



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

RESETTLEMENT ACTION PLAN (RAP) FOR PROPOSED REHABILITATION OF KARATINA URBAN WATER SUPPLY IN KARATINA TOWN AND ITS ENVIRONS

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ACRONYMS

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	Human Immuno Deficiency Virus
LA	Land Act
LRCC	Locational Resettlement and Compensation Committee
NGO's	Non-Governmental Organizations
NLC	National Land Commission
MAWASCO	Mathira Water and Sanitation Company
OBA	Output Based Aid
OD	Operational Directive
OP	Operational Procedures
PAHs	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
WSTF	Water Sector Trust Fund
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 (PAH) 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 commencement 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 Kenyan laws 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 or otherwise uses OD 4.30—The World Bank Group Operational Directive on Involuntary Resettlement. OD 4.30 embodies the basic principles and procedures that underlie IFC's approach to involuntary resettlement associated with its investment projects.

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.

Encroachers

An illegal intrusion in a highway or navigable river, with or without obstruction. An encroachment upon a street or highway is a fixture, such as a wall or fence, which illegally intrudes into or invades the highway or encloses a portion of it, diminishing its width or area, but without closing it to public travel.

EXECUTIVE SUMMARY

This is the Resettlement Action Plan (RAP) for proposed construction and laying of water supply pipelines by Mathira Water and Sanitation Company Limited (MAWASCO) 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

Mathira Water and Sanitation Company is one of the Water Service Providers (WSP) contracted by the Tana Water Services Board (TWSB) to provide water and sanitation services in Mathira West and Mathira East Sub-county. The area of service is an area of approximately 320km². The current population in the WSP area is estimated to be about 148,847 people. The WSP supplies 57,192 people (38.4% as at September 2018).

The WSP is served by water supplies originating from different water sources namely:

- a) Rural Water Supply - old system originating from Ragati River (cross weir constructed in 1970s)
- b) Ragati Water Supply- constructed in 2008 originating from Ragati dam to Canteen and Karindundu localities where it joins the old system.
- c) Hombe Water Supply - Has a pipeline originating from Hombe dam to Tumutumumu tank (Mbogoini area). Currently this dam is not in use due to quality of water
- d) Urban Water Supply - old system from Ihwagi treatment works to Karatina Municipality

The production capacity is about **11,000m³** per day against a current demand of **20,000m³** per day. The treated water is released to the distribution system through pumping. As a result of the rapid increase in population of Karatina Town caused by the construction of a training institute among other factors, the water demand has significantly grown and out stretched the supply. Consequently, the water company has been supplying water on a rationed programme for a maximum of 12-hours per day.

To alleviate this shortage, MAWASCO intends to mitigate the above challenges and overhaul the entire networks and augment the distribution system especially to reach the low income areas which are normally hard hit in times of water shortage.

The proposed project is expected to inject additional 2,500 m³ of water per day into the distribution system. The targeted areas are those exhibiting low income characteristics

and mainly mapped in Maji data and include: Karindundu, Mathaithi, Jamaica etc. The estimated current total population in Karatina Urban is **23,278**.

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 PAHs. The approach included the following tasks: community mobilization and sensitization; PAHs and property identification; property cadastral survey mapping; property assessment and valuation; institutional and individual stakeholder consultation; PAH 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). The RAP includes an analysis indicating gaps that exist between national laws and regulation and World Bank's OP. 4.12 and how these gaps should be filled.

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. The valuation and compensation method adopted in this RAP is **full replacement cost**. Valuation for assets as outlined in this RAP involved field survey to collect data on the PAHs, land to be acquired/easement rights, structures, crops and trees and community assets.

Summary of Project Impacts

The activities highlighted in the scope of works above will take place within the existing road reserves of the Government of Kenya also known as the Right of Way¹(ROW) and in privately owned land. In the project's area of influence, i.e. (ROW and private land) PAHs are engaged in commercial activities which include ownership of movable (mobile) temporary structures (kiosks/sheds and stalls).

The project will lead to acquisition of land through easement (in locations where the pipeline traverses private land) as well as loss of crops and trees. In all the other remaining routes, the project will lead to loss of income of traders on the ROW during the construction period scheduled to take approximately 3-5 days.

¹ Right of way as defined by the Roads Act 2007

Structures used by the traders are movable and temporary and will not be destroyed by the construction activities. PAHs with these types of structures on the ROW will move them away from the pipeline route temporarily until the excavation and laying of pipeline is completed after which they will move back to their original trading locations. The impact will thus be temporary economic displacement/relocation with no destruction of structures. There are no crops or trees or communal assets on the ROW where the traders are domiciled.

