

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

### **ABBREVIATED RESETTLEMENT ACTION PLAN (RAP) FOR PROPOSED CONSTRUCTION OF WATER SUPPLY PIPELINES FOR KAYOLE – MIRERA WATER SUPPLY PROJECT – PHASE I. NAIVASHA WATER SEWERAGE AND SANITATION COMPANY (NAIVAWASS) LIMITED.**

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## **EXECUTIVE SUMMARY**

This document presents Abbreviated Resettlement Action Plan (RAP) for proposed construction of and laying of water supply pipelines by Naivasha Water Sewerage and Sanitation Company (NAIVAWASS) 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 established in order to ensure that any economic or physical displacement resulting from the Project, whether permanent or temporary is undertaken in a socially responsible manner and according to good international practice. Through the RAP, the Project will apply the relevant national legislations of Kenya's as well as the relevant World Bank Policies. 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**

NAIVAWASS was established as an agent of Rift Valley Water Services with a mandate to provide quality water and sewerage services to Naivasha and its environment.

NAIVAWASS 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 200mm in diameter and 47,100m long in pipelines in the target **Kayole-Mirera Phase 1**.

### **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 PAHs, land to be acquired/easement rights, structures, trees, community assets and crops affected. The field survey to determine affected assets showed that there are only 2 PAPs

affected by the project. The valuation of their assets (land) was undertaken through the full replacement cost approach of valuation.

### 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 Way<sup>1</sup> and in 2 single privately owned land. The ROW is not encroached and is free of any encumbrances.

The project will lead to economic and physical displacement of only **land owners** with formal title to the land. A total of **2 PAPs** will be affected by the project with the PAPs losing land. **Appendix 1** contains letters attesting to the same.

**Table 1: Summary of the affected persons**

Description	Impacts in Quantity
Length of pipeline in m	47,100m
Number of affected PAPs	2
Number of PAPs who lose business structures only	0
Number of PAPs who lose land only	2
Number of squatters	0
Loss of Crops in Ha	0
Loss of trees	0
Total number of graves	0

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

**Table 2: Number of Project Affected Persons**

Area	Category of PAP	# of PAPs
Kayole	Land Owners	2

**Table 3: Number of Affected Land Parcels in Pipeline Route**

LOCATION	# OF LAND PARCELS
Kayole	2
Total Affected Land Size (ha)	<b>1.6038</b>

<sup>1</sup> Right of way as defined by the Roads Act 2007

## **Impact on Community Access to Infrastructure and Social Services**

There will be no impacts with respect to land acquisition on community and social infrastructure.

## **Vulnerable Groups**

The RAP study did not identify any vulnerable PAPs because the land owners are institutions/groups and not individual PAPs.

## **Consultation**

The Consultant's RAP team undertook consultations with 2 land owners to ensure that the Project activities and the likely impacts were explained and openly discussed. The consultants informed the 2 land owners the forms of compensation for loss of land as provided by OP. 4.12. i.e. (cash for land or in kind e.g. land for land).

## **COMPENSATION PRINCIPLES AND COMPENSATION STRATEGY**

The ARAP aims to ensure that all affected parties are compensated and assisted in restoring their livelihoods. Overall objectives of the RAP are:

- Avoid or at least adverse impacts including physical and economic displacement"
- Mitigate adverse social and economic impacts from land acquisition

## **BUDGET and RAP Implementation Arrangements**

The RAP study identified two Project Affected Institutions i.e. Panda Self Help Youth Group and Kenya Wildlife Service (KWS). There will be no compensation in cash or in kind for Panda Self Help Youth Group. This is because, Panda Self Help Youth Group has willingly donated the land for the project without any coercion and indicated that they do not want any form of compensation in spite of being made aware of their rights to cash or in kind compensation. This is reflected in the minutes of meetings held by members and officials of Panda Self Help Youth Group. (See appendix 1) However for the purpose of this RAP the land has been valued at **Ksh. 900,000.00**.

Kenya Wildlife Service will receive cash compensation of **Ksh. 514,000.00** based on valuation of the land which did not have any crops, trees or structures. The total cost for the loss of land as a result of the project is therefore Ksh. **514,000.00** in view of the fact that land for Panda Self Help Youth Group is willingly donated and will not be compensated.

**Table 4: Compensation Costs**

Item	Land Size (Hectares)	Value (Kshs)	Remarks
Value of land KWS	0.1038 Ha	514,000.00	Ksh.514,000.00 Will be paid to KWS
Value of land-Youth Group	1.50 Ha	900,000.00	Value of land donated willingly by Panda Self Help Group.
<b>Total Compensation</b>	<b>1.6038 Ha</b>	<b>1,414,000.00</b>	<b>514,000.00</b>

**RAP Implementation Schedule**

The activities related to construction of Project are expected to commence in Mid-**March 2018**. The land to be acquired does not have any structures or crops that would require the land owners to relocate. **Table 5** below shows the implementation schedule.

**Table 5: 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												
1 months' notice to PAPs												
Commencement of Works												



## **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 update and the methodology adopted during RAP preparation.

### **I.1 Project Overview and Description**

Naivasha Water and Sewerage Company is a corporate entity established as an agent of Rift Valley Water Services Board with mandate of providing water and sanitation services within Naivasha Sub County and its environs on self-sustaining basis.

The proposed Project Areas under NAIVAWASS Kayole region, which is just next to Naivasha town, is currently not supplied with water. The area is approximately 7.5 km<sup>2</sup> and is experiencing high rate of expansion. Currently, there are 12 institutions (including schools and a mission hospital), and a population of approximately 12,757 people.

