes **13, 245m** long in pipelines in the targeted **Upper Zone A**.

RAP Methodology and Approach

A consultative-participatory approach was adopted to make clear the project components and implementation activities, and to explain the likely impact and the resettlement measures available to the PAPs. The approach included the following tasks: community mobilization and sensitization; PAPs and property identification; property cadastral survey mapping; property assessment and valuation; institutional and individual stakeholder consultation; PAP census; a review of secondary sources and legislations related to the project area profile; data analysis; and report production.

Institutional and Legal Framework

The RAP has been prepared in compliance with the requirements of the relevant national legislation of the Republic of Kenya. The process and procedures of land acquisition for the Project will be principally governed by Kenya land laws including; Land Act (2012) and its amendments (2016), Land Registration Act (2012), National Land Commission Act (2012) as well as the World Bank Involuntary Resettlement Policy (OP 4.12). Articles 40 of the Constitution of the Republic of Kenya (2010), establish the fundamental principles of right to and protection of private property.

Valuation Methodology

In Kenya, the Land Act (2012) stipulates that compensation value must be 'just'. This can be interpreted to mean that the value paid must include all the other miscellaneous expenses as well as disturbance to them. Valuation for assets as outlined in this RAP involved field survey to collect data on the PAPs, land to be acquired/easement rights, structures, trees, community assets and crops affected. The valuation methods used in this RAP is the replacement cost approach.

Summary of Project Impacts

The activities highlighted in the scope of works above will take place within the road reserves of the Government of Kenya also known as the Right of Way¹. However, in Kanyakwar area, the pipeline routing is traversing private land owned by **2 PAHs**. The project will lead to economic and physical displacement of **2 PAPs** who are categorized **land owners** with formal title to the land. The table below shows the summary of project impacts.

Table 0-1: Summary of the affected persons

Description	Impacts in Quantity
Length of pipeline in m	13,245m
Number of affected PAHs	2
Number of PAHs who lose structures (latrine and fence)	2
Number of PAHs who lose land (formal / customary rights)	2
Number of PAPs who lose businesses	0
Number of squatters/encroachers	0
Number of affected school buildings	0
Number of affected religious institutions	0
Loss of Crops in Ha	0
Loss of trees	0
Total number of graves	0
Total number of Vulnerable PAHs	1
Cost of RAP	986,475.00

A summary of project impacts in terms of number of PAPs affected by area is presented in **Tables 0-2-0-3** below.

Table 0-2: Number of Project Affected Persons

Area	Category of PAP	# of PAPs
Kogony	Land Owners, Structure Owners	0
Mkendwa	Land Owners, Structure Owners	0
Riat	Land Owners, Structure Owners	0
Kanyakwar	Land Owners, Structure Owners	2

Table 0-3: Number & Size of Affected Land Parcels in Pipeline Route

LOCATION	# OF LAND PARCELS
Kanyakwar	2
Total Affected Land Size	0.16 Acres

Impact on Community Access to Infrastructure and Social Services

There will be no impacts with respect to land acquisition on community and social infrastructure as a result of the project.

¹ Right of way as defined by the Roads Act 2007

Vulnerable Groups

Vulnerable PAPs are defined as individuals, groups, households, or communities who by virtue of gender, locality, age, physical or mental disability, economic disadvantage, or social and cultural status who may require additional support or assistance and will need help adjusting to changes introduced by the Project. Assistance will take the following forms, depending on vulnerable people's requests and needs:

- Assistance in the compensation payment procedure;
- Assistance in the post payment period to secure the compensation money;
- Assistance in moving: providing vehicle, driver and facilitation at the moving stage, providing ambulance services for disabled or inform persons during moving, and;
- Health care if required at critical periods;
- Priority in processing disbursement of compensation packages
- Moving and transition support or allowance during the relocation period.

In the context of the Project, vulnerable people identified included as shown in tables 0-4 and 0-5 below:

Table 0-4: Vulnerable PAPs

VULNERABILITY	No.
Vulnerable PAHs	1
Non Vulnerable PAHs	1

Table 0-5: Forms of Vulnerability

FORMS OF VULNERABILITY	No.
Single parent	0
Chronic Illness	0
Elderly	0
Widower	0
Widow	1

Table 0-6: Entitlement Matrix

Impact	Description of affected property	Entitled person	Compensation measure
Loss Land	Partial or permanent loss of land)	Land Owner	Cash compensation for taking into account replacement cost for land. Easement cutting across more than 1/4 th (20%) of

Impact	Description of affected property	Entitled person	Compensation measure
			<p>the total land size will lead to full acquisition of land/ Disturbance allowance (15%)</p>
Loss Land	Partial or permanent loss of land)	Vulnerable Land Owner	<p>Cash compensation for taking into account replacement cost for land Easement cutting across more than 1/4th (20%) of the total land size will lead to full acquisition of land. Disturbance allowance (15%) Priority in processing and disbursing of compensation</p>
Loss of Structures	Partial or permanent loss of structures	Structure Owner	<p>Cash compensation for taking into account replacement cost for structures Disturbance allowance (15%) Right to salvage assets and materials</p>
Loss of structures	Partial or permanent loss of structures	Structure Owner (Vulnerable)	<p>Cash compensation for taking into account replacement cost for structures Disturbance allowance (15%) Right to salvage assets and materials Priority in processing and disbursing of compensation</p>

Community Participation and Consultation

The Consultant's RAP team undertook public consultations to ensure that the Project activities and the likely impacts on the local people and their livelihoods were explained and openly discussed. 2 community meetings and 1 meeting with relevant national and county government were conducted in the project area.

Table 0-7: Community Consultations

DATES	VENUE	NO.OF PARTICIPANTS
21 st August 2017	Mkendwa Primary School	35
22 nd August 2017	Kanyakwar Hall	32

Community meetings covered the following issues: description of the project objectives, components and implementation activities; property and livelihood impacts associated with project implementation; the resettlement/compensation alternatives and strategies available for PAPs; the rights of PAPs; Grievance redress; RAP preparation; valuation principles and procedures; RAP disclosure; and the approval process.

Compensation principles and compensation strategy

The RAP aims to ensure that all affected parties are compensated for their lost land and assets and assisted in restoring their livelihoods.

Overall objectives of the RAP are:

- Avoid or at least minimize adverse impacts including physical and economic displacement"
- Mitigate adverse social and economic impacts from land acquisition by:
 - Providing compensation for loss of assets at replacement cost; and
 - Ensuring that resettlement activities are implemented with appropriate disclosure of information, consultation, and the informed participation of those affected, and
 - Improve or at least restore the livelihoods and standards of living of affected people.
- Provide additional targeted assistance (e.g., credit facilities, training, or job opportunities) and opportunities to improve or at least restore their income- earning capacity, production levels, and standards of living to economically displaced persons whose livelihoods or income levels are adversely affected;

- Provide transitional support to affected people, as necessary, based on a reasonable estimate of the time required to restore their income earning capacity, production levels, and standards of living.

The key principles of this RAP are the following: -

- Compensation and resettlement of project-affected people will be carried out in compliance with Kenyan legislation and WB OP 4.12;
- Where Kenyan legislation is less favorable to PAPs than WB OP 4.12 requirements or does not apply at all, the latter shall apply;
- All physically and economically displaced people will be offered an option between either a full resettlement package, including the provision of replacement of structures or cash compensation;
- The Project will provide for measures to support sustainable use of cash compensation (money management training) and for mechanisms within the overall monitoring framework to follow up the use of cash compensation;
- The Project will assist PAPs in restoring their affected livelihoods and will provide transitional assistance in order to restore livelihoods to at least their previous level
- The Project aims to turn PAPs to Project beneficiaries; targeted livelihood restoration programs will be implemented as part of this RAP in order to achieve this goal
- The RAP implementation and-outcomes will be monitored and evaluated as part of a transparent process.

The compensation assessment procedure proposed in this RAP is in line with the Land Act 2012 and National Land Commission (NLC) Act that puts into operation the constitutional provisions on land and also complies with the provisions of the World Bank Safeguard Policy 4.12 on Involuntary Resettlement.

The proposed RAP resettlement strategy is adequate and ensures prompt monetary compensation and resettlement assistance, including a livelihood/disturbance allowance; and specialized assistance to vulnerable PAPs.

Livelihood Restoration Program

Affected households are entitled to participate in and to benefit from the targeted set of livelihood restoration programs, which were developed for this RAP:

- Financial training for the sustainable use of cash compensation (including training on the maintenance of a bank account, on small

household investments, saving strategy and financial planning on the household level);

Cut-off Date

- The cut-off date for this RAP was communicated to the affected communities during the fieldwork in August 2017. The cut-off date are the respective dates of completion of census survey in the affected project area which is **23rd August 2017**.

Valuation Approach

The valuation methods used in this RAP is the replacement cost approach.

Grievance Management

In practice, in similar compensation and resettlement activities, grievances arise from misunderstandings of the project policy, or result from conflicts between neighbours, which can usually be solved through adequate mediation using customary rules or local administration at the lowest level. Most grievances will be resolved through the stakeholder engagement process and some mediation using customary dispute settlement mechanisms.

This RAP provides a simple and accessible, extra-judicial mechanism for managing grievances and disputes based on explanation and mediation by third parties. Each of the affected persons will be able to trigger this mechanism, while still being able to resort to the judicial system.

Grievance management proposed in this RAP will provide **three tiers** of amicable review and settlement, with the **first tier** to be located at the **village** where the projects will be implemented.

Grievance Redress and Resettlement Committees

The GRMC are partners on the local level for RAP implementation, and will especially provide support in the following ways:

- Compensation process
- Involvement into the grievance mechanism on the village level
- Involvement into monitoring procedures
- Maintaining a grievance log.

First Level: Village Grievance and Resettlement Committee

This RAP prefers the first level of grievance or conflict redress on RAP related issues as a result of this project and handle all forms of grievances in an amicable manner and as an alternative dispute resolution to formal process, which is normally lengthy and costly. Grievances not resolved by the village level committee will be taken to the second level. In the affected villages as described above there will be a

Village Resettlement and Compensation Committee and the membership will include:

- The sub locational chief,
- Assistant chiefs,
- One project affected youth,
- One project affected woman,
- One project affected male
- A representative of vulnerable PAPs,
- Business representative.
- KIWASCO representative
- Contractor representative (Works and Supervising Engineer)

Second Level: Sub County Mediation Committee

There will be a mediation committee at the Sub County level to handle grievances that cannot be resolved by the site level committees and membership will include:

- One representative of the Administration; - National Government
- One representative of County Administration; - County Government
- One representative of KIWASCO;
- One representative of the construction contractor, acting as an observer
- Three representatives of the affected people, amongst them at least one woman, chosen i.e. from community based organizations, elders, traders.

Neutral 3rd Party

The RAP proposes a neutral third party for resolving of grievances before resorting to third level of dispute resolution (justice). The RAP proposes the Commission For Administration of Justice/Ombudsman or Kenya National Commission for Human Rights (KNCHR) as the neutral third party arbitrator of disputes arising from this RAP implementation.

Third Level: Resort to Justice

In case this mechanism will not allow an amicable agreement to be reached, the complainant or the defendant can resort to Justice (and could at any time even without going through the established committees).

National Land Commission (NLC)

The Land Act 2012 empowers NLC to manage public land and carry out compulsory acquisitions of land for specified public purposes. NLC has been constituted and thus legally, NLC is supposed to provide approval to the request made by KIWASCO to acquire land. NLC is also expected to notify landholders in writing of the intention to acquire land; assist in resolving disputes related to compensation;

undertake public consultation on intended acquisition; receive money from KIWASCO for actual payment of entitlement awards to PAPs.

NLC holds the authority to execute compulsory acquisition in Kenya. The Government of Kenya bears the authority for land acquisition, which is vested on the NLC by legislation. It is important to note that the NLC also has statutory powers to prescribe criteria and guidelines for land acquisition. The NLC has a grievance redress process mainly triggered at the time of award of compensation following public hearings. If a PAP is dissatisfied with the awards given by NLC, they have a right to appeal and NLC would look into the matter and determine justification. In the event that a PAP is not satisfied with the appeal made to NLC and the resolution thereof, then dispute is resolved by resorting to the legal justice system where PAP could go to the environment and land court.

Budget

The total budget for resettlement compensation is **Kshs. 986,475.00** including a 15 per cent disturbance allowance. In addition, administration cost for the RAP implementation and monitoring and evaluation has been considered.

PAPs will be paid their resettlement and compensation entitlements and receive any assistance prior to the project works being carried out in the affected project sites with no exceptions allowed. The source of funding for the RAP is counterpart funding from the KIWASCO. A final report and a **resettlement completion audit** have been considered as pertinent elements of the RAP implementation end time.

Table 0-7: Compensation Costs

Item	Value
Value of land	480,000.00
Value of Structures	250,000.00
Total Compensation	730,000.00

Table 0-8: Disturbance Allowance Costs

Disturbance Allowance	Value (Kshs)
Disturbance Allowance	109,500.00
Grand Total	109,500.00

Table 0-9: RAP Implementation Costs

Aspect	Value (Kshs)
Financial/Money Management Training/ Meetings of Resettlement Committees/Administrative Costs/Transition Allowance	50,000
External Monitoring and External Coordination for RAP Implementation	50,000
Grand Total	100,000

Table 0-10: Total RAP Budget

Total RAP Cost	Kshs
Land (Easement)	480,000.00
Structures	250,000.00
Sub Total	730,000.00
Implementation Costs	100,000.00
Disturbance Allowance	109,500.00
Contingency (5%)	46,975.00
Grand Total	986,475.00

RAP Implementation Arrangements

All PAPs will be compensated before their structures are demolished, implying that compensation will be paid before project works start at a specific site/in a specific area as per the contractor's work schedule. KIWASCO will be the lead agency in the RAP implementation and will work together with the County Government of Kisumu to implement the RAP.

In this project, KIWASCO will establish a RAP Implementation Unit (RIU) specifically for this project to implement this RAP. The unit will be responsible for ensuring that PAPs promptly access their compensation entitlements and that their livelihoods are restored after resettlement.

The RAP implementation team will be responsible for:

- (i) delivery of the RAP compensation and rehabilitation measures;
- (ii) appropriate coordination between the agencies and jurisdictions involved in the RAP implementation; and
- (iii) the measures (including technical assistance) needed to strengthen the implementing agencies' capacities for managing the facilities and services provided under the project.

The RIU will comprise a core unit responsible for day-to-day operations and technical support staff. The composition of the core unit will be as follows:

- a) KIWASCO Staff (Technical Manager)
- b) Independent civil society organization/NGO representative (1);
- c) National Government Representatives (Chiefs) for each affected location
- d) County Government Representatives (CEC for Lands and Physical Planning or appointee)
- e) Representatives of PAPs
- f) Works Contractor
- g) Supervising Contractor

Remuneration of RAP Implementation Unit

The RAP has provided a lump sum budget for RAP implementation which will

cover the remuneration costs for this unit. The remuneration costs exclude the following players who have a separate budget within their institutions namely;

- a) County Government Representatives (CEC for Lands and Physical Planning)
- b) Works Contractor
- c) Supervising Contractor
- d) National Land Commission
- e) National Government Representatives (Chiefs) for each affected location (1)
- f) KIWASCO team

RAP Disclosure & Implementation Schedule

This prepared RAP study report will be reviewed by KIWASCO and the Bank for approval before implementation commences. The approved report will be disclosed to the public in hard copies at KIWASCO's offices and at the project area's Chief's camp. KIWASCO will also disclose the report on its website. The Bank will similarly disclose the report through its infoshop.

The activities related to construction of Project are expected to commence in **mid January 2018** by which time the PAPs are expected to have moved from the site. It is expected that by **December 2017** all the PAPs will have been fully compensated in line with the findings of the RAP study and that all the grievances arising will have been resolved in order to pave way for the project execution. In areas where there are no PAPs on the ROW, construction may be allowed to commence following approval by the World Bank.

Table 0-11: Implementation Schedule for the RAP (Indicative Timelines)

Project Activities	Weeks-Timeline											
	1	2	3	4	5	6	7	8	9	10	11	12
RAP approval (WB)												
RAP disclosure												
Establishment and Training of of GRM Committee												
1 months' notice to PAPs												
Relocation of PAPs												
Grievance management												
Compensation payment												
Commencement of Works												
RAP monitoring												
RAP completion and audit												

I INTRODUCTION

This section describes the background to the project, the scope of the project components, components descriptions in relation to the affected areas, the purpose and objective of the RAP and the methodology adopted during RAP preparation.

I.1 Project Overview and Description

The proposed Project Areas under KIWASCO are not adequately served, also tertiary and secondary water network distribution managed by KIWASCO within the target area not well developed. Currently there are the newly laid DN 300 transmission mains in Kogony and Kanyakwar up to the Kanyametha tank and the DN 250 extending parallel to the Kisumu-Busia road up to Korando B ward.

The project area that fits these requirements has been identified under this study to lie partially or wholly within the wards of Kogony, Kanyakwar, Konya, Wathorego, Korando A, Dago and Mkendwa. The areas in reference are undergoing significant growth in all the categories i.e. residential, commercial and institutional. It is noteworthy that a large section of the target area of this project lies within a potential high growth area as identified under the Kisumu Integrated Development Plan of 2014. The other section is adjoining and extends into the Riat Hills but lies outside the scope of consideration of the ISUD plan.

According to KIWASCO, most of the proposed project area considered under this assignment are not adequately served. The tertiary and secondary water network distribution is not well developed despite being near the major transmission mains commissioned under the LPAP project. Arising out of the above considerations, this study has proposed to serve the identified project area by dividing it into three supply zones depending on the commanding supply source. Three such supply zones have been identified under this study, namely: -

- a) Upper zone (Zone A) comprising the area served by gravity from a new tank proposed at RIAT Hills. This tank will be in turn supplied by pumping from the lower area (Zone 2). The pump station is to be located within Kanyakwar area at contour 1220 m asl and will pump water to Riat Hill tank at 1380masl.
- b) Lower zone (Zone B) comprising the area served by gravity directly from the clear water tank at Kajulu Clear Water Tank head and additionally by the Kanyametha Tank. It is noted that the Kanyametha is supplied under Kajulu Clear Water Tank head as well.
- c) Zone C consisting of the area above the 1340 contour within the project area and incorporating upper Dago, Mkendwa and Middle Konya. Water

source will be the existing Mkendwa springs although additional source upstream of contour 1500 can be explored in future so as to allow for distribution of supply entire by gravity.

To allow for efficiency in supply distribution, operations and maintenance, the above zones have been further divided into sub zones on the basis of

- Commanding source head; whether ground or high level source tank
- Zone boundaries
- Limit of effective pressure head which is set at 70m
- Administrative considerations where applicable e.g. buffer zone/zone boundary at the bottom of Riat Hills, ward boundaries etc.,

The scope of works includes the laying of water pipes **13,245m** long in pipelines in the target **Upper Zone A**. This RAP report is therefore only focused on **Upper Zone A** which is the area that will be financed using World Bank funds under the OBA program.