The project will affect a total of **269** PAHs. **264** PAHs are categorized as encroachers. **Out of the 264 PAHs, 6 are institutions while 258 are individual households.** There are 5 PAHs who have recognized land rights.

The project activities will have no permanent physical displacement. **Five PAHs** who are categorized as private land owners with formal title to the land will lose partial agricultural land due to the acquirement of easements (laying of water pipes) and **264 PAHs** whose assets are on the RoW, categorized as roadside traders (encroachers) **who will be temporarily displaced for approximately three days while pipes are laid.**

The physical and economic displacement of the encroachers is temporary with the PAHs in this category expected to reclaim their trading spots after the laying of pipes. They will be compensated for the loss of income for the number of days that they are unable to operate on the ROW.

As a result of restricted use (easements) the 5 land owners will be physically and economically displaced. By way of easements, the 5 PAHs who are land owners will be compensated for loss of uses to the land, however, they will be able to continue cultivation of crops and trees after the pipes have been laid. They will be compensated for loss of crops and trees as well as for restricted use on the area of land where the pipes will be laid.

A summary of project impacts in terms of number of PAHs affected by zone/area is presented in **tables below.**

Table 0-1: Summary of the affected persons

Description	Number of PAHs
Length of Pipelines (cumulative) in kilometers	64
Number of affected PAHs	269
Number of Vulnerable persons	02
Loss of trees and crops	01
Partial Loss of land (Easement)	05
Cost of RAP	Kshs, 977,250.00

A summary of project impacts in terms of number of PAHs affected by zone/area is presented in the **Tables below**;

Table 0-2: Number of Project Affected Persons

Area	Category of PAH	# of PAHs
Blue Valley	Structure and Business Owners	03
Commercial	Structure and Business Owners	29
Gathugu	Land, Crop, Structure and Business Owners	29
Giakairu	Structure and Business Owners	42
Industrial Area	Structure and Business Owners	82
Kariandudu	Structure and Business Owners	08
Market	Structure and Business Owners	08
Sofia	Structure and Business Owners	68
Total PAHs		269

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

LOCATION	SIZE OF LAND PARCELS (Ha)
Gathugu	0.198 Ha
Total Affected Land Size (Ha)	0.198

Impact on Community Access to Infrastructure and Social Services

The project route will have no impact on community access to infrastructure and social services.

Vulnerable PAHs

Vulnerable PAHs 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:

- Additional 10 days' income restoration compensation to cater for any construction related delays estimated to take 3 days.
- 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 the following as shown in Table 4 and 5 below:

Table 0-4: Vulnerable PAHs

VULNERABILITY	No.
Total PAHs	269
Vulnerable PAHs	02
Non Vulnerable PAHs	267

Table 0-5: Forms of Vulnerability

FORMS OF VULNERABILITY	No.
Single parent	00
Chronic Illness	00
Elderly	02
Disabled	00
Widow	00

Under the provisions of the RAP, vulnerable households will be provided with targeted assistance.

Table 0-6: Entitlement Matrix

Impact	Description of affected property	Entitled person	Compensation measure
Loss of Land	Partial or permanent loss of land	Land Owner	Cash compensation for taking into account replacement cost for land Disturbance allowance (15%) OR Land for land option Disturbance allowance (15%)
Loss of Land	Partial or permanent loss of land	Vulnerable Land Owner	Cash compensation for taking into account replacement cost for land

			<p>Disturbance allowance (15%)</p> <p>OR</p> <p>Land for land option</p> <p>Disturbance allowance (15%)</p> <p>Priority in processing and disbursing of compensation</p>
Loss of Structures (commercial)	Partial or permanent loss of structures	Structure Owner	<p>Cash compensation for taking into account replacement cost for structures</p> <p>Compensation for loss of income</p> <p>Right to salvage assets and materials</p>
Loss of structures commercial)	Partial or permanent loss of structures	Structure Owner (Vulnerable)	<p>Cash compensation for taking into account replacement cost for structures</p> <p>Compensation for loss of income including an additional 10 days of income to cater for delays in laying of pipeline.</p> <p>Right to salvage assets and materials</p> <p>Transportation to new locations</p> <p>Priority in processing</p>

			and disbursing of compensation.
Loss of Crops and Trees	Perennial/annual	Land owner	Cash compensation Disturbance allowance (15%) Right to harvest
Loss of business	Commercial Businesses	Encroachers	Compensation for loss of income Right to salvage assets and materials
Loss of business	Commercial Businesses	Encroachers (vulnerable)	Compensation for loss of income including an additional 10 days of income to cater for delays in laying of pipeline Right to salvage assets and materials
Loss of business	Informal Traders/Mobile Traders/Vendors	Encroachers	Compensation for loss of income Right to salvage assets and materials

Community Participation and Consultation

Public consultations to ensure that the Project activities and the likely impacts on the local people and their livelihoods were explained and openly discussed as part of the RAP preparation. There were **2** community meetings and **2** meetings with relevant national and county government conducted in the project area.