The proposed Kayole Water Supply Project is focused at reinforcing the water supply of Kayole area. Currently, residents in Kayole rely on individual and communal boreholes as well as water vendors as sources of water, which has not been reliable. The settlement is new and is not in Maji Data as well but lower Kayole is a low income area.

Mirera is a low income peri-urban settlement situated 6km, south of Naivasha Town. The more urbanized parts of Mirera are settled by low income communities largely consisting of labourers from the neighbouring commercial flower farms and Lake Naivasha fishermen. Many of the residents are immigrant workers from other parts of the country. The outer parts of Mirera are mainly rural in nature settled by small scale agricultural farmers and agricultural workers.

Water in the larger Mirera area is supplied from several private and community owned boreholes located in the area. Currently, there are approximately 5 commercially operated private boreholes and one community borehole that serve the area but this supply cannot meet the demand for water supply in the area hence the need for the OBA.

### **I.2 Description and Scope of Works**

A 55KW pump will be installed in Karate station where it will pump water to the water works station. A 250mm diameter pipeline that narrows down to 200mm, 6.1 km long pipeline will be used to transmit water from Karate Water Station to the Water Works Station.

A 75KW pump will be installed in Works station where it will pump water to water works station. A 200mm diameter pipeline that narrows down to 150mm, 3 km long pipeline will be used to transmit water from Water Works Water Station to Kayole Tank.

A 200mm gravity line from Water Works to Mirera will also be constructed to take water to Mirera's existing elevated tanks.

In Kayole, a 20m high elevated steel tank will be constructed together with a total of 24km HDPE distribution lines.

In Mirera, the existing distribution lines will be extended by 14km lines. It is estimated that the construction of the system (phase 1) will take nine calendar Months. Figure 1-1 below shows the distribution area network.

**Figure 1-1 - Area of distribution**



### **1.3 Pipe material in Distribution network**

The pipes commonly used for water supply in Kenya includes: Grey cast Iron (CI), Ductile iron (DI), Galvanized Mild Steel (GMS), steel, unplasticised Polyvinyl Chlorine (uPVC), High Density Polyethylene (HDPE). The choice of pipe adopted

for this project was GI pipes 250MM, 200MM and 160 MM, HDPE pipes 250MM, 200MM, 160MM, 110 MM, 90MM, 75 MM, 63MM, 50MM, 40MM, 32MM and 25 MM diameter.

The GI pipes were chosen for the following reasons:

- i) High strength and rigidity and is able to withstand high pressure.
- ii) The soil and the environment are aggressive and the pipe can be protected.
- iii) History has shown this type of pipe material to be effective at regions of high external and internal pressure.

The HDPE pipes were chosen for the following reasons:

- i) Less pressure loss then with other materials. Nearly no risk fouling / blocking because of little sediment growth
- ii) Low costs because of relative long lifespan and Resistant to wastewater with abrasive solid materials Friendly to the environment
- iii) No electrical dangers
- iv) Simple and easy to construct by welding / bolting
- v) Fast, easy and moneysaving assembling
- vi) Restrained joints, watertight

**Figure 1-2: Pipe Distribution in Karate Water Station**





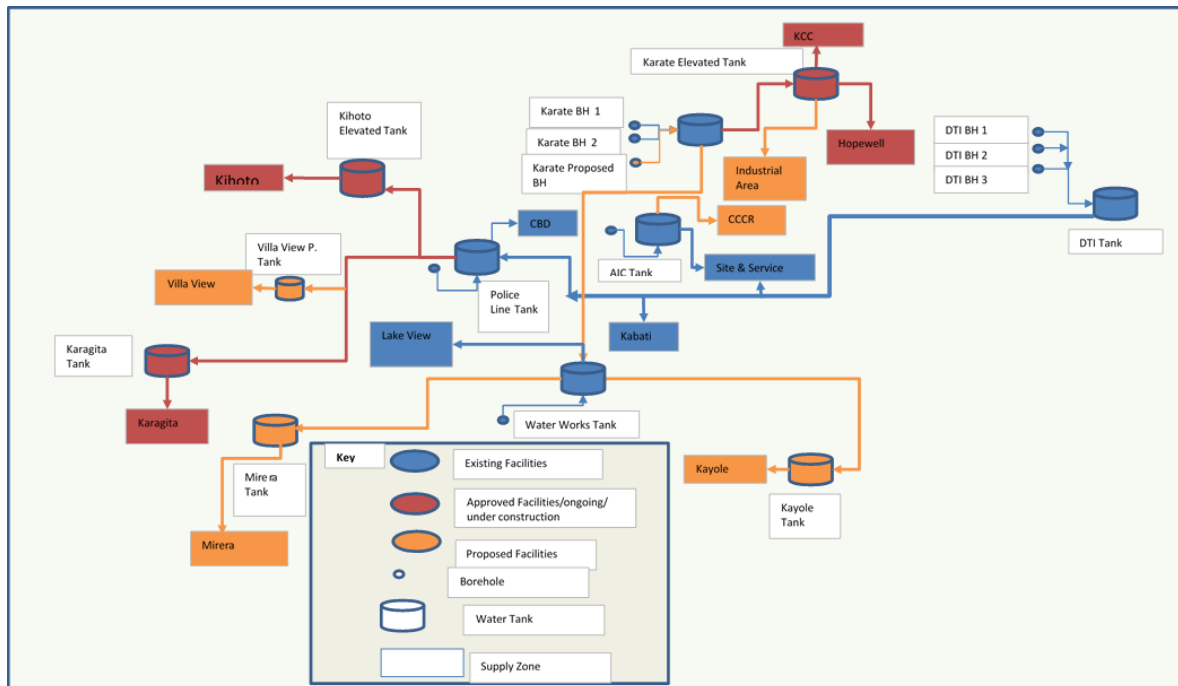
**Figure 1-3: Water Works Station to Kayole pipeline**



**Figure 1-4: Kayole Water Station and Distribution Line**



**Figure 1-5: Water distribution from proposed network**



**Depth of Pipe Cover**

The pipe has been design with a uniform gradient as much as possible to reduce the number of air valves and wash outs. All pipes shall be laid to a minimum depth of 600mm and an average of 900mm depth measured from the proposed ground surface to the top of the pipe, unless specifically allowed otherwise in special circumstances by the Technical Manager. Pipeline passing beneath the road surface will be done in consultation with the relevant authority. At places where the over burden and traffic is high, the pipeline will be protected with pipe sleeves and or mass concrete surrounds.