Figure 1 below shows the 3 different zones A, B and C.

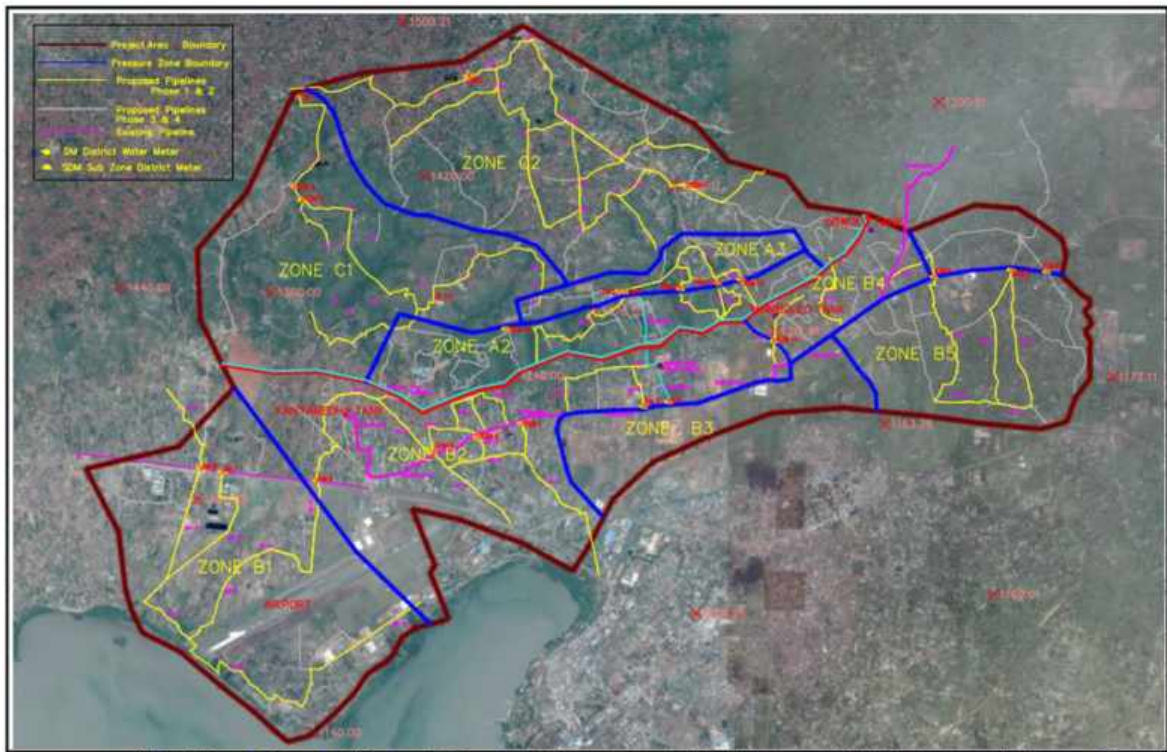


Figure 1: Project Zones-RAP is focusing on upper zone A

1.2 Description and Scope of Works

A ground storage tank is proposed for construction within the Ramogi Institute of Advance Technology (RIAT) at an elevation of 1380. This tank will provide storage for the entire Upper Zone. An elevated tank of 150m³, 10m high with inlet at 1390 masl is proposed to serve the immediate vicinity of the storage tank area (RIAT College and surrounding areas) but the ground tank provides enough head to supply areas away from this vicinity; supply from the Ramogi Institute of Advanced Technology (RIAT) Hill tanks is by gravity.

The proposed tanks at RIAT will be filled by a pumping main (see Section 5.5) from a pumping station located at an elevation of 1220m at the foot of Riat Hills. The pumping station is located adjacent to a 100 m³ (2 x 50m³ modular arrangement) ground tank from which the water is pumped to RIAT. The 100m³ tank is fed by gravity vide a DN 200 water pipe connected to the DN 300 existing main from Kajulu to Kanyamedha tank.

Ramogi Institute of Advanced Technology-a Government training institute which has **voluntarily donated** land for the project (tank site) in exchange for provision of water services at no cost (in kind compensation).

1.2.1 Pipe Material in Distribution Network

A combination of pipe materials will be considered for specific service zones. The pipe material for the steep areas will be epoxy coated steel or G.I while uPVC/HDPE are proposed used for the lower areas. G.I/Epoxy coated steel pipes have been proposed for rocky areas and high pressure areas e.g. rising mains and areas where static pressure is over 50m.

For all the major distribution mains of diameter, Class C uPVC and HDPE 12.5 kg/cm² pipes are proposed due to their light weight and low cost, good hydraulic performance (low frictional resistance to flow) and resistance to corrosion. For pipes below 75mm internal diameter, HDPE has been selected. Although this pipe material is new in the Kenyan market compared to the other two, it possesses an intermediate strength between steel and upvc are bought in rolls and therefore easier to install than either UPVC or steel, and may be more suitable for the rocky terrain in Riat Hills and the resultant high static pressures at the mid to lower sections of the hills that are under the proposed RIAT tank. For road crossings and pipes to be laid on steep slopes as well as above ground, steel pipes are proposed.

1.3 Resettlement Action Plan Objectives

The purpose of the RAP was to identify PAPs and their assets/properties, value them and provide a strategy for resettlement compensation to ensure that the PAPs' livelihoods are restored or improved. The RAP also puts in place appropriate

remedial measures, including grievance channels, for the PAPs and other community members.

This RAP has been prepared in the light of and is consistent with the policies and processes detailed in the Resettlement Policy Framework (RPF) for the OBA. Therefore, the mitigations proposed to address the impacts on people and properties are in line with the laws and legislation in Kenya as well as the World Bank's Policy on Involuntary Resettlement, OP 4.12.

In addition, the RAP preparation was aimed at making stakeholders aware of the project components, implementation activities and the related resettlement measures or the alternatives available for the PAPs. The goal of this RAP is to avoid, minimize or mitigate economic and social impacts that would arise from involuntary resettlement or economic and social displacements associated with project activities implementation. This RAP has allowed for adequate resettlement/compensation for the PAPs and appropriate remedial measures, including grievance mechanisms for PAPs.

The main objectives of the RAP are:

- a) To identify PAPs and their properties and determine the extent of involuntary resettlement/displacements and restricted access impacts associated with the project implementation and put in place measures to minimise and/or mitigate such impacts;
- b) To value PAPs' property and assets (compensation costs, livelihood/disturbance allowances and other assistance values) and provide a strategy for the compensation of PAPs;
- c) To set out strategies for the implementation of the RAP, including the process through which to acquire the necessary land and easements for the implementation of the project activities; and
- d) To carry out consultations with community members and other stakeholders, including PAPs, and make them aware of the project and to obtain their concerns regarding the economic and social impacts of the proposed project and mitigation measures.

1.4 Methodology and Approach

The methodology and approach adopted in preparing this RAP is consistent with the laws of Kenya as well as World Bank OP. 4.12. A registered land valuer and cadastral surveyor identified, surveyed and valued the property of the PAPs. A sociologist led the PAP census and community consultations. The following approach was used:-

- **PAP STUDY, DESIGN AND PROCEDURE**

The PAP study design employed both qualitative and quantitative methods of data collection and stakeholder consultations. By design all PAPs were enumerated. All key institutional stakeholders were consulted at the County and Sub County. Community consultation dialogues were held at selected centres in the project area. The stakeholders' consultation list is attached as **Appendix 1**. The RAP data collection methods are described in the following sub-sections.

▪ **PAP CENSUS DATA COLLECTION AND COMMUNITY CONSULTATION METHODS**

The PAP census data was collected through the household interview with all PAPs' households. The household interview solicited quantitative information regarding the PAPs' household demographic structure, employment and labour, property and landholdings, the assets affected, the educational profile, household health wellbeing and welfare, income and expenditure patterns, the anticipated impact of the proposed Project implementation activities and the preference for compensation, among other RAP issues.

The community and institutional stakeholder consultation methods were: **2 community dialogues** at selected centres in the PA, **1 key institutional stakeholder** interviews, and reference to secondary data sources. below. The lists of key persons and institutions consulted are reflected in **Appendix 1**. Community consultations were carried out on 21st and 22nd August 2017.

Community consultation dialogues covered the following issues: Introductions to and explanations about the project objectives, components and implementation activities, property and livelihood impacts associated with Project implementation including physical, social and economic displacements throughout the project cycle and thereafter, the resettlement/compensation alternatives and strategies available for PAPs, and feedback from the PAPs and other stakeholders concerning alternative resettlement measures and the RAP implementation.

The principles regarding the alternative resettlement/compensation measures and strategies available and the valuation principles and procedures were explained in detail to the PAPs and other stakeholders during and after the community dialogues. The views of the community members and other stakeholders consulted were documented and have been integrated into resettlement measures and strategies outlined in this RAP, in conformity with the RPF.

▪ **PROPERTY OWNERSHIP DATA COLLECTION METHODS**

Information on ownership of affected property was collected through the identification and verification of ownership (buildings and other properties), ownership verification from tenants, neighbors and local leaders. All property information collected was recorded on a 'Compensation Assessment Record Sheet'

specifically designed for this purpose and later transferred to a valuation roll submitted as part of a valuation report, **Appendix 2**.

- **DATA ANALYSIS AND QUALITY CONTROL**

Quantitative PAP census data was analyzed using the Statistical Package for Social Sciences (SPSS). The quantitative data has been presented in the form of descriptions, frequencies, tables and percentages. Qualitative data from community dialogues and key institutional stakeholders was manually analyzed around the major themes/objectives of the RAP. Permanent structures have been assessed according to the provisions of the Land Act 2012.

2 PROJECT IMPACTS

This section describes the project activities and their potential impacts in terms of property and livelihood activities likely to be affected by the implementation of project activities.

2.1 Zones of Potential Impact

The pipeline routing starts from Riat, into Kanyakwar, then Mkendwa and terminates at Kogony. The proposed project routing will displace only **2 PAHs** who are within the alignment and who will lose land for the pipeline including a fence and latrine (structures). The rest of the project routing is within the ROW (not encroached) and will not lead to any form of displacement. The project will therefore lead to **physical displacement** of 2 PAPs who are categorized as land and structure owners. There are no PAPs with crops or trees along the proposed. The impacts will be felt around the following areas as shown in table 2-1 below:

Table 2-1: Affected Areas

Affected Locations/ Areas Along Project Route
Kogony
Mkendwa
Riat
Kanyakwar

Table 2-2: Potential Impacts of Project /Number of PAPS Affected

Area	Category of PAP	# of PAPS
Kogony	Land Owners, Structure Owners,	0
Mkendwa	Land Owners, Structure Owners,	0
Riat	Land Owners, Structure Owners,	0
Kanyakwar	Land Owners, Structure Owners,	2

2.2 Identification of Project Adverse Impacts

The relative potential impact of the project activities is described in the sub-sections that follow.

- **Impact of construction and laying of water supply system**

The major project activity will be construction and laying of water pipelines, which will take place within road reserve and on 2 privately owned land which will be acquired and compensated prior to construction. There will be no impact on crops and trees because based on the survey and inventory of assets, there were no crops or trees to be affected.

With respect to livelihood restoration, therefore, compensation for temporary loss of livelihood income has been considered as part of the 15 per cent

livelihood/disturbance allowance, calculated in addition to the cost and/or replacement of the affected property.

2.3 Extent of Project Impact on Property and Livelihoods

The relative impact of the project on land, structures and other assets is minimal in view of the fact that only 2 PAHs are being displaced and the loss of land is partial (less than 5%) of total land owned. The structures lost include only a fence and pit latrine which will be compensated and does not impact on the livelihoods of the PAHs.

2.4 Impact Severity

The impact is not significant as explained in 2.3 above.

2.5 Specific Impact Significance on Institutions

The project does not affect any community or institutional structures. However, a Government institution, Ramogi Institute for Advanced Technology (RIAT) has voluntarily donated land for siting of the water supply tank and will be compensated by being connected to the water supply at no cost (in kind).

2.6 Alternatives and Mechanisms to Minimise Resettlement/Displacement and Restricted Access

A number of alternatives and mechanisms have been considered to avoid or minimize resettlement/displacement and restricted access to socio-economic services during the design and implementation of project activities. This is also in consideration of the concerns of community members and institutional stakeholders consulted.

- (a) **Use of manual excavation:** The contracting firm will as much as possible use manual excavation. This will enable the project to minimize the extent of structural damage associated with machine excavation in such built-up areas.
- (b) **Selection of non-residential sites:** As much as possible, besides engineering design prerequisites, site selection has been guided by the desire to minimize the displacement of human settlements/residences hence focusing on ROW.

2.7 Labour Influx Management

Local labour requirements: Construction of the highway will employ a significant number of people. There is a perception in the local area, evident from the results of stakeholder engagement during the ESIA and RAP study, that a high level of opportunity will result from this and this is likely to stimulate significant in-

migration. In practice, the level of construction employment available to local workers will be focussed on skilled, unskilled and lower skilled workers. Employment during operation will be much more limited and focused principally in maintenance of the pipeline and will not require any form of significant labour to trigger influx.

It is considered that construction of projects may affect the demographic structure of local communities. Indirectly results of the development activities might affect population growth. The following demographic processes normally take place as a result of influx of workers:

1. In-migration: People from other areas move to the construction area in search of new opportunities.
2. Presence of temporary workers: Short-term influx of construction workers during the construction phase of the project. Another important factor to consider is that in Kenya, with its high levels of unemployment, any new project will lead to an influx of people to the area.
3. Young population: Especially population at working age, can become much easily part of any potential population movement. In brief, the need for unskilled or semi-skilled labor force increases the possibility of employment, and thus, leads to in-migration.
4. Increase in population: Due to the arrival of workers from outside near to the settlements close to major and minor camp sites, total population in these settlements will increase, even temporarily.

2.7.1 Project Characteristics Not influencing In-Migration

- The Project is not expected to stimulate in-migration along the project route due to the low numbers of labourers that will be needed.
- The WSP will employ local labourers from within the project areas as a way of job creation and no external workers from without the area are expected.
- The type of labour required for the construction will be mostly manual (use of hand held implements) with limited mechanical works and hence majority of the work will simply require manual labour hence not necessitating skilled labour which could trigger influx.
- Project demand for goods and services: The scale of the Project will not generate high expectations around opportunities associated with the supply chain. Demand from the construction goods and services in the local study area will not be high during construction and operation to be a strong pull factor.
- Perceptions of opportunity associated with construction camps: there will be no construction camps in view of the fact that local workers will be used and the magnitude of the project. There may be a small

operational site used by the contractor (site office) but not for accommodation. Construction camps are likely to act as a focus for in-migration with people looking for work and other economic opportunities associated with the Project workforce.

3 SOCIO-ECONOMIC BASELINE CONDITIONS

The following sections provide a summary of methodology and results used to characterize socio-economic baseline conditions in the project area prior to significant project investment.

3.1 Location

Kisumu is the third largest City in Kenya. It is the headquarters of Kisumu County in Western Kenya, and lies generally on latitude 00o6 N and longitude 34o 45' E and is located about 340 km by road to the North-West of Nairobi on the Northern Corridor highway to Uganda and the Eastern parts of the Democratic Republic of Congo. Kisumu borders Lake Victoria to the South West, the sugar belt and Kano irrigation scheme to the East.

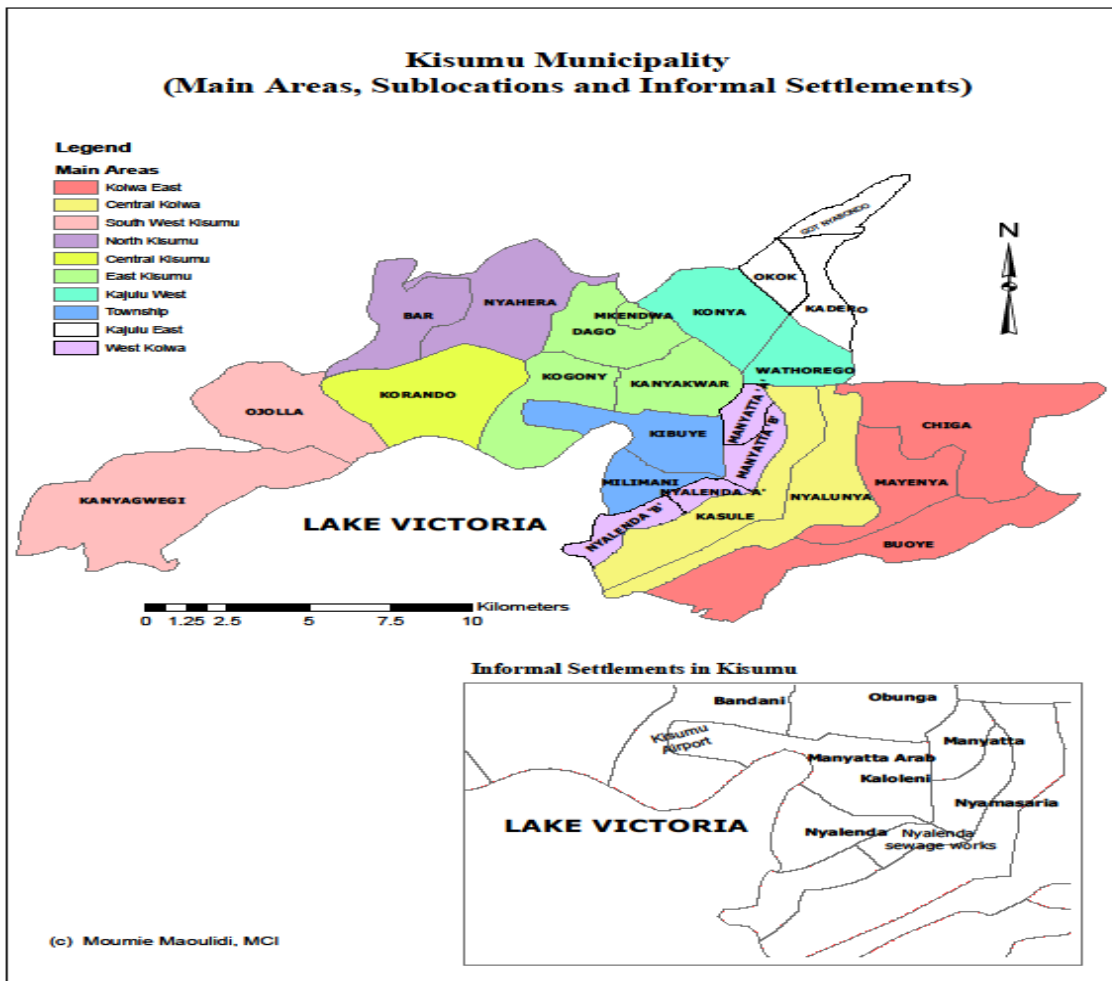


Figure 3-1: Administrative boundaries of Kisumu City County

Kisumu City County project area comprises the following sub-locations:

1. Kanyakwar;
2. Kogony;
3. Dago;
4. Mkendwa;
5. Korando A;
6. Wathorego; and
7. Konya.

3.2 Population

The last Kenya National Population and Housing Census year of 2009 estimated the population of Kisumu to be 404,160. The current population (year 2015) has been estimated by extrapolation to be approximately 471, 452 and projected to reach 692,864 in 2030. According to the Kenya National Housing Survey Census Data of 2009, the population growth rate is 2.6% per annum with a density of approximately 975 persons per km. The population is young with 73% aged below 30 years old.