Table 0-7: Community Consultations

DATES	VENUE	NO.OF PARTICIPANTS
11 th August 2018	Gathugu Market – Local community	23
13 th August 2018	Industrial Area Market	48

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 PAHs; the rights of PAHs; Grievance redress; RAP preparation; valuation principles and procedures; RAP disclosure; and the approval process. PAHs were mainly concerned about the likely impact of the Project activities on their livelihood with respect to displacement on the encroached ROW and damage to the developments/structures, trees and crops on their land and sustenance derived from roadside enterprises such as kiosks/stalls/sheds.

COMPENSATION PRINCIPLES AND COMPENSATION STRATEGY

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

Overall objectives of the RAP are:

- 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 PAHs than WB OP 4.12 requirements or does not apply at all, the latter shall apply;
- 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 2012 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.

All the PAHs, irrespective of their legal status, have been identified and are eligible for some form of compensation if they occupied the land, owned property or operated a livelihood activity within areas earmarked for project activity implementation at the 'cut-off date' which has been taken as **13th August 2018**.

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

Cut-off Date

- The cut-off date for this RAP was communicated to the affected communities during the fieldwork in August 2018. The cut-off dates are the respective dates of commencement of census survey in the affected project area which is **13th August 2018**. The cutoff date was communicated via public baraza/meetings with the PAHs.

Valuation Approach

The valuation methods used in this RAP is the full replacement cost approach which takes into account the market value and all associated transactional costs for assets lost.

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 Redress and Resettlement Committees

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

- Compensation process.
- Involvement into the grievance redress mechanism at different levels
- Involvement into monitoring procedures
- Maintaining a grievance log,
- Resolving any disputes related to succession
- Resolving valuation related disputes
- Resolving land ownership disputes

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 construction activities will take place.

First Level: Village Grievance and Resettlement Committees

This RAP prefers the first level of grievance or conflict redress on RAP related issues as a result of this project and handles all forms of grievances in an amicable manner and as an alternative dispute resolution to judicial 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 Grievance and Resettlement Committees 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 PAHs,
- Business representative.
- MAWASCO 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:

1. One representative of the Administration; - National Government
2. One representative of County Administration; - County Government
3. One representative of MAWASCO;
4. One representative of the construction contractor, acting as an observer
5. 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 MAWASCO 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 MAWASCO for actual payment of entitlement awards to PAHs. 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 PAH 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 PAH 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 PAH could go to the environment and land court.

BUDGET

The total budget for resettlement compensation is **Kshs. 977,250.00** which includes compensation for loss of income for encroachers who will lose income for at least 3 days when the laying of pipelines is undertaken. In addition, administration cost at 30 percent for the RAP implementation and monitoring and evaluation and 5% contingency has been considered.

All PAHs will receive their entitlements and any assistance prior to the project works being carried out in the affected project sites with no exceptions allowed. Construction activities will not commence until all the PAHs have been fully compensated. A final report and a **resettlement completion audit** has been considered as pertinent elements of the RAP implementation end time.

Table 0-8: Compensation Costs

Item	Value
Value of crops and trees	10,000.00
Loss of income (Encroachers)	538,000.00
Partial loss of Land (Easement)	168,000.00
Total Compensation	716,000.00

Table 0-9: RAP Implementation Costs

Aspect	Value (Kshs)
External Monitoring and External Coordination for RAP Implementation	214,800.00
Grand Total	214,800.00

Table 0-10: Total RAP Budget

Total RAP Cost	Kshs
Crops and Trees	10,000.00
Loss of income (Encroachers)	538,000.00
Partial loss of Land (Easement)	168,000.00
External Monitoring and External Coordination for RAP Implementation/Training costs (30%)	214,800.00
Contingency (5%)	46,450.00
Grand Total	977,250.00

RAP Implementation Arrangements

Once this RAP is approved by MAWASCO and the World Bank, all PAHs will be compensated before their structures are moved or demolished; implying that compensation will be paid before project works kicks off at a specific site/in a specific area as per the contractor's work schedule. MAWASCO will be the lead agency in the RAP implementation and will work together with the County Government of Nyeri to implement the RAP.