**1.4 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 and 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.

## **1.5 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 consultations with the PAPs. The following approach was used:

### **a) 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.

### **b) PAP CENSUS DATA COLLECTION AND COMMUNITY CONSULTATION METHODS**

The consultants undertook an inventory of assets in the preparation of this RAP including valuation of the 2 parcels of land.

## 2 PROJECT IMPACTS

### 2.1 Zones of Potential Impact

The pipeline routing starts from KWS then Kayole and terminates at Mirera. In the project routing there are no formal or informal livelihood activities including kiosks/sheds/stalls all housing informal enterprises. The project will therefore lead to **economic** and **physical displacement** of 2 PAPs who are categorized land owners. The relative potential impact of the project activities is described in the sub-sections that follow.

#### (a) 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 with the land owners agreeing to donate the land for the construction. There are no kiosks/sheds and stalls along the road reserves. 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.

### 2.2 Extent of Project Impact on Property and Livelihoods

The relative impact of the project on land, structures and other assets is minimal. There are no structures fixed or movable kiosks/stalls/sheds (commercial) found along the ROW. In relation to severity of impact, the project will only affect 2 PAPs who are land owners.

### 2.3 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) **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.

## 2.4 In Migration/Influx Impacts

Local labour requirements: Construction of the pipeline will employ a number of people. In practice, the level of construction employment available to local workers will be focused on skilled, unskilled and lower skilled workers and is not likely to trigger in migration or influx of workers from outside of the area.

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 construction projects: -

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.

### Project Characteristics Not influencing In-Migration

1. The Project is not expected to stimulate in-migration along the project route due to the low numbers of labourers that will be needed.
2. 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.
3. 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.

4. 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.
5. 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.

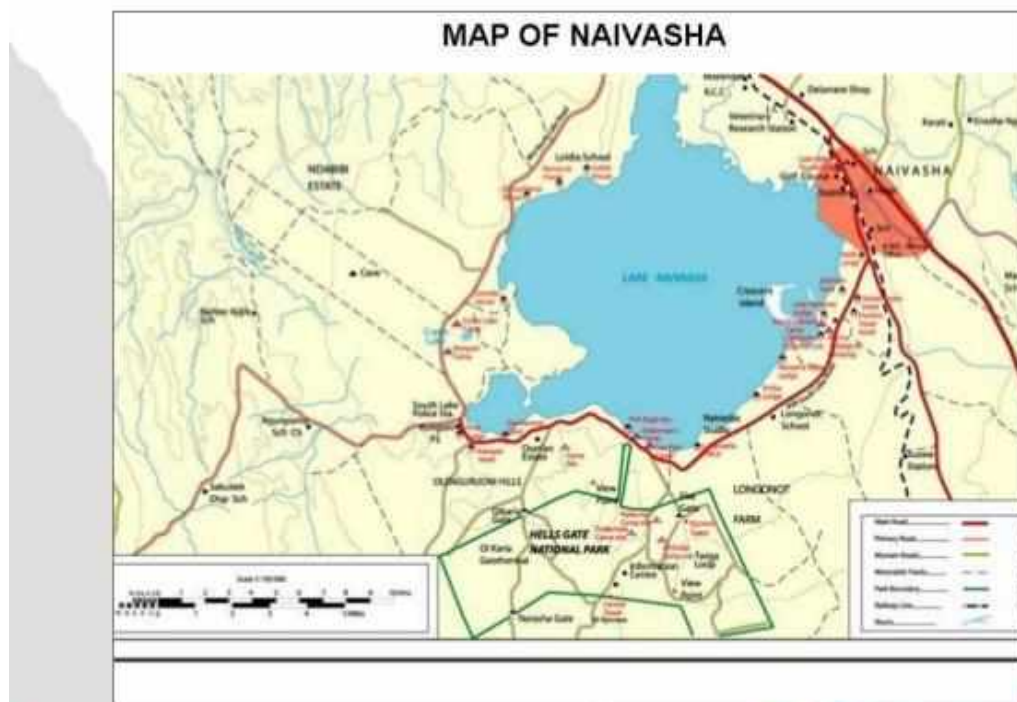
### 3 SOCIO-ECONOMIC BASELINE CONDITIONS

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

Nakuru County is one of the 47 counties of the Republic of Kenya provided in the Constitution of Kenya 2010. The county lies within the Great Rift Valley and borders eight other counties namely; Kericho and Bomet to the west, Baringo and Laikipia to the north, Nyandarua to the east, Narok to the south-west and Kajiado and Kiambu to the south. Figure 3-1 below shows the map of Naivasha town.

Figure 3-1: Map of Naivasha



The county covers an area of 7,495.1 Km<sup>2</sup> and is located between Longitude 35 ° 28` and 35° 36` East and Latitude 0 ° 13 and 1° 10` south. The county headquarter is Nakuru Municipality which was previously the headquarters of Rift Valley Province provided for in the old constitution until 4th August 2010.