The projected urban growth also means increasing demand for infrastructure and urban services. Lack of proper planning has led to severe infrastructure backlog in the town. The population lacks access to basic services like water, electricity, healthcare etc. According to information obtained, sewerage coverage stands at 40%. Over half (52%) of the population use water from piped connections, either through individual household connections, yard tap or residential resale, while 26% rely on water vendors. 20% of residential waste is collected and disposed of by the City of Kisumu and private waste collectors. The City lacks adequate shelter, with approximately 60 % of the urban population residing in the peri-urban and informal settlements lacking basic service.

3.3 Age structure and distribution

Demography of Population: Kisumu County constitutes 3% of the national population. 49% of the population are male while 51% are female. Kisumu town has the largest urban population taking 40% of the county's population, Awasi 10%, Ahero 5%, Muhoroni 4%, Chemelil 1% and Maseno 1% respectively.

The disabled population is 2.01%, higher than the national disabled percentage of 3.46. 1.86% has visual disability, 1.02% hearing disability, 0.64% speech disability, 2.11% physical and self-care disability, 0.47 mental disability and 0.43% with other disabilities. It has a population density of 402.5 which is higher than the national population density of 401.1 per square kilometer. The average household size in Kisumu is 4.3, 0.1 lower than the national household size of 4.4.

The county's age distribution is 20% between 0-5 years, 24% (6 – 14 yrs), 12% (15-19yrs), 13% (20-25 yrs), majority 29% (26-65 yrs) and 35 are above 66 years old. It is estimated that the county's deprived child population is 45.39%.

The household respondent composition shows that 45.5% interviewed were household heads, 42.5% were spouse to house hold heads, 6.5% are either sons or daughters, 4.0% were siblings, 1.0 were other relatives and 0.5% were non relatives either house helps. These shows over 88% of the respondents were partners in the household management. Thus, the report conveys the true picture of what is happening in their households. All the respondents were over eighteen years of age.

3.4 SOCIO-ECONOMIC PROFILE OR PROJECT AFFECTED PAPs

3.4.1 Demographics and Housing Conditions

During the socio-economic survey, a total of 160 respondents from 4 sub locations were interviewed as part of data collection in the sub locations of Kisumu East, Kisumu West, Kisumu North and Kisumu Central).

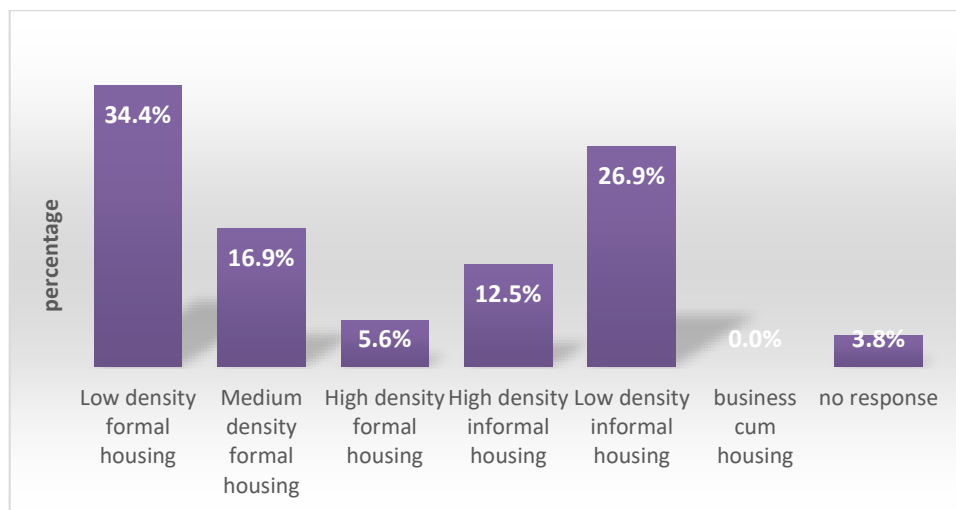


Figure 2-2: Housing Condition

In identifying the type of housing, the dwellings were classified as Low, Medium or High Density and categorized as formal or informal. The fifth category was a business cum housing option, where one facility is used for both functions.

Majority of the households are categorized as low-density formal housing as shown in figure 3-2 above. Low-density housing is detached homes on a residential block. These types of homes are typical of a rural residential setting where the housing density is very low. The number of rooms per house varies with the majority of the households having 2-3 rooms per house as shown in figure 3-3 below. The housing

materials of these types of structures are mainly iron sheet roofings, wooden or iron sheet walls, earthen floors and wooden windows with limited electrical connectivity.

50% of the respondents own the housing units, and 3.2% are on tenant purchase agreement. The rest are living on rental houses. 3.1% of the rental houses includes water as part of the rent; while 15.6% have electricity included as part of the rent. 0% have both water and electricity included in the rent. 1% pay for the utilities separately. The mean rent was **Kshs. 2,619.4** with the maximum rent at Kshs. 7,000 and minimum at Kshs. 2,000.

The number of households per building varies, with 31.3% single households, 11.3% each for two 11.8% three households, 7.5% for four households, and 15.6% host six to ten households.

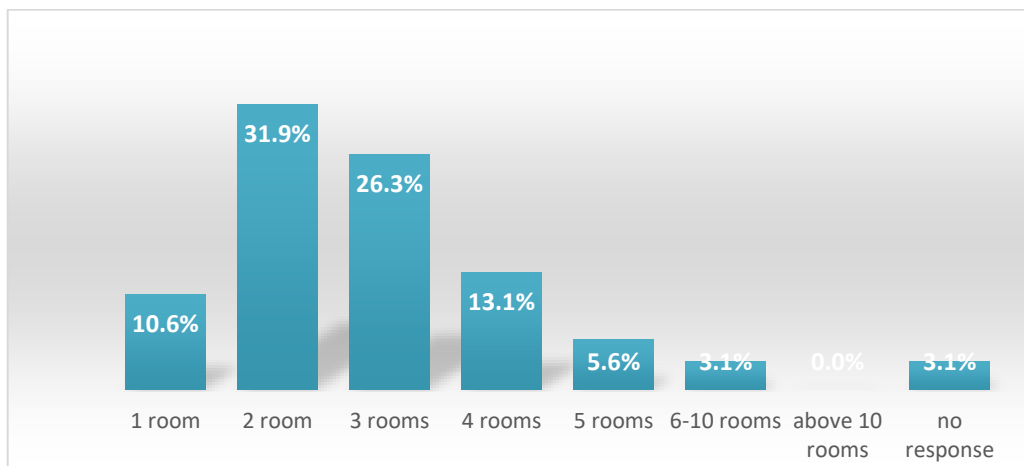
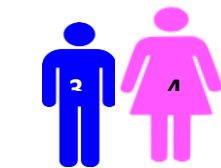


Figure 3-3: Number of rooms

3.4.2 Gender

33% of the households are headed by men and 46% by women as shown in adjacent figure.



Male vs. Female Headed Households

3.4.3 Education

Figure 3-5 below shows the educational background of the PAPs. 19.4% of the PAPs have post-secondary school education, 24.4% and 28.8% completed secondary and

primary school respectively as their highest level of education. **15.6%** did not go past primary school education. **10.6%** did not respond to this question.

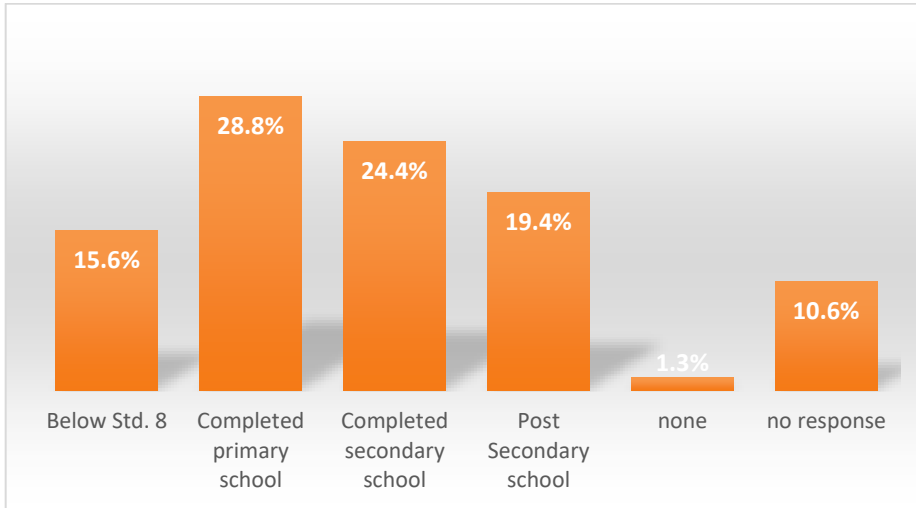


Figure 3-6: Education of Household Head

3.4.4 Household Income and Possessions

Household income (see figure 3-7 below) is largely from self-employment, followed by formal-employment. The major occupation is subsistence farming and small-scale business. The largest forms of formal employment are teaching, skilled workers and civil service. The socio-economic survey undertaken within the supply zone indicates that the minimum monthly household income was Kshs. 3,000 while the maximum household income was at Kshs. 24,821 with an average household income of Kshs 13,500.

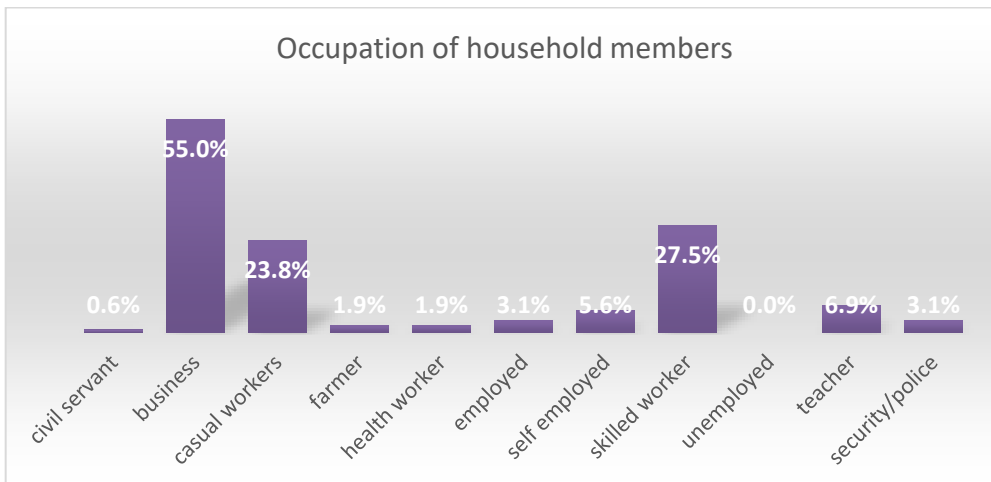


Figure 3-7: Forms of Employment

3.5 Household Expenditure

The bulk of the mean monthly expenditure is on food (50%), followed by loan repayments and school fees at (14%). Water is at 9%, clothes, groceries; transport, fuel and telephone expenses average 1% each. For the case of water supply the mean average spent by majority of respondents on water was computed at Kshs.713.

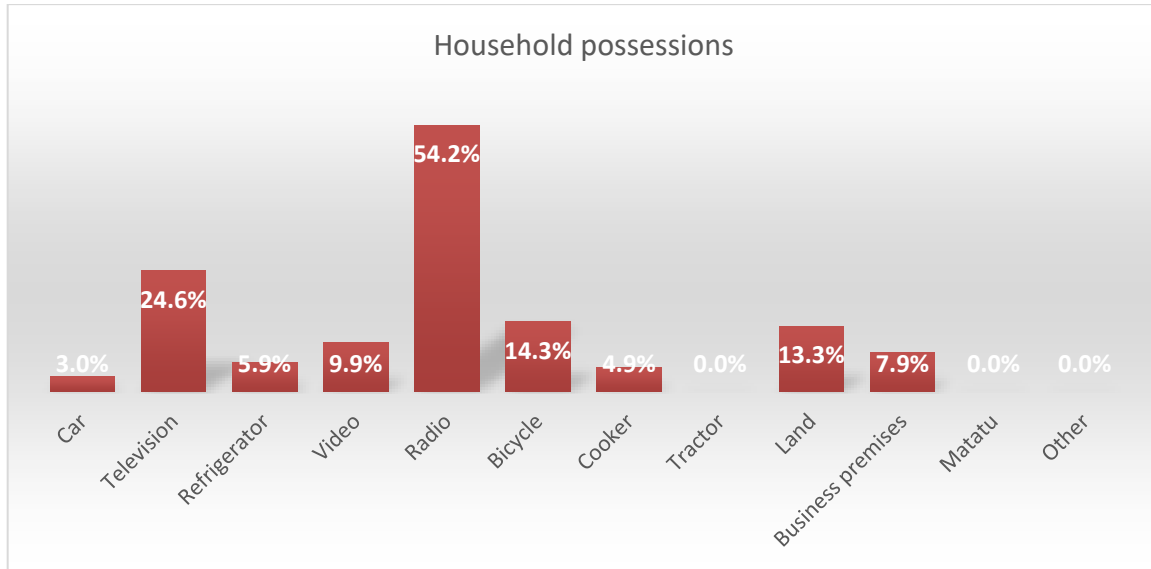


Figure 3-8: Asset Ownership

7.9% and 13.3% of the respondents’ own land and business premises respectively. Other current assets are distributed within the population with 54.2% owning a radio and 24.6% owning television sets.

3.6 Water Sources and Supplies

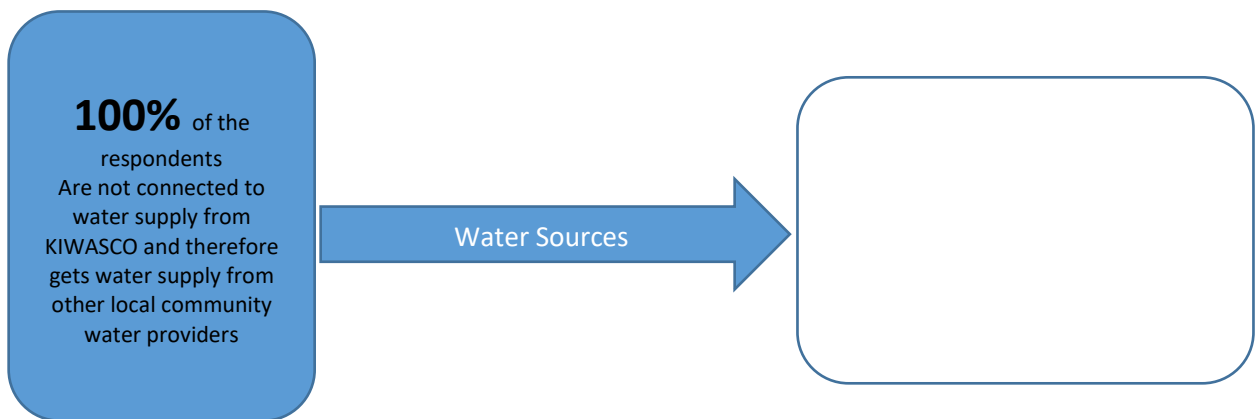


Figure 3-9: Water Sources and Supplies

As shown in figure 3-9 above, 100% of the respondents do not have water connection from the WSP because the area does not have a network so they resort

to sourcing for water elsewhere. The total time spent drawing water is between 30mins-1.5hours and is transported by self-carriage (88%).

Hired labour is largely used for collection of water (11.9%), the female or male head collects on average 48% of the time (Male 7%, Female 41%) and children 21%. 48% are not connected to the water company supply because the area does not have a network, 7.4% because the connection is expensive, 18.5% because supply is unreliable and 18.5% because the landlord is unwilling. 35.6% are willing to contribute to capital investment for extension of secondary mains at an amount of about Kshs. 1,500 (82.5%), 3,000 (1.8%) and 5,000 (0.0%).

3.6.1 Water Storage Facilities

68% have water storage facilities. The storage facilities include elevated tanks (5,000L) and ground tanks (10,000L) 1% each, Plastic tanks (2,950L) 1.5% and drums and debes (600L) 2.3%.

Water for domestic use accounts for 65%, livestock 32% and other uses 2.5%. 35.0 % say that the water is adequate to meet their needs. 63.1% believe the water supply is inadequate the reasons are given as unreliable water supplies (97.0%) and water rationing (1%) and other reasons 25%:



Figure 3-10. Willingness to Pay for Water Services

3.7 Sanitation

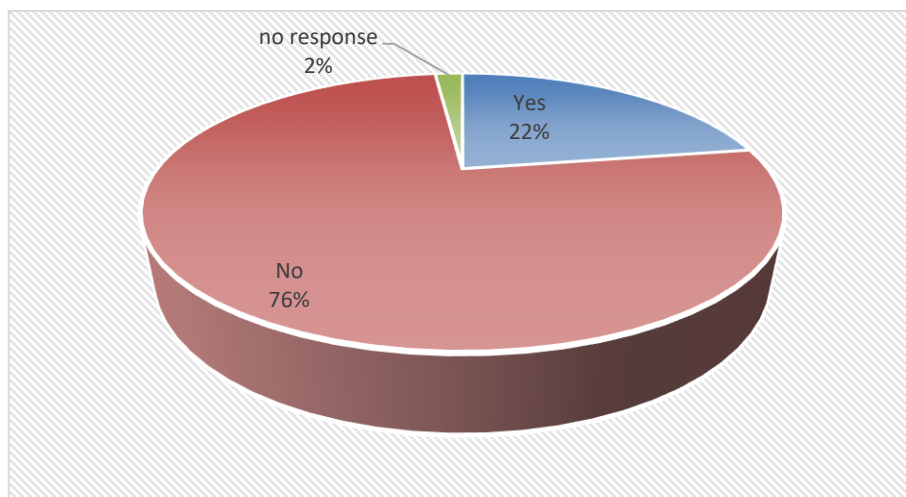
Sanitary facilities are largely less than 100m walk from the households (90%) and 100-500m (6.3%) and are shared:

Table 3-1. Sanitation Facilities

	%
1-5 households	58.1
5-10 households	22.5
More than 10hh	16.3

The area is mainly served by pit latrines (82%) and septic tanks (11.3%). The cost of sanitation is free for 79.4% of the respondents and for others it's included in the water bill (1.3%). The cost of sanitation is applicable to 1% of the respondents and is between Kshs 100-500.