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

The RAP implementation unit will be responsible for:

- a) delivery of the RAP compensation and rehabilitation measures;
- b) appropriate coordination between the agencies and jurisdictions involved in the RAP implementation; and
- c) 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:

1. MAWASCO Staff (Technical Manager)
2. Independent civil society organization/ NGO representative (1);
3. National Government Representatives (Chiefs) for each affected location (1)
4. County Government Representatives (CEC for Lands and Physical Planning or appointee)
5. Representatives of PAHs
6. Works Contractor
7. 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. MAWASCO team

RAP Implementation Schedule

The activities related to construction of Project are expected to commence in April 2019 by which time the PAHs are expected to have moved from the site. It is expected that by end of March 2019 all the PAHs 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 0-12: 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)												
Establishment and Training of GRRC												
RAP disclosure												
1 month notice to PAHs												
Relocation of PAHs												
Grievance management												
Compensation payment												
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

I.1.1 Project Description

Mathira Water and Sanitation Company (MAWASCO) is one of the Water Service Providers (WSP) contracted by the Tana Water Services Board (TWSB) to provide water and sanitation services in Mathira West and Mathira East Sub-county. The area of service is an area of approximately 320km². The current population in the WSP area is estimated to be about 148,847 people.

The WSP is served by water supplies originating from different water sources namely:

- d) Rural Water Supply – old system originating from Ragati River (Cross weir constructed in 1970s)
- e) Ragati Water Supply- Constructed in 2008 originating from Ragati dam to Canteen and Karindundu localities where it joins the old system.
- f) Hombe Water Supply – Has a pipeline originating from Hombe dam to Tumutumumu tank (Mbogoini area). Currently this dam is not in use due to quality of water
- g) Urban Water Supply – old system from Ihwagi treatment works to Karatina Municipality.

The production capacity is about **11,000m³** per day against a current demand of **20,000m³** per day. The treated water is released to the distribution system through pumping.

As a result of the rapid increase in population of Karatina Town caused by the construction of a training institute among other factors, the water demand has significantly grown and outstretched the supply. Consequently, the water company has been supplying water on a rationed programme for a maximum of 12-hours per day.

To alleviate this shortage MAWASCO intends to mitigate the above challenges and overhaul of the entire networks and augment the distribution system especially to reach the low income areas which are normally hard hit in times of water shortage. The proposed project is expected to inject additional 2,500 m³ of water per day into the distribution system. The targeted areas are those exhibiting low income characteristics and mainly mapped in Maji data and include:

Karindundu, Matahaithi, Jamaica etc. The estimated current total population in Karatina Urban is **23,278**.

1.2 Description and Scope of Works

Mathira Water and Sanitation Company (MAWASCO) under the fund, intend to rehabilitate the supply system for Karatina Urban. The Project main objective is to increase MAWASCO water production by 2,500m³/day, extend coverage of water services to people in the low income and informal settlement areas and improve service hours from 12hrs to 24hrs within MAWASCO area. MAWASCO intends to achieve this objective through overhauling and rehabilitating the existing networks and extension of distribution network (pipelines) to low income areas, and increasing water connections and installation.

1.3 Resettlement Action Plan Objectives

The purpose of the RAP was to identify PAHs and their assets/properties, value them and provide a strategy for resettlement compensation to ensure that the PAHs' livelihoods are impacted at a minimal scale and eventually restored or improved. The RAP also puts in place appropriate remedial measures, including grievance channels, for the PAHs and other community members.

This RAP has been prepared in 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 PAHs. The goal of this RAP is to avoid, minimize and 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 PAHs and appropriate remedial measures, including grievance mechanisms for PAHs.

The main objectives of the RAP are:

- (a) To identify PAHs 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 PAHs' property and assets (compensation costs, livelihood/disturbance allowances and other assistance values) and provide a strategy for the compensation of PAHs;

- (c) To provide a baseline for the socio-economic situation of the affected persons to assist in monitoring for impact and livelihood restoration
- (d) 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
- (e) To carry out consultations with community members and other stakeholders, including PAHs, 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.

2 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 PAHs.

The team of experts included;

1. Sociologist and Resettlement Action Plan –Team Leader
2. Sociologist and Resettlement Action Plan-Assistant Team Leader
3. Land Surveyor
4. Valuation Expert
5. GIS Specialist
6. Data entry and analysis expert
7. Research Assistants

2.1 RAP Study, Design and Procedure

The RAP study design employed both qualitative and quantitative methods of data collection and stakeholder consultations. By design all PAHs were enumerated (100% census). All key institutional stakeholders were consulted at the County and Sub County. Community consultation dialogues were held at 2 selected centres in the project area. Direct engagement with the PAHs was done during the census. The stakeholders' consultation list is attached as **Appendix 1**. The RAP data collection methods are described in the following sub-sections.