The county is divided into nine administrative Sub-Counties namely; Naivasha, Gilgil, Nakuru, Rongai, Nakuru North, Subukia, Njoro, Molo, and Kuresoi. Njoro and Kuresoi were hived off from Molo Sub-County, Gilgil from Naivasha, Rongai from Nakuru Town, and Subukia from Nakuru North. Table 3-1 below shows the population in Mirera and Kayole.

### **3.2 Population Size and Composition**

The total population of Nakuru County stood at 1,756,950 in 2012, comprising of 881,674 males and 875,276 Females as per the projections of Kenya National Population and Housing Census of 2009. The population is projected to increase to 1,925,296, comprising of 966,154 males and 959,142 Female in 2015 and to 2,046,395 in 2017 comprising of 1,026,924 males and 1,019,471 females. This remarkable growth in the population implies that the county will have to invest in more social amenities and physical infrastructure to match the needs of the high populations.

The county population growth rate is estimated at 3.05 percent as per 2009 National Population and Housing Census. The high population growth rate has created a predominantly youthful population with about 51.87 percent of the population being less than 20 years of age and about 71.63 percent of the population less than 30 years of age. The implication of a large youthful population is that it will exert pressure on the existing resources.

The county should promote facilities and services to meet the economic and social needs of the youth. In this regard the county government needs to initiate deliberate programmes aimed at youth empowerment for instance Small and Medium Enterprise Parks as well as training youths in technical and professional programmes. The observable decline in population of higher age group indicates a lower life expectancy. Developing a strong and affordable healthcare system and other socio-economic factors that improve the quality of life like environment will partly enhance living standards as envisaged in the Kenya Vision 2030.

### **3.3 Population Density and Distribution**

Nakuru County is cosmopolitan comprising of a populace of diverse ethnicity and nationality which include Kikuyu, Kalenjins, Luos, Kamba, Luhya, and Kisii among others. The settlement patterns are influenced by availability of natural resources, soil fertility and rainfall, pasture, infrastructure, economic opportunities, proximity to urban set-ups and security. Although a large population is in the rural areas, the urban centres have the highest population density due to rural-urban migration as a result of well-developed infrastructures, employment opportunities and security. The rural population is estimated to be 62 per cent, with the remaining 38 per cent living in towns.

### 3.4 Mirera

Mirera is a low income peri-urban settlement situated 6km, south of Naivasha Town. The more urbanized parts of Mirera are settled by low income communities largely consisting of labourers from the neighbouring commercial flower farm and Lake Naivasha fishermen. Many of the residents are immigrant workers from other parts of the country. The outer parts of Mirera are mainly rural in nature settled by small scale agricultural farmers and agricultural workers. The project area is located in Mirera Sub location, Hells gate location in Naivasha district of the Rift Valley. The area has five schools and a current population of about 24,000 people. The settlement is not in Maji Data, however, a survey by Water and Sanitation for Urban Poor indicates that Mirera is a low income area (WSUP 2013).

### 3.5 Kayole

Kayole region, which is just next to Naivasha town, is currently not supplied with water. The area is approximately 7.5 km<sup>2</sup> and is experiencing high rate of expansion. Currently, there are 12 institutions (including schools and a mission hospital), and a population of approximately 12,038 people. The proposed project for Kayole water supply project is aiming at reinforcing the water supply of Kayole area. Currently, residents in Kayole rely on individual and communal boreholes as well as water vendors as source of water, which has not been reliable. The settlement is new and is not in Maji Data as well but lower Kayole is a low income area.

It is estimated that less than 30 percent of the population has access to safe, clean water. The area has insufficient water supply, which is provided by private operators and the quality of water supplied is very poor (has high fluoride levels) and hence posing health risks to the residents of the area. The proposed project is to provide safe, clean, nearby water and improved home environmental sanitation for residents of Mirera and Kayole.

**Table 6 Population Estimates**

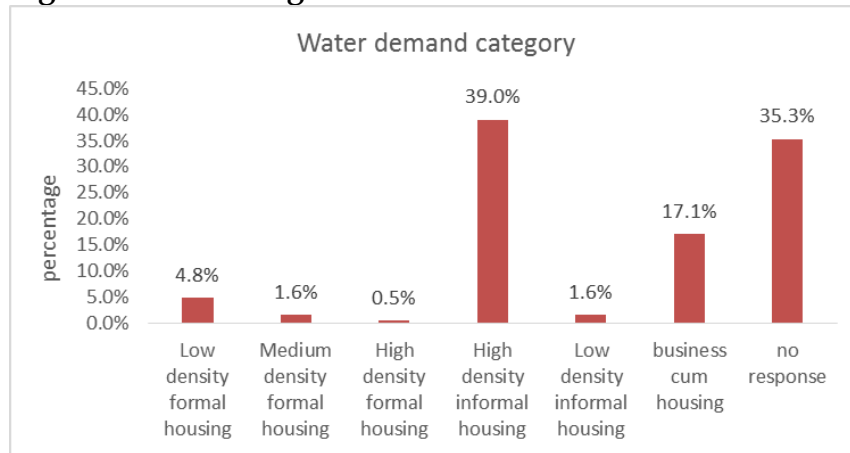
	HUMAN POPULATION			
	Census 2009	Initial (2015)	Future (2025)	Ultimate (2035)
Kayole	10,082	12,038	16,179	21,742
Mirera		24,000	32,254	43,346
<b>Total</b>		<b>36,038</b>	<b>48,433</b>	<b>65,088</b>