50% of the respondents think the water they use is clean and safe for drinking. Water is mainly not treated (43.8%) or treated by boiling (40%). 22.5% have been rendered ill due to water and sanitation conditions; this happens more than once a year (63.9%) and is because of poor quality of water (72.2%), poor sanitation services (13.9%) and lack of sufficient water (8.3%).

**Figure 3-11. Illnesses due to water and sanitation conditions:**

97.5% believe improved water supply and sanitation would result in better personal health and reduced disease incidences of household members (2.5% did not respond to this question). 3% have attended behaviour change training on hygiene and health.

Solid waste is disposed of by burning (99.4%), dumping (0%) and collection by government trucks (0.6%) at a frequency of once a month at a cost of between Kshs. 100- 200.

In the event of flooding, the surface drainage systems available are open drainage (54.8%), the rest of the population has no drainage infrastructure. There are

drainage channels maintained by the county government (22%) and others non-functional due to clogging or otherwise bad state of repair (1.3%).

3.8 Source of Information about the Project

The PAPs have been aware about the proposed project for a very long time and mentioned the following as sources where they derived information about the project namely; -

1. Local Authorities/ County Government
2. National Government
3. Neighbors
4. Family Members

4 LEGAL AND REGULATORY FRAMEWORK

The chapter sets out the legal operating environment for acquisition of land as anticipated in the implementation of the Project. The chapter highlights major issues related to Kenyan land legislation with regards to involuntary resettlement in this RAP. It provides a brief overview of the Kenya land policy, and the Kenya's constitutional provisions related to land use, planning, acquisition, management and tenure, and more specifically the legislations related with land expropriation or acquisition, land valuation and land replacement. The chapter also compares the Kenyan legislation with the World Bank provisions on resettlement, highlighting gaps and making recommendations to fill up gaps.

4.1 THE NATIONAL LAND POLICY

The National Land Policy (“NLP” or “Policy”)² was adopted in August 2009 with the aim of providing an overall framework for new legislation and defining key measures required to address critical issues such as land administration, access to land, land use, and restitution related to historical injustices and an outdated legal framework. The NLP addresses constitutional issues such as compulsory acquisition and development control.³ Section 45 of the NLP defines compulsory acquisition as “the power of the State to extinguish or acquire any title or other interest in land for a public purpose, subject to prompt payment of compensation.”⁴ Under the current Constitution,⁵ the Land Act 2012 empowers the National Land Commission (under the guidance of Minister for Lands) to exercise the power of compulsory acquisition on behalf of the State.⁶ Similarly, the NLP empowers the National Land Commission to compulsorily acquire land.⁷

According to the NLP, the exercise of compulsory acquisition in the past has been conducted with abuses and irregularities.⁸ The NLP therefore calls for a revision of such power and requires the GoK:

- To review the law on compulsory acquisition to align it with the new categories of land ownership (public, private and community land);⁹

² *Sessional Paper No. 3 of 2009 on National Land Policy* (referred to as the “National Land Policy” in this report) was adopted in August 2009 by the Ministry of Lands. Available at http://www.lands.go.ke/index.php?option=com_content&task=view&id=238&Itemid=48, accessed May 25, 2011.

³ Development control is the power of the State to regulate the property rights in urban and rural areas and is derived from the State's responsibility to ensure that the use of land promotes the public interest.

⁴ *Sessional Paper No. 3 of 2009 on National Land Policy*, § 45.

⁵ The Constitution of Kenya, 1963, was replaced in 2010.

⁶ Land Act, § 6, 2012.

⁷ *Sessional Paper No. 3 of 2009 on National Land Policy*. §233(d).

⁸ *Id.* at Chapter 3.2.1.1, article. 46.

⁹ *Id.* at Chapter 3.2.1.1, article. 47(a).

- To harmonize the framework for compulsory acquisition to avoid overlapping mandates;¹⁰
- To establish compulsory acquisition criteria, processes and procedures that are efficient, transparent and accountable;¹¹
- To institute legal and administrative mechanisms for the exercise of the power of compulsory acquisition by the State through the National Land Commission;¹² and
- To confer pre-emptive rights on the original owners or their successor in title where the public purpose or interest justifying the compulsory acquisition fails or ceases.¹³

4.2 The Constitution of Kenya

The Constitution of Kenya, 2010,¹⁴ protects the sanctity of private property rights and states that no property can be compulsorily acquired by the Government except in accordance with law.¹⁵ Article 40(3) states:

“The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation—results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Five; or is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that –

- (i) Requires prompt payment in full, of just compensation to the person; and*
- (ii) Allows any person who has an interest in or right over, that property a right of access to a court of law.¹⁶*

The Constitution empowers the state to exercise the authority of compulsory acquisition. Land Act 2012 (LA) designates the National Land Commission (NLC) as the agency empowered to compulsorily acquire land.¹⁷ Article 40 of the Constitution provides that the state may deprive owners of property only if the deprivation is "for a public purpose or in the public interest," which includes public buildings, roads, way leaves, drainage, irrigation canals among others. The state's exercise of this power is left at the discretion of NLC, and requires the state to make

¹⁰ *Id.* at Chapter 3.2.1.1, article. 46 and 47(b). Under the previous Constitution, Chapter IX (Trust Land), Art. 18, the President and local authorities had the power to set apart Trust Land for the purposes of the Government of Kenya or any corporate body established by an Act of Parliament, or companies which shares are held on behalf of the GoK and for extraction of minerals and oils. This power does not exist under the new Constitution. Under the Government Lands Act, the President has special powers with regards to government land, and he may exercise these powers through the Commissioner of Lands. (Government Lands Act, Chapter 280, §3.)

¹¹ *Sessional Paper No. 3 of 2009 on National Land Policy*, Chapter 3.2.1.1, § 47(c).

¹² *Id.* at Chapter 3.2.1.1, p. 47(d).

¹³ *Id.* at Chapter 3.2.1.1, §47(e).

¹⁴ The Constitution of Kenya, 2010, was adopted by the Government of Kenya on 27 August 2010. The full text is available at http://www.kenyalaw.org/klr/fileadmin/pdfdownloads/Constitution/Constitution_of_Kenya2010.pdf, accessed May 25, 2011.

¹⁵ Constitution of Kenya, art. 40.

¹⁶ *Id.*

¹⁷ The Land Act, 2012 The Government of Kenya, Section 8.

full and prompt payment of "just compensation" and an opportunity for appeal to court.

Article 40(3)(a) refers to acquisition and conversion of all kinds of land in Kenya (private, public, community land and foreign interests in land). The Constitution further provides that payment of compensation shall be made to "occupants in good faith" of land acquired by the state who do not hold title for such land.¹⁸ An occupant in good faith is a "bona fide" occupant. On the other hand, under the Constitution, those who have acquired land illegally are not regarded as deserving any compensation.¹⁹

In addition to Article 40, Chapter Five of the Constitution is relevant to compulsory acquisition. This chapter, entitled "Land and Environment," is divided into two parts. Part 1 deals with land, and Part 2 deals with environment and natural resources. Part 1 of Chapter 5, articles 60 – 68, describes the principles of land policy. Land should be held, used and managed in a manner that is equitable, efficient, productive and sustainable and in accordance with security of land rights, sound conservation and protection of ecologically sensitive areas.²⁰ These principles must be implemented through a national land policy reviewed regularly by the national government and through legislation.²¹

4.3 Land Tenure System in Kenya

Land tenure in Kenya is classified as public, community or private.²² Public land consists of government forests (other than those "lawfully held, managed or used by specific communities as community forest, grazing areas or shrines"²³), government game reserves, water catchment areas, national parks, government animal sanctuaries and specially protected areas.²⁴ The National Land Commission will manage public land.²⁵ Community land includes land that is "lawfully held, managed or used by specific communities as community forest, grazing areas or shrines," and "ancestral lands and lands traditionally occupied by hunter-gatherer communities."²⁶ Rights are also held through traditional African systems, and rights that derive from the English system introduced and maintained through laws enacted by colonial and then the national parliament. The former is loosely known as customary tenure bound through traditional rules (customary law). The latter body of law is referred to as statutory tenure, secured and expressed through

¹⁸ Constitution of Kenya. Id. at art. 40(5).

¹⁹ Constitution of Kenya. Id. at art. 40(3).

²⁰ Id. at art. 60.

²¹ Id. at art. 60(2).

²² Id. at art. 61.

²³ Id. at art. 63(d)(i).

²⁴ Id. at art. 62(g).

²⁵ Id. at arts. 62(3), 67(2)s (a).

²⁶ Id. at art. 63(d)(i) and (ii).

national law, in various Act of parliament e.g. Land Act 2012, Land Registration Act, 2012, Trust Land Act (cap 288) of the Laws of Kenya).

4.3.1 Customary Land Tenure

This refers to unwritten land ownership practices by certain communities under customary law. Kenya being a diverse country in terms of its ethnic composition has multiple customary tenure systems, which vary mainly due to different agricultural practices, climatic conditions and cultural practices. However most customary tenure systems exhibit number of similar characteristics as follows: First, individuals or groups by virtue of their membership in some social unit of production or political community have guaranteed rights of access to land and other natural resources. Individuals or families thus claim property rights by virtue of their affiliation to the group.

4.3.2 Freehold Tenure

This tenure confers the greatest interest in land called absolute right of ownership or possession of land for an indefinite period of time, or in perpetuity. The Land Registration Act, 2012, governs freehold land. The Act provides that the registration of a person as the proprietor of the land vests in that person the absolute ownership of that land together with all rights, privileges relating thereto. A freehold title generally has no restriction as to the use and occupation but in practice there are conditional freeholds, which restrict the use for say agricultural or ranching purposes only. Land individualization was demanded by the colonial settlers who required legal guarantee for the private ownership of land without which they were reluctant to invest.

4.3.3 Leasehold Tenure

Leasehold is an interest in land for a definite term of years and may be granted by a freeholder usually subject to the payment of a fee or rent and is subject also to certain conditions which must be observed e.g. relating to developments and usage. Leases are also granted by the government for government land, the local authorities for trust land and by individuals or organizations owning freehold land. The maximum term of government leases granted in Kenya is 99 years for agricultural land and urban plots. There are few cases of 33 years' leases granted by government in respect of urban trust lands. The local authorities have granted leases for 50 and 30 years as appropriate.

4.3.4 Public Tenure

This is where land owned by the Government for her own purpose and which includes unutilized or un-alienated government land reserved for future use by the Government itself or may be available to the general public for various uses. The land is administered under the Land Act 2012 (LA). These lands were vested in the president and who has, normally exercised this power through the Commissioner

of Lands, to allocate or make grants of any estates, interests or rights in or over un-alienated government land. However, the new constitution grants those rights to the National Land Commission (NLC) which is governed by the National Land Commission Act, 2012 that specifies the role of NLC as:

1. *To identify public land, prepare and keep a database of all public land, which shall be georeferenced and authenticated by the statutory body responsible for survey;*
2. *Evaluate all parcels of public land based on land capability classification, land resources mapping consideration, overall potential for use, and resource evaluation data for land use planning; and*
3. *Acquire land for public purposes*
4. *Solve land disputes and deal with historical land injustices*
5. *Share data with the public and relevant institutions in order to discharge their respective functions and powers under this Act; or*
6. *May require the land to be used for specified purposes and subject to such conditions, covenants, encumbrances or reservations as are specified in the relevant order or other instrument²⁷.*

Categories of government land include forest reserves, other government reserves, alienated and un-alienated government land, national parks, townships and other urban centers and open water bodies.’ The Lands Act does not contain any notion of trusteeship by government of the land to her people.

Public Resources on Public Land

Notwithstanding the fore going, it is a common law doctrine to the effect that common property resources such as rivers, forests and parks are held by the state in trust for the general public. Consequently, the state cannot alienate these resources or use them in a way detrimental to public interest. This is the doctrine that would ensure that public land cannot be alienated or committed to waste to the detriment of public interest. It is the case that the statutory frameworks for land ownership in Kenya is heavily influenced by common law jurisprudence on land ownership-the owner’s rights include the rights of use and abuse. In Kenya however, the development of physical planning legislation has vested in the state the cumulative rights of other landowners. The regulatory power is referred to as police power.

4.4 Land Act, 2012

The Land Act ²⁸(“LA”) is the Kenya’s framework legislation regulating compulsory acquisition of land (i.e. land, houses, easements etc.). The LA was adopted on 2nd May 2012 and provides for sustainable administration and management of land and land based resources including compulsory acquisition.

²⁷ National Land Commission Act, 2012, Section II, article 5(1)

²⁸ Land Act, 2012.

4.5 The Land Laws (Amendment) Act 2016

The Land Laws (Amendment) Act, 2016 (No. 28 of 2016) was assented to by the President on 31 August, 2016 and came into effect on 21 September, 2016.

The Land Laws (Amendment) Act, 2016 revises the Land Act, 2012, the Land Registration Act, 2012 and National Land Commission Act, 2012. It also sets out regulations to give effect to Articles 67 (2) (e) and 68 (c) (i) of The Constitution of Kenya which deal with the National Land Commission's function of initiating investigations into present or historical land injustices and reparation and, prescribed minimum and maximum land holding acreages for private land respectively. The following is a brief outline on the key changes introduced by Land Laws (Amendment) Act to the Land Act, No. 6 of 2012.

4.6 Community Land Act

PART V on conversion of land, Section 39 (3), requires that before conversion of community land into any other category of land a general meeting of the community must grant approval for such conversion.

Section 40 (2) (3) state that Community land shall be compulsorily acquired only if it is for a public purpose or public interest subject to prompt payment in full of just compensation to the community and that transfer of community land shall, subject to the approval of the members of the community in a general meeting, be done in accordance with the Land Act.

Section 41(2) requires that Conversion of land requires approval of members of the community in a general meeting in the case of land managed and administered by a Committee. Section 44 requires that adequate compensation shall be made to the affected community where land is set aside for public purposes.

4.7 Land Acquisition Process

Proof that compulsory possession is for public good

It is very explicit in the Land Act, 2012, Section 107, that whenever the national or county government is satisfied that it may be necessary to acquire some particular land under section 110 of Land Act 2012, the possession of the land must be necessary for public purpose or public interest, such as, in the interests of public defence, public safety, public order, public morality, public health, urban and planning, or the development or utilization of any property in such manner as to promote the public benefit. Irrigation and drainage are explicitly identified as qualifying for land acquisition as public utility and the necessity therefore is such as to afford reasonable justification for the causing of any hardship that may result to any person having right over the property, and so certifies in writing, possession of such land may be taken.

Respective Government agency or cabinet must seek approval of NLC

The respective Cabinet Secretary or Government agency or the County Executive Committee Member must submit a request for acquisition of private land to the NLC to acquire the land on its behalf. The Commission will prescribe a criteria and guidelines to be adhered to by the acquiring authorities in the acquisition of land. It is important to note that if the NLC is constituted prior to conclusion of land acquisition, it could prescribe criteria and guidelines necessitating variations or revisions to the current RAP. Similar, the Commission has powers to reject a request of an acquiring authority, to undertake an acquisition if it establishes that the request does not meet the requirements prescribed.

Inspection of Land to be acquired

NLC may physically ascertain or satisfy itself whether the intended land is suitable for the public purpose, which the applying authority intends to use as specified. If it certifies that indeed the land is required for public purpose, it shall express the satisfaction in writing and serve necessary notices to land owners and or approve the request made by acquiring authority intending to acquire land.

Publication of notice of intention to acquire

Upon approval, NLC shall publish a notice of intention to acquire the land in the *Kenya Gazette and County Gazette*.²⁹ It will then serve a copy of the notice to every person interested in the land and deposit the same copy to the Registrar³⁰ The courts have strictly interpreted this provision, requiring that the notice include the description of the land, indicate the public purpose for which the land is being acquired and state the name of the acquiring public body.³¹ NLC shall ensure that the provisions are included in her notice.

The Land Registrar shall then make entry in the master register on the intention to acquire as the office responsible for survey, at both national and county level, geo-references the land intended for acquisition.

Serve the notice of inquiry

Thirty days after the publication of the Notice of Intention to Acquire, NLC will schedule a hearing for public inquiry. NLC must publish notice of this meeting in the *Kenya Gazette and County gazette 15 days before the inquiry meeting* and serve the notice on every person interested in the land to be acquired. Such notice must

²⁹ The *Kenya Gazette* is the official government journal in Kenya published by the Government Printing Press.

³⁰ Land Act, 2012, 107

³¹ Government of Kenya 1994. Coastal Aquaculture Limited v. The Commissioner of Lands and Settlement and the Minister of Lands and Settlements. Mombasa H.C. Misc. Appl., No. 55 of 1994, [http://www.kenyalaw.org/CaseSearch/case_download.php?go=97115264151454584840489&link=, accessed May 25, 2011.](http://www.kenyalaw.org/CaseSearch/case_download.php?go=97115264151454584840489&link=,)

This ruling was upheld by the Court of Appeal. Coastal Aquaculture Limited v. the Commissioner of Lands and Settlement and the Minister of Lands and Settlements. Nairobi. No. 252 of 1996, [http://www.kenyalaw.org/CaseSearch/view_preview1.php?link=49186237036025529910634, accessed May 25, 2011.](http://www.kenyalaw.org/CaseSearch/view_preview1.php?link=49186237036025529910634,)

instruct owner of land to deliver to the NLC, no later than the date of the inquiry, a written claim for compensation.³²

Holding of a public hearing

NLC then convenes a public hearing not earlier than 30 days after publication of the Notice of Intention to Acquire. On the date of the hearing, NLC must conduct a full inquiry to determine the number of individuals who have legitimate claims on the land, the land value and the amount of compensation payable to each legitimate claimant.³³ Besides, at the hearing, the Commission shall – make full inquiry into and determine who are the persons interested in the land; and receive written claims of compensation from those interested in the land. For the purposes of an inquiry, the Commission shall have all the powers of the Court to summon and examine witnesses, including the persons interested in the land, to administer oaths and affirmations and to compel the production and delivery to the Commission (NLC) of documents of title to the land.

The public body for whose purposes the land is being acquired, and every person interested in the land, is entitled to be heard, to produce evidence and to call and to question witnesses at an inquiry. It will also provide opportunity to land owners to hear the justification of the public authority in laying claims to acquire the land.

4.8 Valuation of the land

Part III of the Land Act 2012, section 113 (2a) states that “the Commission shall determine the value of land with conclusive evidence of (i) the size of land to be acquired; (ii) the value, in the opinion of the Commission, of the land; (iii) the amount of compensation payable, whether the owners of land have or have not appeared at the inquiry.” This can be interpreted that NLC must determine the value of the land accordingly and pay appropriate just compensation in accordance with the principles and formulae that it will develop. Nonetheless, just compensation³⁴ could also be interpreted as market rate. The final award on the value of the land shall be determined by NLC and shall not be invalidated by reason of discrepancy, which may be found to exist in the area.