2.2 Census Data collection and Community Consultation Methods

The PAH census data was collected through the household interview with all PAHs' households. The household interview solicited quantitative information regarding the PAHs' 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 a selected center in the PA, 2 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 and stakeholder consultations were carried out on **11th and 13th August 2018**.

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 PAHs, and feedback from the PAHs 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 PAHs 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.

2.3 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, neighbours 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**.

2.4 Data Analysis and Quality Control

Quantitative PAH census data was analysed 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 analysed around the major themes/objectives of the RAP.

3 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.

3.1 Zones of Potential Impact

Mathira Water and Sanitation Company is one of the Water Service Providers contracted by the Tana Water Services Board (TWSB) to provide water and sanitation services in Mathira West and Mathira East Sub-county. The area of service is an area of approximately 320km². The current population in the WSP area is estimated to be about 148,847 people.

The WSP is served by water supplies originating from different water sources namely:

- h) Rural Water Supply – old system originating from Ragati River (Cross weir constructed in 1970s)
- i) Ragati Water Supply- Constructed in 2008 originating from Ragati dam to Canteen and Karindundu localities where it joins the old system.
- j) Hombe Water Supply – Has a pipeline originating from Hombe dam to Tumutumu tank (Mbogoini area). Currently this dam is not in use due to quality of water
- k) Urban Water Supply – old system from Ihwagi treatment works to Karatina Municipality.

The production capacity is about **11,000m³** per day against a current of **20,000m³** per day. The treated water is released to the distribution system through pumping.

As a result of the rapid increase in population of Karatina Town caused by the construction of a training institute among other factors, the water demand has significantly grown and outstretched the supply. Consequently, the water company has been supplying water on a rationed programme for a maximum of 12-hours per day.

To alleviate this shortage MAWASCO intends to mitigate the above challenges and overhaul of the entire networks and augment the distribution system especially to reach the low income areas which are normally hard hit in times of water shortage. The proposed project is expected to inject additional 2,500 m³ of water per day into the distribution system. The targeted areas are those exhibiting low income characteristics and mainly mapped in Maji data and include:

Karindundu, Matahaithi, Jamaica etc. The estimated current total population in Karatina Urban is **23,278**.

The project will therefore lead to economic and physical displacement of PAHs who are categorized as land owners and encroachers who are on the ROW.

3.2 Detailed Design of Proposed Project

The coverage area is 4km² and an estimated population of 25,000 residents. It has 4,776 registered water connections which are all metered and 2,644 sewer connections. The distribution networks in town can be described as a ring system with pipelines ranging from 15mm diameter to 160mm diameter. The urban water supply consists of the Ihwagi intake weir, treatment works and the main pipelines from Ihwagi treatment plant to the storage tanks and the distribution network to the entire urban centre. The design capacity of the treatment plant is 2,500m³/d. Two main pipelines of diameters 6" and 8" supplies water to the two main storage tanks 450m³ each at Gathugu and then distribute water to Karatina town and environs through approximate distance of 80 Kilometers.

Ihwagi Intake

The intake weir is in good condition but requires expansion and fencing.

Ihwagi Treatment Works

The general condition of the plant is quite good. The plant's design capacity of 2,500m³/day is not adequate for the growing demand, currently the treatment plant is over worked at 3,000m³/d. However, there are valves and master meters at the clear water tank outlets. Flocculation baffles and v-notch are worn out and need replacement.

The plant requires rehabilitation, replacement of fittings and valves. A parallel treatment unit of 2,500m³/day in capacity is required for maximum production and quality output. Also to improve the plant efficiency, the laboratories need to be well equipped and staffed.

Main Pipeline (Rising Mains)

Water is delivered to Gathugu Tanks from the treatment plant through two pipelines of diameter 225mm and 160mm. The 225mm dia pipeline is 7km long and has been supplying water from treatment plant since 1984. The 160mm line runs from treatment works to Gathugu tanks at a distance of 8.3 km. However, the two mainlines require relocation to achieve maximum output since they parcel through people's farm contributing to high NRW levels due to perforation and wanton water thefts. The land is also highly adjudicated hence need to re-align the pipelines to the expanded roads. This will boost water supply within the town and its environs.

Water Distribution

The distribution network which consists of a ring system is quite hard to monitor the Unaccounted for Water (UFW) due to interconnected pipes. Most of the pipes in the central business areas were installed in 1930's made of asbestos cement (AC) and corroded GI therefore causing several problems like: -

- a) Underground leakages
- b) Clogging of the pipes
- c) Undetected illegal connections
- d) Poor installation i.e. under pavements/tarmac roads and trough private premises.

Total overhaul of the distribution system is recommended, pipes ranging from 32mm -160mm diameter for distance of about 5km.