### 3.6 SOCIO-ECONOMIC PROFILE OR PROJECT AFFECTED PAPs

#### 3.6.1 Demographics and Housing Conditions

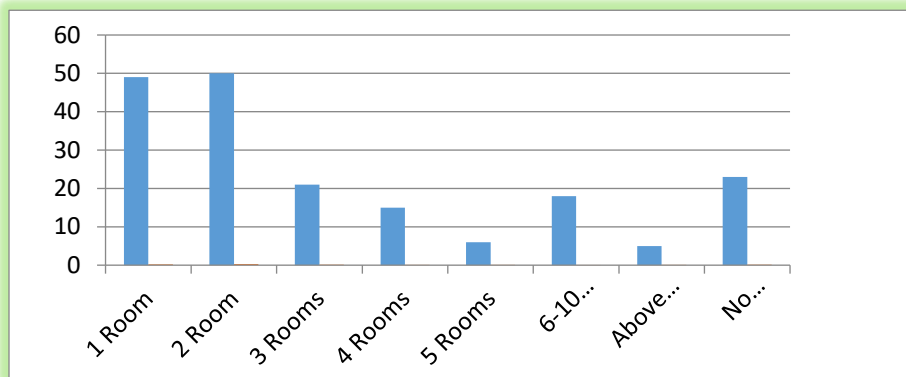
During the socio-economic survey, a total of **187** respondents in the project area participated.

**Figure 3-2. 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 categorised as low-density formal housing **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 1-2 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.

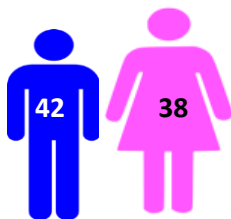
**Figure 3-3. Number of rooms**



26.7% of the respondents own the housing units, the rest are living on rental houses. 2.5% of the rental houses includes water as part of the rent; while 26.1% have electricity included as part of the rent. 25.2% have both water and electricity included in the rent. 45.4% pay for the utilities separately.

The mean rent was **Kshs. 2431.9** with the maximum rent at **Kshs. 36000** and minimum at **Ksh.1000**. The number of households per building varies, with 24.6% single households, 11.2% each for two 16.0% three households, 15.0% for four households, and 11.8% host six to ten households.

### 3.6.2 Gender



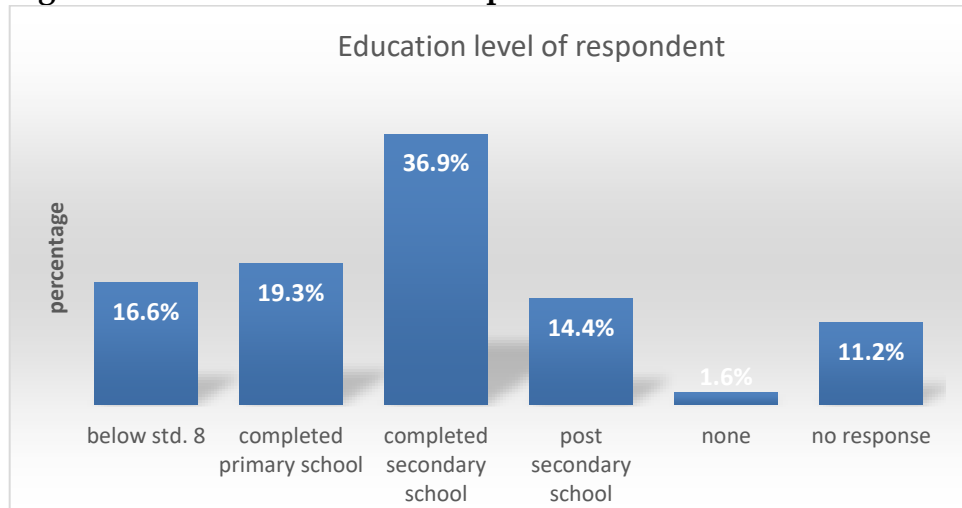
42% of the households are headed by men and 38% by women.

Male vs. Female Headed Households

### 3.6.3 Education

According to figure 3-5 below 14.4% have post-secondary school education, 36.9% and 19.3% completed secondary and primary school respectively as their highest level of education. 16.6% did not go past primary school education. 11.2% did not respond to this question.

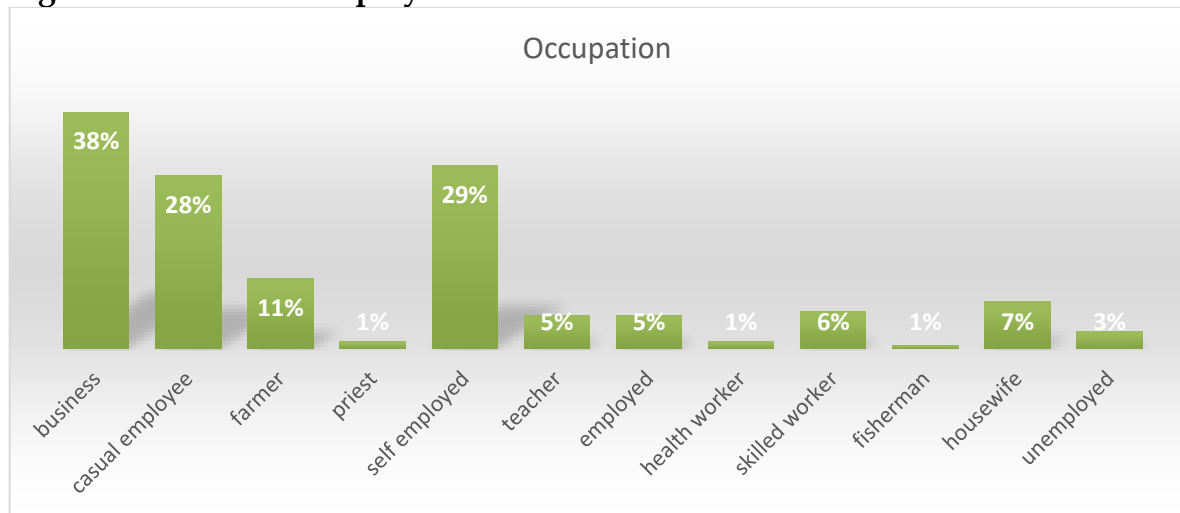
**Figure 3-4. Education level of respondent**



### 3.6.4 Household Income and Possessions

Household income is largely from business followed by self-employment, followed by casual –employment as shown in **figure 3-5 below**. The socio-economic survey undertaken within the Supply Zone indicates that the minimum monthly household income was Kshs. 11, 810 while the maximum household income was at Kshs. 40,850 with an average household income of Ksh 26,330.