Matters to be considered in determining compensation:

The market value of the property, which is determined at the date of the publication of the acquisition notice must be considered.³⁵ Determination of the value has to

³² Land Act, 2012 (112).

³³ *Id.* at article 112.

³⁴ Schedule explaining ‘just compensation’ has not been assessed and released by NLC. The Land Act 2012 say NLC should develop the schedule.

³⁵ *Id.* at article 112 and article 111.

take into consideration the conditions of the title and the regulations that classify the land use e.g. agricultural, residential, commercial or industrial.

Increased market value is disregarded when:

- It is accrued by improvements made within two years before the date of the publication of the acquisition notice, unless it is proved that such improvement was made in good faith and not in contemplation of the proceedings for compulsory acquisition.
- It is accrued by land use contrary to the law or detrimental to the health of the occupiers of the premises or public health.
- Any damages sustained or likely to be sustained by reason of severing such land from other land owned by the claimant.
- Any damage sustained or likely to be sustained if the acquisition of the land had negative effects on other property owned by the claimant.
- Reasonable expenses, if as a consequence of the acquisition, the claimant was compelled to change his residence or place of business (i.e., compensation for disruption to the claimant's life).
- Any damage from loss of profits over the land occurring between the date of the publication of the acquisition notice and the date the NLC takes possession of the land.³⁶

Matters not to be considered in determining compensation:

- The degree of urgency, which has led to the acquisition.
- Any disinclination of the person's interest to part with the land.
- Damages sustained by the claimant, which will not represent a good cause of action.
- Damages, which are likely to be caused to the land after the publication of the acquisition notice or as a consequence of the future, land use.
- Increased land value accrued by its future use.
- Any development at the time of acquisition notice, unless these improvements were necessary for maintaining the land.³⁷

4.9 Valuation of Land for Pipeline

The pipeline that will serve the project area will pass on land for 2 PAPs who have legal title over the land even though it is a riparian reserve. Land will be acquired using the easement approach where the land owned by the PAPs will not be fully purchased but will instead be acquired as a wayleave (easement).

³⁶ Schedule 2 governing compensation 2000.

³⁷ Schedule 3 governing compensation for compulsory acquisition.

4.9.1 Methodology

The right to lay a pipe in another person's land is frequently called "an easement". Although, the right to lay a pipe in another person's land is sometimes referred to as "an easement", such a right can rarely be an easement in the true legal sense of the word. It is usually a particular form of licence called a wayleave.

4.9.2 Wayleaves

Wayleaves are normally created when two parties agree in writing that the grantor will permit the grantee to use part of his/her land for a wayleave. This agreement may be in the form of an exchange of letters or a more formal document like a deed that will attract a stamp duty. Another form of agreement would arise where, in the terms of a conveyance, a restrictive covenant creates a wayleave for the benefit of the seller over the purchasers' land.

Many wayleaves are negotiated between owners of land and statutory authorities holding compulsory purchase powers. The authority may never exercise those powers, but their presence does lead to an express agreement between the parties. Where statutory powers have to be exercised, the method constitutes acquisition of a legal estate. The owner of the land will be entitled to a notice to treat following the compulsory purchase procedure under the Land Act 2012. The owner of the land subject to the wayleave will be compensated as if a legal estate was being acquired. Betts and Kent (1988) state that payments made by acquiring authorities and undertakings should be broken into two distinct headings:

- (i) Consideration for acquiring the way leave (i.e. capital value of that part of that land subject to the wayleave): and,
- (ii) Compensation for the damage caused in the laying the pipe (i.e. compensation for the disturbance, severance and injurious affection where they apply).

Basis of Valuation

The value of an interest in land can be affected, due to a wayleave, in a number of ways as follows:

- (i) The depreciation in the value of the land due to the wayleave. The existence of the wayleave pre-supposes a right over the grantor's land. Such a right will restrict the grantor's right to use the land himself. Included under this is the "hope" value, which is attached to the value of an interest in land. The possibility of future development, whether immediate or far postponed, will attract to a land a value higher than the existing use value. A notice to treat will require that the value be calculated as at the date of the notice to treat. Hence one must consider only the depreciation in the present value of any potential change of use, caused by the appearance of a wayleave.

- (ii) Damage due to constructional operation or the laying of a pipe must entail disturbance of the surface of the soil together with the crops growing thereon.
- (iii) Injurious affection and disturbance to adjoining land. This refers not only to the land over or below the wayleave but also to adjoining lands. The presence of the wayleave may have a detrimental effect on the value of adjoining land. The amount of award for compensation will in practice depend on the following matters:

Length of the wayleave: the compensation for the damage by the laying of the pipe should be related to the length of the pipe and its position in the field rather than the total area of the field.

Width of wayleave: There are number of widths to be considered which affect the wayleave. These are:

- Width of the land sterilized due to the presence of the pipe.
- Width of the land affected by pipe laying.
- Width of the wayleave if defined.
- Width of working strip used in laying the pipe.

Width of the land sterilized will include the strip on which the pipe is to be laid, and a strip of land 3 metres on either side where certain operations such as building works are forbidden. The width of land sterilized may therefore be: width of the pipe plus 3 metres of either side.

Width of the land affected by pipe laying arises because the digging of a deep trench and the laying of a pipe will cause damage that will take so long to heal that it can be referred to as permanent damage. It is in this part that the tilth has been destroyed and the subsoil has become mingled with the topsoil. The width of the land affected during the construction exceeds the width of the land sterilized. The width of the working strip used in laying the pipe will be the area of land used by the pipe laying gang.

Depth of pipe: This is important because pipes are laid at least 750 mm below ground level in order to minimize the risk of obstructing cultivations. Shallower depths restrict the amount of cultivations possible and hence increase the amount of compensation payable.

In Britain, lands tribunals have recommended the basis of calculation for land taken as "laid length" at a price per metre at 50 percent of the value of freehold land. Many authorities make substantial offers well above the rule of thumb

established by the tribunals. With respect to damage caused by the laying of the pipe, the valuer should be guided by two principals (Bents and Kent, 1988:549):-

- The claimant is entitled to be left in no worse a position than he would have been had the event not taken place and where there is no other means of restitution.
- It is the duty of the claimant to mitigate wherever possible any claim that may arise (i.e. the list of items will vary with circumstances).

Award of compensation

The Land Act does not stipulate that compensation must be in the form of money only. Under the Land Act 2012 section 117, the State can award a grant of land in lieu of money compensation (“land for land”), provided the value of the land awarded does not exceed the value of the money compensation that would have been allowable.³⁸ The law could be interpreted that any dispossessed person shall be awarded the market value of the land.³⁹ The new law is silent on relocation support or disturbance allowance support.

Upon the conclusion of the inquiry, and once the NLC has determined the amount of compensation, NLC will prepare and serves a written award of compensation to each legitimate claimant.⁴⁰ NLC will publish these awards, which will be considered “final and conclusive evidence” of the area of the land to be acquired, the value of the land and the amount payable as compensation.⁴¹ Land Act, Section 115 further stipulates that an award shall not be invalidated by reason only of a discrepancy between the area specified in the award and the actual area of the land. Compensation cannot include attorney’s fees, costs of obtaining advice, and costs incurred in preparing and submitting written claims.

Payment of Compensation

A notice of award and offer of compensation shall be served to each person by the Commission. Section 120 provides that “first offer compensation shall be paid promptly” to all persons interested in land.⁴² Section 119 provides a different condition and states that the NLC “as soon as practicable” will pay such compensation.⁴³ Where such amount is not paid on or before the taking of the land,

³⁸ *Land Act*, 117.

³⁹ *Land Act*, Schedule

⁴⁰ *Land Act*, 115

⁴¹ *Land Act*, 115

⁴² *Land Act*, This language reflects the language of the Kenya Constitution, 1963.

⁴³ *Land Act*, 119

the NLC must pay interest on the awarded amount at the market rate yearly, calculated from the date the State takes possession until the date of the payment.⁴⁴

In cases of dispute, the Commission may at any time pay the amount of the compensation into a special compensation account held by the Commission, notifying owner of land accordingly. If the amount of any compensation awarded is not paid, the Commission shall on or before the taking of possession of the land, open a special account into which the Commission shall pay interest on the amount awarded at the rate prevailing bank rates from the time of taking possession until the time of payment.

⁴⁴ *Constitution of Kenya, article 162*

Transfer of Possession and Ownership to the State

Once first offer payment has been awarded, the NLC will serve notice to landowners in the property indicating the date the Government will take possession. Upon taking possession of land, the commission shall ensure payment of just compensation in full. When this has been done, NLC removes the ownership of private land from the register of private ownership and the land is vested in the national or county Government as public land free from any encumbrances.⁴⁵

On the other side also, the Commission has also the power to obtain temporary occupation of land. However, the commission shall as soon as is practicable, before taking possession, pay full and just compensation to all persons interested in the land.

In cases of where there is an urgent necessity for the acquisition of land, and it would be contrary to the public interest for the acquisition to be delayed by following the normal procedures of compulsory acquisition under this Act, the Commission may take possession of uncultivated or pasture or arable land upon the expiration of fifteen days from the date of publication of the notice of intention to acquire.

On the expiration of that time NLC shall, notwithstanding that no award has been made, take possession of that land. If the documents evidencing title to the land acquired have not been previously delivered, the Commission shall, in writing, require the person having possession of the documents of title to deliver them to the Registrar, and thereupon that person shall forthwith deliver the documents to the Registrar.

On receipt of the documents of title, the Registrar shall – cancel the title documents if the whole of the land comprised in the documents has been acquired; if only part of the land comprised in the documents has been acquired, the Registrar shall register the resultant parcels and cause to be issued, to the parties, title documents in respect of the resultant parcels. If the documents are not forthcoming, the Registrar will cause an entry to be made in the register recording the acquisition of the land under this Act.

4.10 Children and Orphans Provision of Land Possession

The Land Act 2012, Part III, section 27⁴⁶ recognizes the capacity of a child as being capable of holding title to land. However, this can only happen through a trustee and such a child shall be in the same position as an adult with regard to child's liability and obligation to the land.

⁴⁵ *Land Act, 115 and 116*

⁴⁶ "A child shall be capable of holding title to land through a trustee and such child be in the same position as an adult with regard to the child's liability and obligations to the land".

4.11 National Land Commission Act 2012

The National Land Commission (NLC) 2012 will undertake compensation. NLC is an independent government commission whose establishment was provided for by the Constitution of Kenya, 2010 to, amongst other things, manage public land on behalf of the national and county governments, initiate investigations into present or historical land injustices and recommend appropriate redress, and monitor and have oversight responsibilities over land use planning throughout the country. [1] It was officially established under The National Land Commission Act, 2012. Pursuant to

Article 67(2) of the Constitution, the functions of the Commission are –

- to manage public land on behalf of the national and county governments;
- Compulsory acquire land for national and county governments
- Compensate acquired land on behalf of national and County government
- To recommend a national land policy to the national government;
- To advise the national government on a comprehensive programme for the registration of title in land throughout Kenya;
- To conduct research related to land and the use of natural resources, and make recommendations to appropriate authorities;
- To initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress;
- To encourage the application of traditional dispute resolution mechanisms in land conflicts;
- To assess tax on land and premiums on immovable property in any area designated by law; and
- Monitor and have oversight responsibilities over land use planning throughout the country.

Under the National Land Commission Act, the Commission shall:

- On behalf of, and with the consent of the national and county governments, alienate public land;
- Monitor the registration of all rights and interests in land;
- Ensure that public land and land under the management of designated state agencies are sustainably managed for their intended purpose and for future generations;
- Develop and maintain an effective land information management system at national and county levels;
- Manage and administer all unregistered trust land and unregistered community land on behalf of the county government; and

- Develop and encourage alternative dispute resolution mechanisms in land dispute handling and management.
- Implement Settlement programmes on behalf of national and county governments as outlined in section 134 of the Land Act.
- Administer the Land Settlement Fund in accordance with section 135 of Land Act 2012
- Manage the Land Compensation Fund
- Identify ecologically sensitive areas that are within public land and demarcate and take any other justified action on those areas and act to prevent environmental degradation and climate change in accordance with the Land Act.
- Reserve public land for the establishment of approved settlement programmes, and where public land is not available, purchase private land subject to the Public Procurement and Disposal Act, 2005 or any other law as provided for in section 134 (5) of the Land Act.
- Set aside land for investment purposes in accordance with section 12(3) of the Land Act.
- Approve compulsory acquisitions, wayleaves, easements and analogous rights.
- Ensure that the investments, in land benefit local communities and their economies.
- Make regulations prescribing the criteria for allocation of public land, such regulations to prescribe forms of ownership and access to land under all tenure systems.
- The procedure and manner of setting aside land for investment should respect mechanisms of benefit sharing with local communities.

As a result, NLC will compensate all affected PAPs, since legally they are the constitutional body charged with this responsibility.

4.12 The Valuers Act

Valuation of land is a critical aspect of compulsory acquisition practice and compensation. The National Land Commission based on land valuation determined by registered valuers will make compensation awards. Besides, the Valuers Act⁴⁷ establishes the Valuers Registration Board, which regulates the activities and practice of registered valuers. All valuers must be registered with the Board to practice in Kenya. The Board shall keep and maintain the names of registered valuers, which shall include the date of entry in the register; the address of the person registered the qualification of the person and any other relevant particular that the Board may find necessary.

⁴⁷ The Valuers Act, Chapter 532, http://www.kenyalaw.org/kenyalaw/klr_app/frames.php, accessed May 25, 2011.

As of March 2011, there were 285 registered valuers in Kenya.⁴⁸ The Valuers Act does not provide for a description of the valuation procedures and methods. The RAP team consists of and has made use of the services of registered valuers who are approved by Valuers Registration Board.

Under the Valuers Act, professional misconduct of registered valuer will include:

- False or incorrect entry in the register;
- False or misleading statement caused by omission or suppression of a material fact;⁴⁹ and
- The acceptance of “any professional valuation work which involves the giving or receiving of discounts or commissions.”⁵⁰

In case of professional misconduct, the registered valuer is guilty of an offense punishable with a fine (not exceeding Ksh.10, 000) and/or imprisonment for three years. Fees for land valuation in case of compulsory acquisition are established based on the value of the property as “the first Kshs 400,000 at 1 per cent. Residue at 0.5 per cent”⁵¹ and are paid by those who requested the valuation.

4.13 Child Rights Act 2012

This Act of Parliament makes provision for parental responsibility, fostering, adoption, custody, maintenance, guardianship, care and protection of children. It also makes provision for the administration of children's institutions, gives effect to the principles of the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. Section 15 states that a child shall be protected from sexual exploitation and use in prostitution, inducement or coercion to engage in any sexual activity, and exposure to obscene materials. The works contractor for this project will prepare a code of ethics which must clearly spell out steps for protecting children against any form of abuse in accordance with this Act. This will be part of the contractual agreement and award with KIWASCO.

4.14 Matrimonial Property Act No 49 of 2013

Ownership of matrimonial property

Part III (clause 7)

States that: -

Subject to section 6(3), ownership of matrimonial property vests in the spouses according to the contribution of either spouse towards its acquisition, and shall be divided between the spouses if they divorce or their marriage is otherwise dissolved. This also includes assets like land.

⁴⁸ Government of Kenya, Kenya Gazette notice no. 2892, March 18, 2011. Registered and Practicing Valuers.

⁴⁹ The Valuers Act, § 24 and Legal Notice no. 32.

⁵⁰ *Land Act 2012, article 128.*

⁵¹ *Legal Notice 32.*

4.15 Constitutional Provisions and Disability

The COK 2010, (chapter 4, part III), Application of Rights (clause 54) states:

A person with any disability is entitled: -

- (a) to be treated with dignity and respect and to be addressed and referred to in a manner that is not demeaning;
 - (b) to access educational institutions and facilities for persons with disabilities that are integrated into society to the extent compatible with the interests of the person;
 - (c) to reasonable access to all places, public transport and information;
 - (d) to use Sign language, Braille or other appropriate means of communication; and
 - (e) to access materials and devices to overcome constraint arising from the person's disability.
- (2) The State shall ensure the progressive implementation of the principle that at least five percent of the members of the public in elective and appointive bodies are persons with disabilities.

4.16 Opportunity for Appeal

The Kenya Constitution establishes Environment and Land Court⁵². Article 162 of the constitution provides for the creation of specialized courts to handle all matters on land and the environment. Such a court will have the status and powers of a High Court in every respect. Article 159 on the principles of judicial authority, indicates that courts will endeavour to encourage application of alternative dispute resolution mechanisms, including traditional ones, so long as they are consistent with the constitution. Section 20, of the Environment and Land Court Act, 2011 empowers the Environment and Land Court, on its own motion, or on application of the parties to a dispute, to direct the application of including traditional dispute resolution mechanisms.

Any person whose land has been compulsorily acquired may petition the Environment and Land Court for redress with respect to:

- The determination of such person's right over the land;
- The amount offered in compensation; and
- The amount offered in compensation for damages for temporary dispossession in the case of the Government's withdrawal of its acquisition of the land.⁵³

Parties will pay fees as determined by Land and Environment or the court may choose to waive them completely or in part on grounds of financial hardship.⁵⁴

⁵² Land Act 2012, Section 128

⁵³ Land Acquisition Act. at article 29(7).

⁵⁴ Land Acquisition Act at article 43.

4.17 World Bank Safeguard Policy on Resettlement

The World Bank Operational Policy 4.12, Framework of November 2002, is a common standard of approved principles and guidelines for compensation/resettlement for this type of project. World Bank principles should, however, be harmonized with the national laws of the subject country where the project is to be funded to the extent possible. Where there are differences, World Bank OP 4.12, applies.

World Bank's Safeguard Operational Policy O.P. 4.12 on 'Involuntary Resettlement' requires that displaced persons should be compensated at full replacement cost, assisted with relocation/resettlement and during the transition period.

4.17.1 World Bank Gender and Development Framework Policy

The gender and development policy framework comprises nine Operational Policies (OPs) and/or Bank Procedures (BP): five are relevant for investment lending generally, one for development policy lending, and three for safeguard policies. Three of the policies in the gender and development framework are part of the Bank's environmental and social safeguard policies include: Indigenous Peoples (OP 4.10), Involuntary Resettlement (OP 4.12), and Forests (OP4.36). The applicable policy is OP. 4.12 which is described below.

OP 4.12 on Involuntary Resettlement calls for providing —displaced persons and their communities, and any host communities|| with timely information, opportunities for consultation, participation in —planning, implementing, and monitoring resettlement, as well as accessible grievance mechanisms (Para. 13). Paragraph 8 addresses gender issues through the following requirement to pay attention to —vulnerable people “to achieve the objectives of this policy, particular attention is paid to the needs of vulnerable groups among those displaced, especially those below the poverty line, the landless, the elderly, women and children, indigenous peoples, ethnic minorities or other displaced persons who may not be protected through national land compensation legislation.” To do so, OP 4.12 (Paragraph 6 (a) (iv)) calls for —socio-economic studies to include a census survey with information on vulnerable people, including women, and specifies that the implementing agency is responsible for monitoring and evaluation during project implementation, with the Bank calling on —independent monitors as appropriate. (Para. 21).