Major works will include, Installation of HDPE pipes (trenching, laying and jointing and backfilling) within Karatina town and it's environ for the areas and distances listed in table 3-1 below.

- Installation of master meter for each zone/DMA
- Reposition and replacement of consumer meters at the boundary of the premises
- Rehabilitation of Mathaithi tank and Construction of Meter testing laboratory room
- Procurement of meter testing bench, NRW Management equipment (i.e. pipe locator, sounding machine, correlator for leak detection etc.)
- Procurement and installation of billing system
- Procurement and installation of GIS software and GPS data loggers
- Training

Additional Works will include construction of;

- Anchor/support blocks
- Construction of Inspection Chambers and covers

3.3 Augmentation of Distribution System

The existing water distribution network will be augmented through laying of 62 km extension lines mainly to enable reach of the low income areas of Karatina town. The proposed pipelines are of assorted diameters ranging from 20 mm to 225 mm. The sizing of the pipeline system has been carried out using EPANET model. The proposed extension have been integrated in the existing distribution system and found to be sound in performance simulations.

Table 3-1. Sizes of Proposed Pipeline Extensions

S/No.	Item Description	Total Length (Meters)
1	Installation of 225MM diameter HDPE pipe distribution line from Gathugu tank to Kiangararu Junction	3100
2	Installation of 160MM diameter HDPE pipe distribution line from Gathugu tank to Mathaithi Junction	750
3	Installation of 110MM diameter HDPE pipe from Mathaithi Junction to Karindundu PCEA Church, from Ragati slaughter house to express hotel and to Jambo and Giakairu	2,000
4	Installation of 90MM diameter HDPE pipe distribution line from Mathaithi Junction to Mathaithi tank and Giakairu	3,000
5	Installation of 63MM diameter HDPE pipe service line within Karatina as detailed in the designs	12,000
6	Installation of 50MM diameter HDPE pipe service line within Karatina	4,600
7	Installation of 32MM diameter HDPE pipe service line within Karatina	15,350
8	Installation of 25MM diameter HDPE pipe for customer connections	500
9	Installation of 20MM diameter HDPE pipe for customer connections	21,000

The proposed pipeline extensions are designed to transmit and distribute water to the following targeted villages under this project.

Table 3-2: Affected Areas

Affected Locations/ Areas Along Project Route
Blue Valley
Commercial
Gathugu
Giakairu
Industrial Area
Kariandudu
Market

Sofia

Table 3-3: Potential Impacts of Project/Number of PAHs Affected

Area	Category of PAH	Category of PAHs	No. of PAHs
Blue Valley		Structure and Business Owners	03
Commercial		Structure and Business Owners	29
Gathugu		Land, Structure and Business Owners	29
Giakairu		Structure and Business Owners	42
Industrial Area		Structure and Business Owners	82
Kariandudu		Structure and Business Owners	08
Market		Structure and Business Owners	8
Sofia		Structure and Business Owners	68
Total PAHs			269

3.4 Impact of laying of the water pipeline system

The major project activity will be laying of water pipelines, which will take place mainly within existing road reserve (ROW) and on privately owned land which will be acquired as easement and compensated prior to construction. The project will have an impact on the entrances to buildings, kiosks/sheds and stalls housing formal and informal economic enterprises along the road reserves. There will be impact on crops and trees based on the survey and inventory of assets specifically for the 5 PAHs who are land owners.

3.5 Impact Severity

The project will affect a total of 269 PAHs. 264 PAHs are categorized as encroachers. Out of the 264 PAHs, 6 are institutions while 258 are individual households. There are 5 PAHs who have recognized land rights.

3.6 Specific Impact Significance on Institutions

The project route will affect the entrances and verandas of 6 institutions.

3.7 Specific Impact Significance on Labour Influx

An assessment of the labour force in the project area indicates there is adequate work force that can be sourced from within the project area of influence. This significantly reduces labour influx requirements to manageable levels. The construction methods will mainly be manual labor with hand held implements being utilised and minimal use of mechanized equipment to warrant specialised external skills which would trigger labour influx.

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

A number of alternatives and mechanisms have been considered to avoid or minimise 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.

- **Use of manual excavation:** The contracting firm will as much as possible use manual excavation. This will enable the project to minimise the extent of structural damage associated with machine excavation in such built-up areas.
- **Selection of non-residential sites:** As much as possible, besides engineering design prerequisites, site selection has been guided by the desire to minimise the displacement of human settlements/residences hence focusing on ROW.
- The PAHs on the ROW will re-settle back on their trading spots once pipes have been laid hence minimizing any permanent related relocation impacts.

4 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.