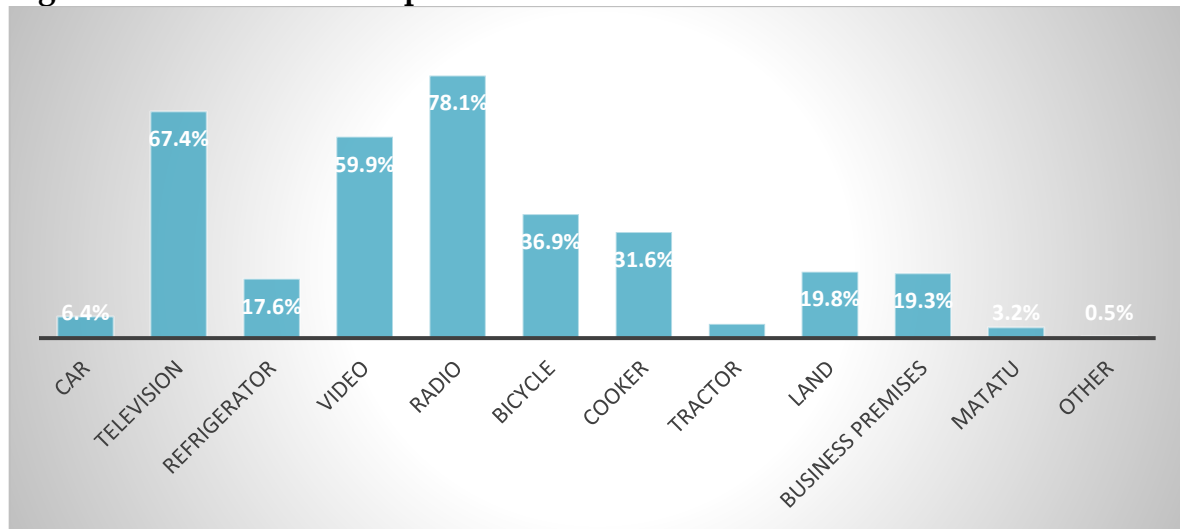
**Figure 3-5. Forms of Employment**



### 3.6.5 Household Expenditure

The bulk of the mean monthly expenditure is on food (54%), followed by clothes and school fees at (16%), each. Water is at 8%, 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.523.

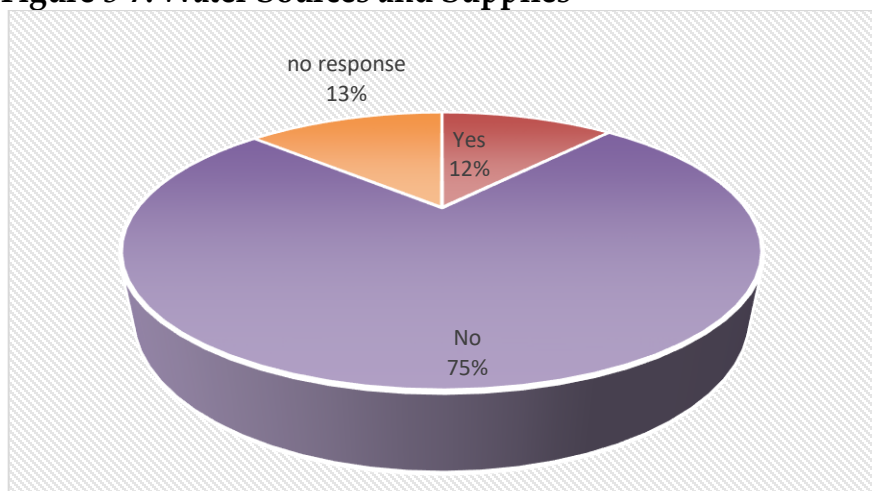
**Figure 3-6. Asset Ownership**



19.8% and 19.3% of the respondents’ own land and business premises respectively. Other current assets are distributed within the population with 78.1% owning a radio and 67.4% owning television sets as shown in **figure 3-7** above.