4.18 Comparison of Kenya Land Laws and World Bank

Table 4-1 outlines World Bank OP. 4.12 policy on involuntary resettlement and compares them to the Kenyan legislation on the same. Recommendations are made on the existing gaps of the Kenyan laws.

Comparative Analysis of World Bank Op 4.12 & Kenyan Resettlement Laws

Table 4-1: Comparative Analysis of World Bank OP 4.12 and Government of Kenya requirements **including measures to address gaps**

OP 4.12	Kenyan Legislation	Comparison	Recommendation to Address Gap
GENERAL REQUIREMENTS			
<p>World Bank OP4.12 has overall policy objectives, requiring that:</p> <p>a) Involuntary resettlement should be avoided wherever possible, or minimized, exploring all alternatives.</p> <p>b) Resettlement programs should be sustainable, include meaningful consultation with affected parties, and provide benefits to the affected parties.</p> <p>c) Displaced persons should be assisted in improving livelihoods etc., or at least restoring them to previous levels.</p>	<ol style="list-style-type: none"> 1. According to Kenyan Legislation, involuntary resettlement may occur as a result of projects implemented in public interest. 2. The Land Act, 2012 Act outlines procedures for sensitizing the affected population to the project and for consultation on implications and grievance procedures. 3. The Land Act 2012 guarantees the right to fair and just compensation in case of relocation. 	<ol style="list-style-type: none"> 1. The Land Act does not stipulate that resettlement should be avoided wherever possible; on the contrary, as long as a project is for public interest, involuntary resettlement is considered to be inevitable. 2. Same as the World Bank 3. Just and fair compensation as outlined in the Land Act 2012 is not clear and can only be determined by NLC, which can be subjective. It does not talk about improving livelihood or restoring them to pre-project status. 	<ul style="list-style-type: none"> • Ensure that resettlement issues are considered at the design stage of the project in order to avoid/ minimize resettlement. <p>Implement World Bank OP 4.12 policy - displaced should be assisted in improving their livelihood to pre-project status.</p>

OP 4.12	Kenyan Legislation	Comparison	Recommendation to Address Gap
PROCESS REQUIREMENTS			
<p>Consultation: Displaced persons should be meaningfully consulted and should have opportunities to participate in planning and implementing resettlement programs</p>	<p>The Land Act outlines procedures for consultation with affected population by the NLC and grievance management procedures.</p>	<p>Same as World Bank</p>	<p>Implement consultation procedures as outlined in both Kenyan legislation and World Bank.</p>
<p>Grievance: For physical resettlement, appropriate and accessible grievance mechanism will be established.</p>	<p>Land Act 2012 clearly outline the steps and process for grievance redress that includes alternative dispute resolution, re-negotiation with NLC and is backed by the judicial system through Environmental and Land Court</p>	<p>Kenyan legislation meets OP4.12 requirements.</p>	<p>N/A</p>
<p>Eligibility Criteria</p> <p><i>Defined as:</i></p> <p>(a) those who have formal legal rights to land (including customary and traditional rights recognized under the laws of the country);</p> <p>(b) those who do not have formal legal rights to land at the time the census begins but have a claim to such land or assets—provided that such claims are recognized under the laws of the country or become recognized through a process identified in the</p>	<p>The Land Act 2012 provides that written and unwritten official or customary land rights are recognized as valid land right. The Law provides that people eligible for compensation are those holding land tenure rights</p> <p>Land Act also recognizes those who have interest or some claim in the land such pastoralist or who use the land for their livelihood.</p> <p>The constitution recognizes ‘occupants of land even if they do not have titles’ and payment made in good faith to those</p>	<p>Kenya’s Land Law defines eligibility as both formal (legal) and informal (customary) owners of expropriated land. However, it does not specifically recognize all users of the land to be compensated.</p> <p>The constitution of Kenya on the other hand recognizes ‘occupants of land’ who do not have title and who the state has an obligation to pay in good faith when compulsory acquisition is made.</p>	<p>Ensure ALL users (including illegal squatters, laborers, rights of access) of affected lands are included in the census survey or are paid</p>

OP 4.12	Kenyan Legislation	Comparison	Recommendation to Address Gap
<p>resettlement plan (see Annex 10 A, para. 7(f)); and 19</p> <p>(c) those who have no recognizable legal right or claim to the land they are occupying</p> <p><i>To determine eligibility:</i></p> <p>Carry out resettlement census. Cutoff date for eligibility is the day when the census begins.</p>	<p>occupants of land. However, this does not include those who illegally acquired land</p> <p>Land Act 2012 provides for census through NLC inspection and valuation process</p>	<p>Same as World Bank</p>	<p>Implement cut-off procedures as outlined in the RPF and Kenyan Law</p>
<p>Measures: Preference should be given to land based resettlement strategies for displaced persons whose livelihoods are land-based.</p> <p>Cash based compensation should only be made where (a) land taken for the project is a small fraction of the affected asset and the residual is economically viable; (b) active markets for lost assets exist and there is sufficient supply of land and housing; or (c) livelihoods are not land-based.</p> <p>World Bank OP4.12 Article 6(a) requires that displaced persons are provided with prompt and effective compensation at full replacement cost</p>	<p>Legislation provides for land for land compensation but the Land Act 2012 does not state whether preference should be granted to land to land compensation.</p> <p>Land Act 2012 appears to prefer mode of compensation by the Government to the affected population.</p> <p>Land Act talks of prompt, just compensation before the acquisition of land. However, interpretation of just compensation is yet to be clearly outlined through a specific</p>	<p>Land for Land provided for in the Land Act based on agreement by the PAP.</p> <p>Cash based compensation seems to be the preferred mode of awarding compensation to the affected population by Government of Kenya</p> <p>‘Just compensation’ as stipulated in the Land Act not yet specifically defined.</p>	<p>Ensure that all alternative options are considered before providing cash compensation</p> <p>Use World Bank OP4.12 procedures in determining form of compensation</p> <p>Implement prompt and effective compensation at full replacement cost for the losses of the assets.</p>

OP 4.12	Kenyan Legislation	Comparison	Recommendation to Address Gap
<p>for losses of assets attributable directly to the project. If physical relocation is an impact, displaced persons must be provided with assistance during relocation and residential housing, housing sites and/or agricultural sites to at least equivalent standards as the previous site. Replacement cost does not take depreciation into account. In terms of valuing assets, if the residual of the asset being taken is not economically viable, compensation and assistance must be provided as if the entire asset had been taken.</p> <p>Compensation and other assistance required for relocation should be determined prior to displacement, and preparation and provision of resettlement sites with adequate facilities, where required</p>	<p>schedule defining just compensation have not been put in place.</p> <p>Attorney’s fees, cost of obtaining advice or cost incurred in preparing and making written claim not in the Land Act other than ‘just compensation’</p> <p>The Act is does not out rightly stipulate assistance for relocation but we can interpret that relocation cost will be included in just compensation.</p>	<p>OP 4.12 provides related land transaction fees. Land Act not clear on this.</p> <p>OP4.12 requires that displacement must not occur before all necessary measures for resettlement are in place, i.e., measures over and above simple compensation</p>	<p>Implement World Bank policy.</p> <p>Ensure that ALL resettlement options are agreed on with PAPs and put in place BEFORE displacement of affected persons.</p>

OP 4.12	Kenyan Legislation	Comparison	Recommendation to Address Gap
<p>Valuation: With regard to land and structures, “replacement cost” is defined as follows:</p> <p>For agricultural land, it is the pre-project or pre-displacement, whichever is higher, market value of land of equal productive potential or use located in the vicinity of the affected land, plus the cost of preparing the land to levels similar to those of the affected land, plus the cost of any registration and transfer taxes.</p> <p>For houses and other structures, it is the market cost of the materials to build a replacement structure with an area and quality similar to or better than those of the affected structure, or to repair a partially affected structure, plus the cost of transporting building materials to the construction site, plus the cost of any labor and contractors’ fees, plus the cost of any registration and transfer taxes.</p>	<p>Valuation is covered by the Land Act 2012 and stipulates, as already mentioned, that the affected person receive just compensation from NLC, as determined by National Land Commission. Valuers Act stipulates that a residual amount of 0.5% of the total valuation of an asset is expected to pay the valuer.</p> <p>Land Act 2012 talks of just compensation for the lost assets but it is not specific of the exact amount or procedures on the same.</p> <p>The Land Act 2012 stipulates just compensation.</p>	<p>Though one could argue that there is some form of consistency between the Kenyan Law and World Bank OP.4.12, interpretation of ‘just compensation’ has not been defined.</p> <p>Interpretation of just compensation not clear</p> <p>Interpretation of just compensation not clear.</p>	<p>Apply the World Bank OP4.12 valuation measures, as outlined in Section 6, in order to fully value all affected assets in a consistent manner.</p> <p>Apply World Bank OP4.12 on valuation and compensation measures.</p> <p>Apply World Bank OP4.12 on valuation and compensation procedures.</p>

OP 4.12	Kenyan Legislation	Comparison	Recommendation to Address Gap
Monitor Adequate monitoring and evaluation of activities to be undertaken.	According to Land Act can be undertaken County Land Boards.	Both Kenyan Law and World Bank policy advocates for Monitoring and Evaluation	Implement as prescribed in the World Bank OP4.12 and Kenyan Law.

Comparative Analysis of World Bank OP 4.12 & Kenya’s Requirements Relevant to the Process

Table: 4-2 Comparative Analysis of World Bank OP 4.12 and Kenya’s requirements Relevant to the Process

Category of PAPs and Type of Lost Assets	Kenyan Law	World Bank OP4.12
Land Owners	Fair and just compensation which could be in form of cash compensation or Land for Land	Recommends land-for-land compensation. Other compensation is at replacement cost
Land Tenants	Constitution says that ‘occupants of land’ entitled to some level of pay in good faith. Land Act stipulates that they are entitled to some compensation based on the amount of rights they hold upon land under relevant laws. However, those who acquired land illegally not entitled to any.	PAPs are entitled to some form of compensation whatever the legal/illegal recognition of their occupancy.
Owners of Temporary Buildings	The constitution of Kenyan respects the right to private property and in case of compulsory acquisition, just compensation must be granted to the owner for the loss temporary buildings.	Entitled to in-kind compensation or cash compensation at full replacement cost including labor and relocation expenses, prior to displacement.
Owners of Permanent buildings	The constitution of Kenyan respects the right to private property and in case of compulsory acquisition, just	Entitled to in-kind compensation or cash compensation at full replacement cost including labor and relocation expenses, prior to displacement.

Category of PAPs and Type of Lost Assets	Kenyan Law	World Bank OP4.12
	compensation must be granted to the owner for the permanent building	
Perennial Crops	Compensation for the loss of crops	As per specifications of this RPF, once approved by the Bank and disclosed at the Bank info shop,

5 PROJECT DISPLACEMENT IMPACTS

5.1 Minimizing Displacement and Social Impacts

The project has deliberately routed the water supply pipelines along the RoW and in effect, minimising displacement and social impacts. Additional measures taken or steps to be taken to reduce impact include:

- Fully compensating PAPs before project commencement including 15% disturbance allowance

5.2 Impact on Land

The proposed project will have **minimal impact** on land due to the fact that there will be acquisition of land from only 2 PAPs going to lose land as a result of the project. During the socio-economic survey, it was further observed that there is no form of crops or trees hence in equal measure, compensation of this nature will not occur.

5.3 Impacts On People and Livelihoods

A comprehensive census of Project-Affected People has been carried during the preparation of this RAP. This census has included:

- The inventory of all structures including their measurement and description,
- The census of Project-Affected People, including the administration of a socio-economic questionnaire,
- The identification of vulnerable households.

5.4 Overview of the Results of the Census

Table 5-1 below shows the breakdown of these numbers for the affected persons.

Table 5-1: Summary Results of the Census

Area	# of PAPs
Kogony	0
Mkendwa	0
Riat	0
Kanyakwar	2

5.5 Impact on Structures

There are no residential or commercial structures that will be affected as a result of the project. The only structures to be affected include a **pit latrine** and **fence** owned by the 2 PAPs.

5.6 Impact on Public and Community Infrastructure

The project will not lead to the displacement of any public or community assets and infrastructure.

5.7 Impact on Businesses

There are no businesses that will be affected by the project. The routing is along the ROW which is not encroached.

5.8 Impact on Cultural Sites

There are no cultural sites like graves, shrines along the project route.

5.9 Impact During Maintenance of Lines

It is envisaged that during the project operation, leakages and blockage of the pipeline may warrant the need to access the pipeline routing to fix the problem. This may cause disturbances to the PAP and this RAP recommends that any disturbances arising as a result of maintenance of the pipeline be compensated through valuation of the damage/disturbance and compensating for the same by KIWASCO.

6 RESETTLEMENT COMPENSATION STRATEGY

6.1 COMPENSATION FRAMEWORK

The constitution allows for the national and county governments to acquire land in the public interest. The assessment for compensation under this RAP is, therefore, statutory and all steps have been taken to comply with the statutory provisions.

This is also in relation to the World Bank OP 4.12 procedures that spell out who is entitled to resettlement compensation as a result of involuntary displacement due to development projects. According to the World Bank OP 4.12 procedures, the following PAPs will be eligible for compensation:

- Those who have formal rights to land (including statutory rights of occupancy recognized under Kenyan law);
- Those who do not have formal legal rights to land at the time of PAP census but have a claim to such land or assets provided that such claims are recognized under Kenyan laws, or become recognized through a process identified in the resettlement and compensation plan; and
- Those who have no claim to land they are occupying or using.

6.2 Compensation Principles

The compensation principles to be followed are derived from the national legislation and the World Bank OP 4.12 procedures on involuntary resettlement. These principles, including the valuation procedures, were all explained to the PAPs and other community members during the community dialogues and stakeholder consultations.

- 4 Resettlement and compensation of PAPs will be carried out in compliance with relevant Kenyan laws and WB standards.
- 5 All PAPs physically or economically displaced shall be adequately, promptly and equitably compensated before the commencement of works at the project-affected sites. All efforts will be taken to provide necessary assistance for PAPs to restore their livelihoods.
- 6 Special consideration will be given to especially disadvantaged and/or vulnerable people such as women, children, the very old and the unemployed. Provision will be made to enhance their rights to resettlement and compensation payments. For example, the consent of spouses and children where it applies shall be a sought prerequisite for compensation payment, as provided by the Land Act (2012).
- 7 The project will promote and provide in-kind compensation as an option for especially vulnerable groups and project affected community resources and facilities.

- (a) The project will consider a 15 per cent livelihood/ disturbance allowance in addition to the assessed compensation values for affected property.
- (b) In consideration of the differences between national legislation and the World Bank Safeguard Policy on Involuntary Resettlement, the higher of the two standards will be followed, where it best applies in this RAP, since this approach also satisfies the requirements of the lesser standard.

6.3 Eligibility for compensation

The concept of eligibility is used with respect to the definition of PAPs and the criteria for determining their qualification for compensation and other resettlement assistance.

6.3.1 Eligibility for Compensation and ‘cut-off’ date

The affected persons, irrespective of their status, are eligible for some form of assistance if they occupied the land or engaged in any livelihood income-generating activity at the affected sites before the entitlement ‘cut-off date’ which has been taken as **23rd August 2017**. The entitlement ‘cut-off’ date refers to the time when the census and assessment of PAPs and their property in the project area were carried out and ended. This was explained to the community members and PAPs during community dialogues and the PAP census. Thereafter, no new cases will be entertained for compensation.

Upon completion of the census and asset inventory surveys, and in order to avoid an influx of additional persons, cut-off date was established to be **23rd August 2017**. The cut-off date was advertised, through discussions with PAPs and local leaders, via chiefs’ barazas. Those who encroach on the area after the established cut-off dates will not be eligible for compensation or assistance.

The following categories are eligible for compensation:

- (a) People who rightfully own land (formal) outside of ROW which will be acquired as a result of laying the water pipelines.
- (b) People who rightfully own residential or commercial structures (outside of ROW) which will be acquired as a result of laying the water pipelines.

The list of the identified PAPs is attached as **Appendix 2**. During the community and public consultations, compensation alternatives were explained to the PAPs and other stakeholders. The strategy for income restoration is discussed below.

6.3.2 Eligibility

Both in principle and in the context of the Project, eligibility for compensation for displacement defines:

- Which losses of assets and income are compensated under the project, and which are not;
- Who is entitled to receive that compensation, and who is not; and
- What evidence is expected in order to support a claim for compensation?

These eligible losses and entitlements are elaborated in a detailed Entitlement Matrix (see table 6-1).

6.3.3 Exclusion For Eligibility

As described in earlier section of this RAP, all involuntary displacement (resettlement) is eligible for compensation with the exception of six main categories of loss, which are explicitly classified as ineligible for compensation:

- Losses arising from structures or activities in the ROW, or in any of the sub-project areas impacted by the Project, that post-date the cut-off date;
- Losses claimed on the basis of intention to use the land for a particular purpose (actual prior investment in plans and permissions may be compensated, but expected future value arising from proposed future investments is excluded);
- Losses arising from structures or activities outside the ROW [fully justified exceptions could be considered by the Grievance Redress Mechanism (GRM)];
- Losses claimed on a fraudulent basis or by material misrepresentation of facts e.g. of identity, ownership, employment, or nature of asset or use of land.

6.3.4 Ownership Category and Category of Losses

The categories of eligible losses and PAPs eligible for compensation are those experiencing permanent or temporary losses of the following assets:

1. Land (legal/formal land ownership) as per Land Act 2012
2. Structures (latrine and fence)

Thus, all eligible affected people are entitled to appropriate compensation regardless of whether or not they have legal rights to the land. Eligibility for compensation does not create or confer a right where none previously existed – e.g. it does not make legal the illegal occupation of land.

6.3.5 Cash Compensation

This strategy will be through adequate and prompt monetary compensation and will apply to all the PAPs. This strategy will include cash compensation for

property, land and other resettlement assistance including disturbance allowance to enable all category of PAPs to restore their livelihoods as described in the entitlement matrix. This strategy was arrived at after consideration of the following factors:

1. The PAPs prefer cash compensation as opposed to in-kind compensation as demonstrated by the results of the socio-economic survey which indicated that the 2 PAPs have a preference to cash compensation.
2. The land to be acquired by the project is not significant (less than 5%) of the total land sizes

6.3.6 Replacement In Kind

The project will promote and provide in-kind compensation as an option especially vulnerable groups and project affected community resources and facilities. This RAP provides for the following in-kind compensations:

- Vehicular and pedestrian access from tarmac roadways: works contractor to restore access (in-kind only). Appropriate language to this effect is included in the tender documents/BOQ;
- Relocation of public utilities including power and communication lines, sanitation facilities will be replaced by the contractor and is part of the contractual agreement. Relocation of these services will be undertaken with minimal disruption of the services to the local communities and all location of services will be identified by contractor in collaboration with utility providers and adequate notice given to the local communities and alternatives provided in advance in cases where disruption is inevitable.