4.1 Location

Nyeri County is one of the 47 counties in Kenya and is located in the central region of the country. It covers an area of 3,337.2 Km² and is situated between longitudes 36038" east and 37020" east and between the equator and latitude 00 380 south. It borders Laikipia County to the north, Kirinyaga County to the east, Murang'a County to the south, Nyandarua County to the west and Meru County to the northeast.



Figure 4-1: Map of Nyeri County

Karatina Urban Rehabilitation Project is aimed at serving the low income areas within the jurisdiction area of MAWASCO. These areas include: Karindundu, Mathaithi, Jamaica etc.

4.2 Population to be served

Population projections within MAWASCO's service provision area are as shown in the following table.

Table 4-1: Sub-counties that are served by MAWASCO

Sub County	Area (Km2)	Divisions	Locations	Sub-locations
Mathira East	131	4	13	44
Mathira West	165.6	3	8	31

Table 4-2: Administrative units in Nyeri County

Sub County	Area (Km2)	Divisions	Locations	Sub-locations
Mathira East	131	4	13	44
Mathira West	165.6	3	8	31
Kieni West	623.3	2	6	26
Kieni East	817.1	2	12	33
Tetu	217.5	2	8	35
Mukurwe-ini	178.6	4	7	32
Nyeri Town/Nyeri Central	167.8	1	4	26
Othaya/Nyeri South	174.5	3	11	29
TOTAL	*2,475.5	21	69	256

4.3 Population Size, Density and Distribution

The population data 2009 census reports have been adopted as base data for population projections. According to the 2009 census report the growth rate in the years 1989, 1999 and 2009 for Central Province were 2.8%, 1.8% and 1.6% respectively. The national population is estimated to be growing at 2.54% (World Population Review, 2016).

Considering that these percentages are averaged and could vary from one area to another and in view of the rapid population growth witnessed in Mathira Town

since year 2009, a conservative growth rate of 2.5% has been adopted in projection of the current population (2018) estimated at 181,534.

4.4 Economic activities

The main economic activities include agricultural processing, particularly in horticulture and pineapple (exported mainly to Europe), coffee (exports mainly to the United States and Europe), cooking oils (to the rest of Kenya and eastern Africa) and animal feed processing. Other industries include textile (cotton), macadamia nuts, wheat, tannery, motor vehicle assemblies, cigarette manufacturing, bakeries, packaging and industrial chemicals. About 100 small-scale industries and about 20 major factories exist in and around the town.

4.5 Infrastructure and Access

The county currently has 3,092.73 Km of classified roads with 478.25 Km of bitumen, 2,492.85 Km gravel and 121.63 Km earth surface. The table below shows the categories of various roads by surface type since 2013 to date.

Table 4-3: Categories of Road Surface in the County

Category of Road Surface by Type	2013	2014	2015	2016	2017
Bitumen	450	450	450	450	478.25
Gravel/Murram	1,390.59	1,619.97	1,871.95	2,332.20	2,492.85
Earth	1,252.14	1,022.76	770.78	310.53	121.63
TOTAL	3,092.73	3,092.73	3,092.73	3,092.73	3092.73

Source: County department of Transport, Public works, Infrastructure and Communication, 2017.

4.6 Posts and Telecommunications

The county is fairly developed as a result of the advent of mobile telephony and internet hubs in the urban centers. The mobile phone coverage stands at 91 per cent and there are 384 cyber cafes. This has greatly revolutionized the way people communicate and improved efficiency in service delivery. There exist six Post Offices, 19 sub-post offices and 25 licensed stamp vendors. However, Post office faces stiff competition from 30 private courier services mainly G4S, Wells Fargo, 2NK Sacco, 4NTE etc.

The banking industry has enhanced use of ICT where most of the financial institutions are offering computerized banking services. Many government departments have embraced the use of modern methods of communication through E-Government services by use of E-Mail and mobile phone technology. The county is expected to grow fast after connection of a fibre optic cable, which will greatly revolutionize communication and information sharing.

4.7 Financial Institutions

The county has fairly distributed financial institutions which includes; 10 commercial banks, nine micro-finance institutions and 10 insurance companies with their branches in the county.

Table 4-4: Financial Institutions as distributed in Nyeri County

Sub-County	Banks	SACCO (FOSA)
Nyeri Central	14	4
Mathira	7	2
Othaya	5	1
Mukurweini	2	1
Tetu	1	0
Kieni	5	0

4.8 Land and Land Use

Most of the land in the county is owned by individuals as freehold and mainly where subsistence farming practiced. The gazetted forest cover 26 percent of the county land surface while the county and national governments own few tracks of land where offices and social facilities and infrastructure are located.