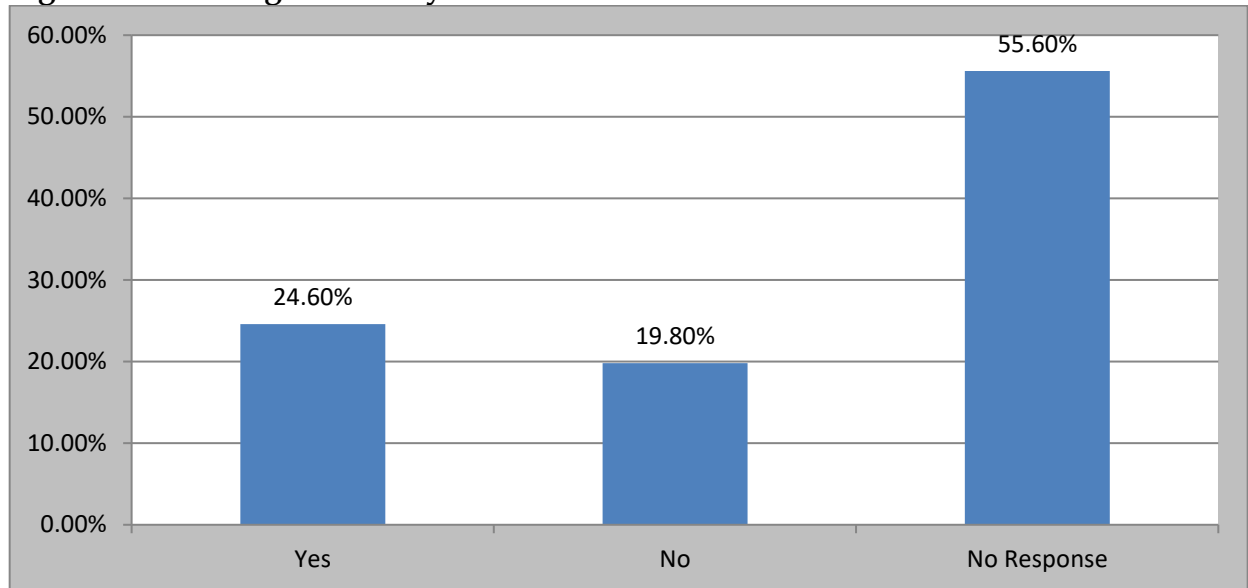
**3.6.6 Water Sources and Supplies**

**Figure 3-7. Water Sources and Supplies**



75% are not connected to the water company supply because the area does not have a network as shown in figure 3-8 above. 8.0% **do not have water** because the connection is expensive, 0.5% because supply is unreliable and 0.7% because the landlord is unwilling to establish connection. 24.6% are willing to contribute to capital investment for extension of secondary mains at an amount of about Kshs. 1,500 (19.6%), 3,000 (4.3%) and 5,000 (26.1%).



**Figure 3-8: Willingness to Pay for Water Services**

### Water Storage Facilities

**72.2%** have water storage facilities. The storage facilities include elevated tanks (5,000L) and ground tanks (10,000L) **6%** each, Plastic tanks (2,950L) **42.0%** and drums and debes (600L) **12.3%**.

Water for domestic use accounts for **69.6%**, livestock **29.4%** and other uses **1.0%**. **20.9%** say that the water is adequate to meet their needs. **55.1%** believe the water supply is inadequate the reasons are given as water rationing (**48.5%**) and water unreliable Water Supply (**34%**) and other reasons **24.1%**:

### 3.6.7 Sanitation

Sanitary facilities are largely less than 100m walk from the households (**90%**) and 100-500m (**6.3%**) and are shared. **80%** of the respondents think the water they use is clean and safe for drinking. Water is mainly not treated (**10.8%**) or treated by boiling (**20%**). **12.5%** have been rendered ill due to water and sanitation conditions; this happens more than once a year (**63.0%**) and is because of poor quality of water (**12.2%**), poor sanitation services (**60%**) and lack of sufficient water (**30%**).

**97.0%** believe improved water supply and sanitation would result in better personal and reduced disease incidences of household members (**2.0%** did not respond to this question). **5%** have attended behavior change training on hygiene and health.

Solid waste is disposed of by dumping (**98%**), burning (**1%**) and collection by government trucks (**0.4%**) at a frequency of once a month at a cost of between Kshs. **1000- 2500**.

In the event of flooding, the surface drainage systems available are open drainage (**56%**), the rest of the population has no drainage infrastructure. There are drainage systems maintained by the county government (**30%**) and others non-functional due to clogging or otherwise bad state of repair (**8.3%**).

### **3.7 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 Constitution of Kenya

The Constitution of Kenya, 2010,<sup>2</sup> protects the sanctity of private property rights and states that no property can be compulsorily acquired by the Government except in accordance with law.<sup>3</sup> 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.<sup>4</sup>*

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.<sup>5</sup> 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 full and prompt payment of "just compensation" and an opportunity for appeal to court.

<sup>2</sup> 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](http://www.kenyalaw.org/klr/fileadmin/pdfdownloads/Constitution/Constitution_of_Kenya2010.pdf), accessed May 25, 2011.

<sup>3</sup> Constitution of Kenya, art. 40.

<sup>4</sup> Id.

<sup>5</sup> The Land Act, 2012 The Government of Kenya, Section 8.

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.<sup>6</sup> 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.<sup>7</sup>

## **4.2 Land Act, 2012**

The Land Act<sup>8</sup> (“LA”) is the Kenya’s framework legislation regulating compulsory acquisition of land (i.e. land, houses, easements etc.). The LA was adopted on 2<sup>nd</sup> May 2012 and provides for sustainable administration and management of land and land based resources including compulsory acquisition.

## **4.3 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.

## **4.4 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

<sup>6</sup> Constitution of Kenya. Id. at art. 40(5).

<sup>7</sup> Constitution of Kenya. Id. at art. 40(3).

<sup>8</sup> Land Act, 2012.

a Committee. Section 44 requires that adequate compensation shall be made to the affected community where land is set aside for public purposes.

#### **4.5 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 Act<sup>9</sup> 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.

#### **4.6 World Bank Safeguards 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 harmonised 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.

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<sup>9</sup> The Valuers Act, Chapter 532, [http://www.kenyalaw.org/kenyalaw/klr\\_app/frames.php](http://www.kenyalaw.org/kenyalaw/klr_app/frames.php), accessed May 25, 2011.

## **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, minimizing displacement and social impacts. There are no PAPs who have encroached on the ROW.