6.3.7 Educational Facilities/Schools

The project does not impact or displace any educational facilities.

6.3.8 Relocation of Graves/cultural assets

The project does not impact or displace any graves or cultural assets.

6.3.9 Religious Institutions

The project does not impact or displace any religious institutions.

6.3.10 Squatters

Squatter are entitled compensation for structures and other assets lost other than land. They are also entitled to livelihood restoration measures and disturbance allowance as well as right to salvage. There are **no squatters** along this pipeline route. OP 4.12 requires those without legal title to affected land may be compensated at replacement cost for their structures, land improvements, and may

qualify for other resettlement and rehabilitation assistance including livelihood restoration, disturbance allowance.

6.3.11 Associated obligations, special considerations and entitlements

(a) Vulnerable groups

There is one **PAP** meeting the criteria or definition of vulnerable groups based on the census survey conducted. These PAP will be provided with the following additional assistance namely: -

- Assistance in the compensation payment procedure;
- Assistance in the post payment period to secure the compensation money;
- Priority in processing disbursement of compensation packages

6.3.12 Strategy for Property and Livelihoods Income Restoration

The resettlement measures or strategies have been developed in close consultation with the 2 PAPs and in reference to the national legal regimes, the World Bank involuntary resettlement policy. Two main strategies have been identified and are discussed below. All PAPs are aware of these options, including those who requested further consultations with other household and family members.

(a) Strategic option one: Cash compensation

This is the main strategy for property and income restoration because the 2 PAPs preferred this form of compensation. This strategy will be through adequate and prompt monetary compensation and will apply to the 2 PAPs. This strategy will include cash compensation for property, land and other resettlement assistance to enable PAPs to restore their livelihoods. This strategy was arrived at after consideration of the following factors:

- a) Both PAPs expressed the preference for cash compensation as opposed to in-kind compensation.

Other resettlement measures that apply to the PAPs are described below:

a) Disturbance allowance

Property and livelihood income restoration will also include a livelihood/disturbance allowance that will be paid to the PAPs at the rate of 15 per cent of the value of compensation. This has been fully incorporated in the RAP and complies with both the national legislation for resettlement compensation and the World Bank requirements for PAP assistance for income and livelihoods restoration.

After compensation, it is anticipated that communities will re-establish themselves in the economic activities they were performing before the project. Accordingly, compensation must be paid upfront before project activities begin at the respective project-affected sites/areas, as provided for in the Land Act (2012), to allow PAPs to plan for the restoration of their livelihood enterprises and other necessary adjustments.

Affected households are entitled to participate in and to benefit from the targeted set of livelihood restoration programs, which were developed for this RAP:

- Financial training for the sustainable use of cash compensation (including training on the maintenance of a bank account, on small household investments, saving strategy and financial planning on the household level);

6.4 Cut-off Date

Upon completion of the census and asset inventory surveys, and in order to avoid an influx of additional persons, cut-off date was established to be **23rd August 2017**. The cut-off dates were advertised, through discussions with PAPs and local leaders, via chiefs' barazas and via the dissemination of posters in the project area. Those who encroach on the area after the established cut-off dates will not be eligible for compensation or assistance.

It is important to note that any structures or activities established in the ROW, or in areas outside of the ROW but part of the Project after the cut-off date are not eligible for compensation. Any claims for occupation prior to that date, and therefore mistakenly omitted from the Census, will be reviewed against evidence, and referred to the GRM for resolution. A summary of the entitlements is presented in the entitlement matrix, in Table 6-1.

Table 6-1: Entitlement Matrix

Impact	Description of affected property	Entitled person	Compensation measure
Loss Land	Partial or permanent loss of land)	Land Owner	Cash compensation for taking into account replacement cost for land Easement cutting across more than 1/4 th of the total land size will lead to full acquisition of land. Disturbance allowance (15%)
Loss Land	Partial or permanent loss of land)	Vulnerable Land Owner	Cash compensation for taking into account replacement cost for land Easement cutting across more than 1/4 th of the total land size will lead to full acquisition of land. Disturbance allowance (15%) Priority in processing and disbursing of compensation
Loss of Structures	Partial or permanent loss of structures	Structure Owner	Cash compensation for taking into account replacement cost for structures Disturbance allowance (15%) Right to salvage assets and materials
Loss of Structures	Partial or permanent loss of structures	Structure Owner (Vulnerable)	Cash compensation for taking into account replacement cost for structures Disturbance allowance (15%) Right to salvage assets and materials

Impact	Description of affected property	Entitled person	Compensation measure
			Priority in processing and disbursing of compensation

7 VULNERABLE PEOPLE

7.1 Identification of Vulnerable People

Vulnerable people, as defined by the World Bank guidelines are people who by virtue of gender, ethnicity, age, physical or mental disability, economic disadvantage, or social status may be more adversely affected by resettlement than others and who may be limited in their ability to claim or take advantage of resettlement assistance and related development benefits. Vulnerable people potentially eligible for specific assistance under this Resettlement Action Plan are those who are affected by the Project land acquisition, compensation and resettlement activities.

The socio-economic survey results show that there is **1 PAH (widow)** who meets the criteria of vulnerable groups. The vulnerable PAH will be provided with the following additional support including: -

- Assistance in the compensation payment procedure;
- Assistance in the post payment period to secure the compensation money;
- Priority in processing disbursement of compensation packages

Table 7-1: Vulnerable PAPs

VULNERABILITY	No.
Vulnerable PAHs	1
Non Vulnerable PAHs	1

Table 7-2: Forms of Vulnerability

FORMS OF VULNERABILITY	No.
Single parent	0
Chronic Illness	0
Elderly	0
Widower	0
Widow	1

8 GRIEVANCE MANAGEMENT AND REDRESS

In practice, grievances and disputes that are most likely during the implementation of a resettlement program are the following:

- Misidentification of assets or mistakes in valuing them;
- Disputes over plot limits, either between the affected person and the Project, or between two neighbors;
- Dispute over the ownership of a given asset (two individuals claim to be the owner of this asset);
- Disagreement over the valuation of a plot or other asset;
- Successions, divorces, and other family issues, resulting in disputes between heirs and other family members, over ownership or ownership shares for a given asset;
- Disagreement over resettlement measures, for instance on the location of the resettlement site, on the type or standing of the proposed housing, or over the characteristics of the resettlement plot; and
- Disputed ownership of a business (for instance where the owner and the operator are different persons), which gives rise to conflicts over the compensation sharing arrangements.

This RAP provides a simple and accessible, extra-judicial mechanism for managing grievances and disputes based on explanation and mediation by third parties. Each of the affected persons will be able to trigger this mechanism, while still being able to resort to the judicial system.

Grievance management proposed in this RAP will provide **three tiers** of amicable review and settlement, with the **first tier** to be located at the **village** where the project will be implemented.

8.1 Grievance Redress and Resettlement Committee

The GRMC are partners on the local level for RAP implementation, and will especially provide support in the following ways:

- Compensation process
- Involvement into the grievance mechanism on the village level
- Involvement into monitoring procedures, especially in monitoring of land dynamics, of progress of livelihood restoration measures and of compensation disbursement
- Maintaining a grievance log.

First Level: Village Grievance and Resettlement Committee

This RAP prefers the first level of grievance or conflict redress on RAP related issues as a result of this project and handle all forms of grievances in an amicable manner

and as an alternative dispute resolution to formal process, which is normally lengthy and costly. Grievances not resolved by the village level committees will be taken to the second level.

In the affected villages as described above there will be a **Village Resettlement and Compensation Committee** and the membership will include:

- The sub locational chief,
- Assistant chiefs,
- One project affected youth,
- One project affected woman,
- One project affected male
- A representative of vulnerable PAPs,
- Business representative.
- KIWASCO representative
- Contractor representative (Works and Supervising Engineer)

Second Level: Sub County Mediation Committee

There will be a mediation committee at each Sub County level to handle grievances that cannot be resolved by the site level committees and membership will include:

- One representative of the Administration; - National Government
- One representative of County Administration; - County Government
- One representative of KIWASCO;
- One representative of the construction contractor, acting as an observer
- Three representatives of the affected people, amongst them at least one woman, chosen i.e. from community based organizations, elders, traders.

Neutral 3rd Party

The RAP proposes a neutral third party for resolving of grievances before resorting to third level of dispute resolution (justice). The RAP proposes the Commission For Administration of Justice/Ombudsman or Kenya National Commission for Human Rights (KNCHR) as the neutral third party arbitrator of disputes arising from this RAP implementation.

Third Level: Resort to Justice

In case this mechanism will not allow an amicable agreement to be reached, the complainant or the defendant can resort to Justice (and could at any time even without going through the established committees).

8.2 National Land Commission (NLC)

The Land Act 2012 empowers NLC to manage public land and carry out compulsory acquisitions of land for specified public purposes. NLC has been constituted and thus legally, NLC is supposed to provide approval to the request made by

KIWASCO to acquire land. NLC is also expected to notify landholders in writing of the intention to acquire land; assist in resolving disputes related to compensation; undertake public consultation on intended acquisition; receive money from KIWASCO for actual payment of entitlement awards to PAPs. NLC holds the authority to execute compulsory acquisition in Kenya. The Government of Kenya bears the authority for land acquisition, which is vested on the NLC by legislation. It is important to note that the NLC also has statutory powers to prescribe criteria and guidelines for land acquisition.

8.3 NLC Grievance and Appeals Process

The NLC has a grievance redress process mainly triggered at the time of award of compensation following public hearings. If a PAP is dissatisfied with the awards given by NLC, they have a right to appeal and NLC would look into the matter and determine justification. In the event that a PAP is not satisfied with the appeal made to NLC and the resolution thereof, then dispute is resolved by resorting to the legal justice system where PAP could go to the environment and land court.

8.4 Grievance Mechanism Steps and Procedures

Step 1: Receipt of complaint/grievance

A verbal or written complaint from a PAP or community member will be received by the GO or an assigned contact officer in a given administrative jurisdiction/authority near to community level and recorded in a grievance log which will be held in the offices of the contractor and KIWASCOs office.

Box 8-1. Role of a Grievance Officer

A Grievance Officer (GO), who will be a KIWASCO Staff, will lead the grievance mechanism. Principal responsibilities of the GO will include:

- (I) Recording the grievances, both written and oral, of the affected people, categorising and prioritising them and providing solutions within a specified time period.
- (II) Discussing grievances on a regular basis and coming up with decisions/actions regarding issues that can be resolved at that level.
- (III) Informing the Steering Committee of serious cases within an appropriate time frame.
- (IV) Reporting to the aggrieved parties about developments regarding their grievances and the decisions of the Steering Committee.
- (V) Providing inputs into the monitoring and evaluation process.

The grievance team will hold meetings at Village Level where grievances are received by a contact person who would then hand over the received complaints to the GO, for entering into the grievance log using the grievance form.

The grievance log will indicate grievances, date opened/lodged, actions taken to address or reasons why the grievance was not acted upon (e.g. the grievance was not related to the resettlement process), information provided to complainant and date on which the grievance was closed.

Grievances can be lodged at any time, either directly to the GO based at the KIWASCO's office, contractor's site office or the sub-county offices. **A sample Grievance Form is attached as appendix 3 for use by the project.** The process of lodging a complaint is outlined below:

- (a) The GO will receive a complaint from the complainant.
- (b) The GO will ask the claimant questions in their local language, write the answers in English and enter them in English onto the grievance form (refer to grievance registration sample form in **Appendix 3**).
- (c) The local leader (representative of an independent local civil society organisation) and the complainant both sign the grievance form after they have both confirmed the accuracy of the grievance.
- (d) The GO lodges the complaint in the grievance log.

Step 2: Determination of corrective action

If in their judgement, the grievance can be solved at this stage and the GO and a representative of a local independent civil society organisation will determine a corrective action in consultation with the aggrieved person. A description of the action, the time frame within which the action is to take place, and the party charged with implementing the action will be recorded in the grievance database.

Grievances will be resolved and the status reported back to complainants within 30 days. If more time is required, this will be clearly communicated and in advance to the aggrieved person. In cases that are not resolved within the stipulated time, detailed investigations will be undertaken and results discussed in the monthly meetings with the affected persons. In some instances, it may be appropriate to appoint independent third parties to undertake the investigations.

Step 3: Meeting with the complainant

The proposed corrective action and the time frame in which it is to be implemented will be discussed with the complainant within 30 days of receipt of the grievance. Written agreement to proceed with the corrective action will be sought from the complainant (e.g. by use of an appropriate consent form). If no agreement is reached, Step 2 will be revisited.

Step 4: Implementation of corrective action

Agreed corrective actions will be undertaken by the project developer or its contractors within the agreed time frame. The date of the completed action will be recorded in the grievance database.

Step 5: Verification of corrective action

To verify satisfaction, the aggrieved person will be approached by the GO to verify that the corrective action has been implemented. A signature of the complainant will be obtained and recorded in the log and/or on the consent form (see Step 3). If the complainant is not satisfied with the outcome of the corrective action, additional steps may be undertaken to reach agreement between the parties. If additional corrective action is not possible alternative avenues may be pursued. **A sample Grievance Resolution Form is attached as Appendix 3 for use by the project.**

Step 6: Action by Grievance and Resettlement Committee

If the complainant remains dissatisfied and a satisfactory resolution cannot be reached, the complaint will be handled by the Grievance Committee. A dedicated Grievance Committee will be established to assess grievances that arise from disputes and membership will include:

- One representative of the Administration; - National Government
- One representative of County Administration; - County Government
- One representative of the KIWASCO acting as an observer;
- One representative of the construction contractor, acting as an observer
- Three representatives of the affected people, amongst them at least one woman, chosen i.e. from community based organizations, elders, traders.

This committee must have a quorum of at least three persons. Decisions will be reached by simple majority. The Grievance Committee should be constituted for as long as grievances are being lodged.

Once the Grievance Committee has determined its approach to the lodged grievance, this will be communicated to the GO, who will communicate this to the complainant. If satisfied, the complainant signs to acknowledge that the issue has been resolved satisfactorily. If the complainant is not satisfied, however, the complainant notes the outstanding issues, which may be re-lodged with the Grievance Committee or the complainant may proceed with judicial proceedings.

Step 7: Alternative Action/Judicial Recourse

In case this mechanism will not allow an amicable agreement to be reached, the complainant or the defendant can resort to Justice (and could at any time). The Land Act 2012 and National Land Commission Act 2012 obligate the NLC to manage

grievances and disputes related to resettlement or land amicably. NLC will be expected to arbitrate or negotiate with PAPs or landowners that have any grievances concerning their compensation. The cascading structures they put in place are also expected to take up this responsibility.

8.5 Remuneration of Grievance Redress and Compensation Committee Members

All the members of the GRCCs established at the different levels will perform their duties on a voluntary basis. There will be no remuneration other than costs associated with transport, communication, meals and sitting allowance. The financial rates for the above costs will be decided upon jointly between KIWASCO and committee members.

This RAP has included a budget estimate for the associated cost under the RAP implementation budget line item. Similarly, the terms of the GRCCs will be decided upon through joint consultations between KIWASCO and the GRCCS.

8.6 Appointment of Grievance Redress and Compensation Committee Members

The members of the GRCCs will be appointed through an election process with all the affected PAPs in the project area participating. The elections will be facilitated by KIWASCO and the local administration including national and county government.

8.7 Capacity-Building for the Grievance Officer and Grievance Committee

It will be important for the GO to be appointed based on his/her experience and training in conflict resolution through mediation and reconciliation. It will also be important for the GO to have sufficient skills in data management, including data entry, data analysis and storage. This notwithstanding, it will be important that steps are taken to orient and build the capacity of the GO as part of the project implementation team in conflict resolution procedures, such as mediation and reconciliation, and other management areas such as record-keeping, report-writing and ICT equipment management.

The Grievance Committee members will also need to be oriented to the grievance management system suggested in the RAP as adopted from the RPF. The capacities of the Grievance Committee members will also need to be built around issues of conflict identification, conflict information analysis and conflict resolution as provided for in the land legislation.

8.8 Other alternatives

The other alternative recourse suggested as a last resort is for the complainant to seek redress in formal courts of law. The constitution establishes the Land and Environment Court (high court) and empowers this court to determine disputes relating to the amount of compensation to be paid for land acquired compulsorily in the public interest.

9 MONITORING AND COMPLETION AUDIT

The purpose of monitoring and evaluation is to report on the effectiveness of the implementation of the RAP, and the outcomes and impact of compensation on the PAPs in relation to the purpose and goals of the RAP. This section describes the Monitoring and Evaluation (M&E) system for the RAP and also describes the parameters and associated indicators to be monitored, and the monitoring milestones and resources, including the persons or institutions responsible for carrying out the monitoring activities. KIWASCO's and WSTFs' Monitoring Officer will be part of the RAP implementation team.

9.1 General Objectives of Monitoring

Monitoring is a key component of the Resettlement Action Plan and is an integral part of KIWASCO's responsibility and obligations. It has the following general objectives:

- Monitoring of resettlement and compensation progress, of specific situations of economic or social difficulties arising from the implementation of the compensation and resettlement process, and of the compliance of the actual implementation with objectives and methods as defined by World Bank Principles, Kenyan regulations and this RAP;
- Audit of the completion of the resettlement program, through and assessment of the short- mid- and long-term impacts of the compensation and resettlement program on affected households, their incomes and standards of living, the environment, local capacities, housing, etc.

Monitoring allows to correct implementation methods "in real time" during Project implementation, and also to check whether general objectives have been met and whether the resettlement and compensation program can be deemed complete. Monitoring and auditing include an internal tier and an external tier.

9.2 Internal Monitoring

Monitoring will address the following aspects:

- Social and economic monitoring: follow-up of the status of PAPs, cost of housing in the displacement area, potential land speculation, environmental and health situation, livelihood restoration including agriculture, small businesses, employment and other activities;
- Monitoring of vulnerable people;
- Technical monitoring: supervision of infrastructure and housing construction where relevant, commissioning and testing of the technical components of the resettlement housing; and
- Grievances and grievance management system.