### **5.2 Impact on Land: The Project-Affected Area**

The proposed project will have minimal impact (insignificant) on land due to the fact that there are only 2 land owners who will be affected as a result of the project. The 2 land owners include a Government of Kenya institution, (Kenya Wildlife Service), and a community organization (Panda Self Help Group). These 2 land owners have agreed to donate the land willingly for the project in exchange for provision of free water. **Appendix 1** contains letters by the institutions attesting to the same.

### **5.3 Impact on Commercial Structures**

There are no commercial or residential structures affected by the proposed project.

### **5.4 Impact on Public and Community Infrastructure**

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

### **5.5 Impact on Businesses**

There are no small businesses/small enterprises on the ROW that will be directly affected as a result of the proposed project.

### **5.6 Impact on Cultural Sites**

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

### **5.7 Squatters**

There are no squatters on the proposed project routing and ROW.

### **5.8 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 NAIVAWASS.

## **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:

- (a) Those who have formal rights to land (including statutory rights of occupancy recognized under Kenyan law);
- (b) 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
- (c) 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.

- (a) Resettlement and compensation of PAPs will be carried out in compliance with relevant Kenyan laws and WB standards.
- (b) All PAPs physically 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.

## 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. They are **no PAPs** who meet the criteria of vulnerable groups.



## 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;
- 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 **two tiers** of amicable review and settlement.

### 8.1 Grievance Redress and Resettlement Committees

#### First Level: Project Level 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. The membership will include:

- The sub locational chief,
- Assistant chief,
- NAIVAWASS representative
- Kenya Wildlife Service
- Panda Self Help Youth Group

#### 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).

## **9 PUBLIC CONSULTATIONS AND DISCLOSURE**

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.

### **9.1 Community Members and Stakeholder Consulted**

The RAP team undertook consultations with the 2 land owners to ensure that all concerns regarding the project implementation activities and the associated impacts were raised and openly discussed. During the consultations, the 2 PAPs were made aware of their entitlement to cash or in kind compensation. Kenya Wildlife Service preferred cash based on the value of the land affected. Panda Self Help Group did not want any form of compensation (cash or in kind) for loss of land and indicated that they had willingly and without any coercion and with full knowledge that they were entitled to compensation, donated the land freely for the project as shown in minutes of the meeting by the self-help group members (see appendix 1.)

## **I0 IMPLEMENTATION OF THE RAP**

### **I0.1 Implementation Arrangements**

NAIVAWASS will be the lead agency in the RAP implementation and will work together with the County Governments.

In this project, NAIVAWASS 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.

### **I0.2 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:

- a) NAIVAWASS Staff (Technical Manager)
- b) National Government Representatives (Chiefs) for each affected location (1)
- c) County Government Representatives (CEC for Lands and Physical Planning or appointee)
- d) Works Contractor
- e) Supervising Contractor

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

- (i) Plan and coordinate prompt compensation payments;
- (ii) Plan and coordinate non-cash compensation such as special assistance to vulnerable groups;
- (iii) 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;
- (iv) Report to the NAIVAWASS's senior management team and stakeholders;
- (v) Ensure that the information needs of the PAPs are disseminated promptly and effectively;
- (vi) Establish, manage and update the RAP implementation database;
- (vii) Contribute to the regular monitoring and evaluation of the RAP

- implementation; and  
 (viii) Consult and sensitise the community and PAPs with regard to the RAP implementation progress.

### 10.3 Schedule of Implementation

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

- (a) target dates for fulfilling the prerequisites for legal requirements (contracts showing agreements by WSP and PAPs for in-kind compensation);
- (b) dates for vacant possession of the acquired land from the PAPs (this date must be after agreements are signed between the PAP and WSP for compensation); and
- (c) the link between the RAP activities to the implementation of the overall sub-project components.

**Table 7: Implementation Schedule for the RAP**

Project Activities	Weeks-Timeline											
	1	2	3	4	5	6	7	8	9	10	11	12
RAP approval (WB)												
RAP disclosure												
1 months' notice to PAPs												
Commencement of Works												

### 10.4 RAP Budget

The RAP study identified two Project Affected Institutions i.e. Panda Self Help Youth Group and Kenya Wildlife Service (KWS). There will be no compensation in cash or in kind for Panda Self Help Youth Group. This is because, Panda Self Help Youth Group has willingly donated the land for the project without any coercion and indicated that they do not want any form of compensation in spite of being made aware of their rights to cash or in kind compensation. This is reflected in the minutes of meetings held by members and officials of Panda Self Help Youth Group. (See appendix 1) However for the purpose of this RAP the land has been valued at **Ksh. 900,000.00**.

Kenya Wildlife Service will receive cash compensation of **Ksh. 514,000.00** based on valuation of the land which did not have any crops, trees or structures. The total cost for the loss of land as a result of the project is therefore **Ksh. 514,000.00** in view of the fact that land for Panda Self Help Youth Group is willingly donated and will not be compensated.

**Table 8: Compensation Costs**

Item	Land Size (Hectares)	Value (Kshs)
<b>Value of land KWS</b>	0.1038 Ha	514,000.00
<b>Value of land-Panda Self Help Group</b>	1.50 Ha	900,000.00 <b>value of land donated willingly by Panda Self Help Group.</b>
<b>Total Compensation</b>	<b>1.6038</b>	<b>514,000.00</b>

## **II APPENDICES**

## **II.I APPENDIX I. LETTERS AND MINUTES SHOWING VOLUNTARY LAND DONATION**

## 11.2 APPENDIX 2. SELECTED PHOTOGRAPHS

	
<p>Privately owned water shop in Kayole, Naivasha town.</p>	<p>Mirera residents using a donkey to transport water from a private water kiosk for sale.</p>
	
<p>Research assistant enumerating a potential water project beneficiary in Mirera area.</p>	<p>Truck carrying garbage waste in Kayole.</p>