Table 9-0. Indicators and Frequency of Monitoring

#	Item	Indicator	Variable	Impact Aspect
1	Land	Utilization of the land Acquisition	<ul style="list-style-type: none"> • Land Ownership (Private, Government or Community) • Type of land use (Farming, Residential, Fallow) • Area of land acquired • Area of land acquired for project infrastructure developments • Size of land being used as compared to before 	<ul style="list-style-type: none"> • Loss of Agricultural Produce • Loss of homestead • Size of remaining for intended purpose
2	Structures/Buildings	Acquisition of buildings	<ul style="list-style-type: none"> • Building type, quality and use (residential, commercial etc.) • Number, type and size of buildings (residential or Commercial) • Standard of building constructed compared to previous one 	<ul style="list-style-type: none"> • Displacement of PAHs • Displacement of sources of income
		Acquired structure	<ul style="list-style-type: none"> • Number, type and size of other private structures acquired • Number, type and size of other community structures acquired • Standard of the new structure • Use of the acquired structure 	Loss of use of structure
3	Trees and Crops	Acquisition of Trees	Number, size and type of trees cut	<ul style="list-style-type: none"> • Loss of canopy • Loss of income from sale
		Loss of Crops	Type of crop and acreage of crop loss	<ul style="list-style-type: none"> • Loss of food crop
4	Compensation, Re-establishment and Rehabilitation	Compensation, Resettlement and Restoration of	<ul style="list-style-type: none"> • No. of compensated PAHs, type of loss and amount paid • No. of constructed replacement buildings 	Disruption of settlements

#	Item	Indicator	Variable	Impact Aspect
		affected persons	<ul style="list-style-type: none"> Number, type and size of replacement houses constructed Period between compensation and beginning of civil works 	
		Government and Community Resources	<ul style="list-style-type: none"> Number of community buildings replaced Number of Government, Community land compensated Number of seedlings supplied by type for community trees Number of trees planted and their survival rate 	Disruption of community services
7	Consultations	Consultation programme operation	<ul style="list-style-type: none"> Number of public consultations related to resettlement held and their minutes Type of issues raised at public consultation meetings Number of participants attending public consultation meetings related to resettlement 	
		Information	<ul style="list-style-type: none"> Level of access to information by PAHs Number of communication documents provided to PAHs and their subject matter (Health, Education, Security etc.) 	
		dissemination	<ul style="list-style-type: none"> The extent of information flows between SCRCC, LRCCs and EWASCO RAP/Entitlement information access by PAHs Number of people seeking information on resettlement and compensation 	
		Grievances resolved	<ul style="list-style-type: none"> Number of grievances registered by type Number of grievances resolved How quickly the grievances were resolved Number of cases referred to court 	
8	Training	Operation of training programme	<ul style="list-style-type: none"> Number of youth, women PAHs trained Number of training SCRCC/LRCC has undertaken Number of affected population trained on livelihood restoration 	
9	Livelihood Restoration	Livelihood improvement	<ul style="list-style-type: none"> Employment status of economically active members of PAHs Level of skills of PAHs members 	

#	Item	Indicator	Variable	Impact Aspect
			<ul style="list-style-type: none"> Earnings/income by source, separating compensation payments of PAHs Pre- and post-disturbance changes to agriculture and off-farm income-earning activities Amount and balance of income and expenditure Access to income-generating natural resource base (wood, grass, sand, stones) Number of vulnerable persons benefiting from livelihood restoration programs. Status of vulnerable people as compared to their initial situation. Number of people or groups assisted to improve their livelihood 	
10	Management	Staffing	<ul style="list-style-type: none"> Number of EWASCO officials available by function for resettlement Number of local organizations by function Number of office and field equipment by type 	
		Procedures in operation	<ul style="list-style-type: none"> Census and asset verification/quantification procedures in place Effectiveness of compensation delivery system by NLC Number of land transfers effected 	

Indicators and Frequency of Monitoring

During the active phase of resettlement and compensation, the following key progress indicators will be measured internally by KIWASCO on a quarterly basis:

- Numbers of households and individuals affected by Project activities;
- Numbers of households and individuals displaced as a result of Project activities;
- Numbers of structures taken possession of by PAPs;
- Grievances (open, closed); and
- Amounts of compensation paid per category (structures, land, crops, others).

A brief quarterly internal monitoring report will be prepared on this basis. It will be publicly disclosed. In addition, simple socio-economic parameters will be established and monitored annually for a sample of about 20% of PAPs, for instance the following:

- Average monetary income, and total income including self-consumption;
- Breakdown of household expenditures;
- Surface area of land holdings,
- Number of unemployed people; and
- Number of children at school.

9.3 External Monitoring

KIWASCO will hire a suitably qualified external social auditor with significant experience in resettlement to carry out one review with review focusing on the assessment of compliance with social commitments contained in Kenyan legislation, in the World Bank Principles and in this Resettlement Action Plan.

Objectives of the are as follows:

- To assess overall compliance with the RAP and other social commitments made in the Environmental and Social documentation,
- To verify that measures to restore or enhance Project-Affected Peoples' quality of life and livelihood are being implemented and to assess their effectiveness,
- To assess the extent to which the quality of life and livelihoods of affected communities are being restored in an appropriate manner.

External monitoring reports will be prepared independently by the reviewer and submitted to KIWASCO and WSTF.

10 PUBLIC CONSULTATIONS AND DISCLOSURE

Public consultation and participation is a process through which stakeholder's influence and share control over development initiatives, the decisions and resources which affect them. The objective of consultation, disclosure and engagement during present and forthcoming phases of the project is to establish broad community support and employ the principles of free (free of intimidation or coercion), prior (timely disclosure of information) and informed (relevant, understandable and accessible information) consultation. This approach and the principles of respect for local communities, transparency, fairness and consistency in communication with stakeholders guide the development and implementation of engagement activities relating to this RAP.

The effectiveness of RAP programs is directly related to the degree of continuing involvement of those affected by the project. Comprehensive planning is required to assure that stakeholders and host population and project staffs interact regularly and purposefully in all stages of the project. Participation of persons directly affected by projects is a prerequisite of Kenya Government and World Bank policy, if its programs are to be suited to the needs of the resettled population.

PAP involvement increases the probability of successful resettlement and rehabilitation. Consultation and public participation will continue over RAP implementation and the remainder of project preparation.

Community and stakeholder consultations were held within the PA. Public community consultations were useful in creating awareness of the project sub-components and the related implementation activities and the potential impacts of project sub-components implementation activities on community. The community members, including PAPs, were also informed of the property identification and valuation principles to be followed during assessment, as well as the resettlement compensation options available to them.

The views of the community and PAPs were documented and have been integrated into the resettlement measures and strategies outlined in this RAP. The aims of community and stakeholder consultations were to:

- i. Introduce project implementation activities and potential impacts to the community members;
- ii. Identify the communal property and public infrastructure and facilities likely to be affected;
- iii. Identify the vulnerable social groups that may require special support;
- iv. Identify various socially and culturally acceptable resettlement and other mitigation alternatives;

- v. Identify the community expectations and fears related to the resettlement compensations;
- vi. Explain to the community members the meaning of key concepts used under the RAP such as resettlement⁵⁵, displacement, relocation and compensation, among others;
- vii. Explain to the community members the procedure for property identification and assessment for the PAPs.
- viii. To create awareness and garner up support for the proposed project;
- ix. To engage the local community especially the Interested and Affected Parties about the project benefits, problems they anticipate with the project and how these can be resolved;
- x. To consult and gather recommendations from the local administration e.g. County Commissioners, DOs, Chiefs, Assistant Chiefs, local CBOs/NGOs, Village Elders and communities that have a stake in the project;
- xi. To provide an opportunity for all the PAPs to raise issues and concerns pertaining to the project, feedback, and allow the identification of alternatives and recommendations;
- xii. Provide correct and accurate information regarding the project;
- xiii. Identify the community expectations and fears related to the resettlement compensations;
- xiv. Explain to the community members the procedure for property identification and assessment for the PAPs.

10.1 Community Members and Stakeholders Consulted

The RAP team undertook intensive public consultations at village levels to ensure that all concerns regarding the project implementation activities and the associated impacts on the local people and their livelihood activities were raised and openly discussed. **2 community meetings and 1 meeting** with relevant county government were held at the various points along the proposed pipeline routing.

Table 10-1: Community Consultations

DATES	VENUE	NO.OF PARTICIPANTS
21 st August 2017	Mkendwa Primary School	35
22 nd August 2017	Kanyakwar Hall	32

Table 10-2. Consultation with National and County Government Institutions

DATE	VENUE	# OF PARTICIPANTS
18th August 2017	Chief's Camp	4

⁵⁵ The concept of resettlement was explained to the community members as NOT only meaning physical displacement and relocation but also the loss of physical and economic assets and livelihood amenities and the necessary compensation measures to assist PAPs in restoring their livelihoods.

10.2 Community and Stakeholders Concerns/Views

The community, PAPs and key stakeholders were invited to attend the public consultation meetings by the Assistant Chief through baraza and direct phone calls and through direct contact with the PAPs and key stakeholders were made. The summary views of the community members are presented in the tables.

Table 10-3. PUBLIC CONSULTATION FOR RIAT AND MKENDWA AT MKENDWA PRIMARY SCHOOL 21st AUGUST 2017

Questions/Comments	Responses
How will the people be compensated?	After the census process, valuation will be carried out and each PAP will be compensated as per the determined value of their assets.
Will the locals be able to get jobs during this whole process of construction?	Yes, jobs that do not require skills will be left to the locals and the recruitment will be done through the local administration offices.
When will the construction work begin?	The construction phase will only begin after all the PAPs have been verified and compensation done
Will all the residents of get water or it will be for the chosen few?	The areas to be served include Mkendwa, Kanyakwar, Riat and Kogony.
Will the water supply be free?	The water will not be free. There will be meters for the consumer and the bills will be as per consumption.
How will the census process be done?	RAP consultants have prepared survey questionnaires that will be used to enumerate the PAPs, undertake census survey and conduct valuation of assets.
In cases where valuation is lower than expected, how will such cases be handled?	<p>In the event that the asset owner deems that valuation is low/insufficient, PAPs have the following avenues for seeking re-course. The first step is to approach the grievance redress and compensation committees at all levels.</p> <p>The second step will be to approach NLC which handles grievances based on award notices.</p> <p>The final step would be to seek legal recourse via the Environment and Land Court if dissatisfied with resolutions made by NLC or GRCC.</p>
Has the issue of drainage been considered in the project since there are serious flooding cases during rainy seasons	The project is only focusing on the piped water but the flooding issue has been noted and will form part of our recommendation in the report.

Questions/Comments	Responses
What will happen if there is a pending land case in court?	If such a case arises compensation will be held in a separate account and only be made available once the conflict is fully resolved.
How will the value of the assets be determined?	The project team has a registered Land and asset Valuer who will undertake the valuation of the affected assets.

TABLE 10-4. PUBLIC CONSULTATION FOR KANYAKWAR AND KOGONY AT KANYAKWAR HALL ON 22nd AUGUST 2017

Comments and Issues	Response
Workers from outside the community engaged in construction may bring with them alien cultures which may corrupt our youth.	All in-migration workers will be furnished with an ethics code on how to interact with the locals in a respectable manner.
Aside from compensating us for involuntary displacement, is there any other way the project will benefit us?	The project will provide access to quality water and sanitation supply on a regular basis.
Is there a grievance redress mechanism system in place and will it be effective?	There is a grievance redress mechanism in place which with corporation from the PAPs is expected to handle any issues fairly.
Will the KIWASCO Phase 1&2 water project provide jobs for our youth?	The project will aspire to create jobs for the youth and women during construction.
What mode will compensation take?	Compensation will be as per the choice of the individual PAP. It may be in money form or as an asset equivalent.
Will the local population be involved during construction?	The project will provide skilled and unskilled jobs during and after construction. It is envisaged that project area residents will be given priority when jobs are allocated, this would go a long way in aiding livelihood restoration especially among those affected directly by the project.
What will determine compensation rates?	Compensation will be determined at the rates prevailing in the area at that moment.
What do we do in case we have a dispute on how to share compensation proceeds or if we are not satisfied with the compensation provided?	The project will establish a resettlement and grievance management committee, which will handle all disputes related to compensation. These committees will include a council of elders as well. However, the project will consult widely with the traditional structures and systems on how to handle such cases
We want to know the start date of the project.	The implementer is going through the process to identify project-affected persons and compensate them before commencing construction. The groundwork is expected to start after November 2017.

Comments and Issues	Response
How and who will take the inventory of our assets? What criteria will be used for compensation?	The resettlement action plan team comprises of enumerators will note all assets that are affected in the presence of the owner. Compensation will be pegged on the replacement cost rates.
There are projects that come up and affected people are promised compensation only to be displaced without being compensated or the compensation is not adequate, will this exercise be similar?	There may have been such occurrences in other projects but the residents were assured that would not happen in regard to KIWASCO Water Project Phase 1&2. All affected would be reasonably compensated and this would be done before they are relocated.

II IMPLEMENTATION OF THE RAP

II.1 Implementation Arrangements

All PAPs will be compensated before their structures are demolished, implying that compensation will be paid before project works start at a specific site/in a specific area as per the contractor's work schedule. KIWASCO will be the lead agency in the RAP implementation and will work together with the County Government of Kisumu to implement the RAP.

In this project, KIWASCO will establish a RAP Implementation Unit (RIU) specifically for this project to implement this RAP. The unit will be responsible for ensuring that PAPs promptly access their compensation entitlements and that their livelihoods are restored after resettlement.

The RAP implementation team will be responsible for:

- (iv) delivery of the RAP compensation and rehabilitation measures;
- (v) appropriate coordination between the agencies and jurisdictions involved in the RAP implementation; and
- (vi) the measures (including technical assistance) needed to strengthen the implementing agencies' capacities for managing the facilities and services provided under the project.

II.2 RAP IMPLEMENTATION UNIT STRUCTURE

The RIU will comprise a core unit responsible for day-to-day operations and technical support staff. The composition of the core unit will be as follows:

- h) KIWASCO Staff (Technical Manager)
- i) Independent civil society organization/ NGO representative (1);
- j) National Government Representatives (Chiefs) for each affected location (1)
- k) County Government Representatives (CEC for Lands and Physical Planning or appointee)
- l) Representatives of PAPs
- m) Works Contractor
- n) Supervising Contractor

The day-to-day role of the RAP implementation team will be to:

- (a) Plan and coordinate prompt compensation payments;
- (b) Plan and coordinate non-cash compensation such as special assistance to vulnerable groups;
- (c) Ensure that the compensation process and entitlements adhere to legal provisions such as spousal and children's consent where it applies, and

- following the succession Act in case of the death of a PAP;
- (d) Report to the KIWASCO's senior management team and stakeholders;
 - (e) Ensure that the information needs of the PAPs are disseminated promptly and effectively;
 - (f) Establish, manage and update the RAP implementation database;
 - (g) Contribute to the regular monitoring and evaluation of the RAP implementation; and
 - (h) Consult and sensitise the community and PAPs with regard to the RAP implementation progress.

11.3 Remuneration of RAP Implementation Unit

The RAP has provided a lump sum budget for RAP implementation which will cover the remuneration costs for this unit. The remuneration costs exclude the following players who have a separate budget within their institutions namely;

- g) County Government Representatives (CEC for Lands and Physical Planning)
- h) Works Contractor
- i) Supervising Contractor
- j) National Land Commission
- k) National Government Representatives (Chiefs) for each affected location (1)
- l) KIWASCO team

11.4 Schedule of Implementation

The KIWASCO RAP implementation team, NLC and PAPs, will develop the schedule for the implementation of activities. The implementation schedule will include:

- a) target dates for the start and completion of compensation payments;
- b) timetables for and the place of compensation payments;
- c) target dates for fulfilling the prerequisites for compensation payments and other legal requirements by PAPs;
- d) the timetable for special assistance to vulnerable groups;
- e) dates for vacant possession of the acquired land from the PAPs (this date must be after the payment of all compensation); and
- f) the link between the RAP activities to the implementation of the overall sub-project components.

11.5 RAP Disclosure and Implementation Schedule

This RAP study report will be submitted to KIWASCO and the Bank for approval before implementation commences. The approved report will be disclosed to the public in hard copies at KIWASCO's offices and at the project area's Chief's camp. KIWASCO will also disclose the report on its website. The Bank will similarly disclose the report through its infoshop.

The activities related to construction of Project are expected to commence in Mid January 2018 by which time the PAPs are expected to have moved from the site. It is expected that before December 2017, all the PAPs will have been fully compensated in line with the findings of the RAP study and that all the grievances arising will have been resolved in order to pave way for the project execution.

Table 11-1: Implementation Schedule for the RAP

Project Activities	Timeline in Weeks											
	1	2	3	4	5	6	7	8	9	10	11	12
RAP approval (WB)												
RAP disclosure												
Establishment and Training of GRM Committee												
1 months' notice to PAPs												
Relocation of PAPs												
Grievance management												
Compensation payment												
Commencement of Works												
RAP monitoring												
RAP completion and audit												

11.6 RAP Budget

The total budget for resettlement compensation is Kshs. **986,475.00** including a 15 per cent disturbance allowance. In addition, administration cost for the RAP implementation, monitoring and evaluation has been considered. PAPs will be paid their resettlement and compensation entitlements and receiving assistance prior to the project works being carried out in the affected project sites and no exceptions will be allowed. The source of funding for the RAP is counterpart funding from the KIWASCO.

A final report and a **resettlement completion audit** have been considered as pertinent elements of the RAP implementation end time.

Table 11-2: RAP Compensation Cost

Item	Value
Value of land	480,000.00
Value of Structures	250,000.00
Total Compensation	730,000.00

Table 11-3: RAP Disturbance Allowance

Disturbance Allowance	Value (Kshs)
Disturbance Allowance	109,500.00
Grand Total	109,500.00

Table 11-4: RAP Implementation Costs

Aspect	Value (Kshs)
Financial/Money Management Training/ Meetings of Resettlement Committees/ Administrative Costs/ Training of GRMCs etc.	50,000.00
External Monitoring and External Coordination for RAP Implementation	50,000.00
Grand Total	100,000.00

Table 11-4: Total RAP Budget

Total RAP Cost	Kshs
Land (Easement)	480,000.00
Structures	250,000.00
Sub Total	730,000.00
Implementation Costs	100,000.00
Disturbance Allowance	109,500.00
Contingency	46,975.00
Grand Total	986,475.00

The costs for the RAP implementation have taken into consideration the following pertinent task activities:

- a) Personnel administrative costs.
- b) Administrative logistical costs (stationary, fuel/transport for fieldwork/monitoring activities, public notices/announcements, start-

up equipment and furniture, maintenance and service costs, hygiene sundries, refreshments for staff and visitors, including legal fees and unforeseen litigation).

- c) Special assistance packages for vulnerable PAPs.
- e) Evaluation and completion report assignments.
- f) Other incidentals estimated.

12 PHOTOGRAPH PLATES



A member of the public contributing during one of the consultation meetings



Training of Research Assistance in session



A sign post showing one of the reservoirs



A section of the routing in Kanyakwar area

13 APPENDICES

13.1 APPENDIX I – CONSULTATIONS WITH AFFECTED COMMUNITIES

13.2 APPENDIX 2-VALUATION ROLL

I3.3 APPENDIX 3. GRIEVANCE REDRESS FORMS (SAMPLE)