The county has a total area of 987.5 Km² and 758.5 Km² of arable and non-arable land respectively. The larger part of the land is used for food crop while the rest is used for cash crop farming, livestock rearing and farm forestry. The mean holding size is one hectare for majority of the small holders.

5 SOCIO-ECONOMIC PROFILE OF PROJECT AFFECTED HOUSEHOLDS

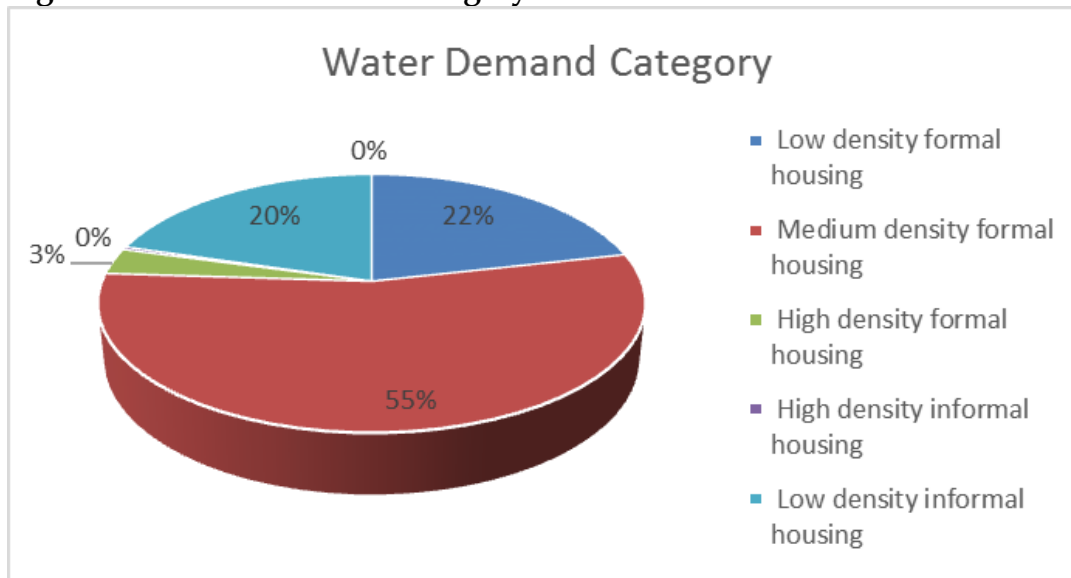
5.1 Type of Housing

In this survey 299 respondents representing PAHs from several villages in the project area participated. The villages included Blue Valley, Commercial, Gathugu, Giakairu, Industrial Area, Kariandudu, Market and Sofia in Karatina town. 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.

5.1.1 Water Demand Category

In terms of water demand, medium density formal housing have high water demand at 55%, followed by low density formal housing at 22% as shown in figure 5-0 below:

Figure 5-0: Water Demand Category



5.1.2 Gender

According to the survey, 57% of the households are headed by men and 38% by women.

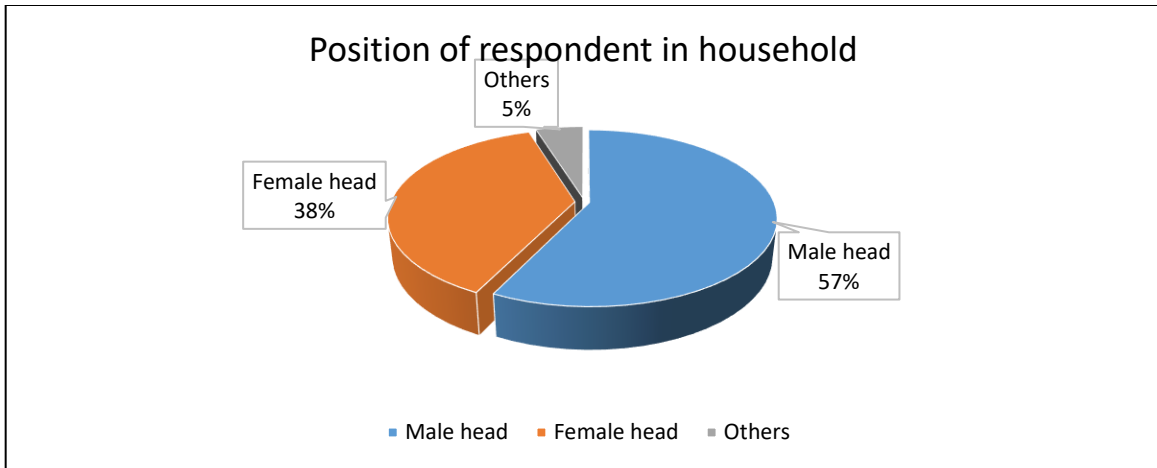
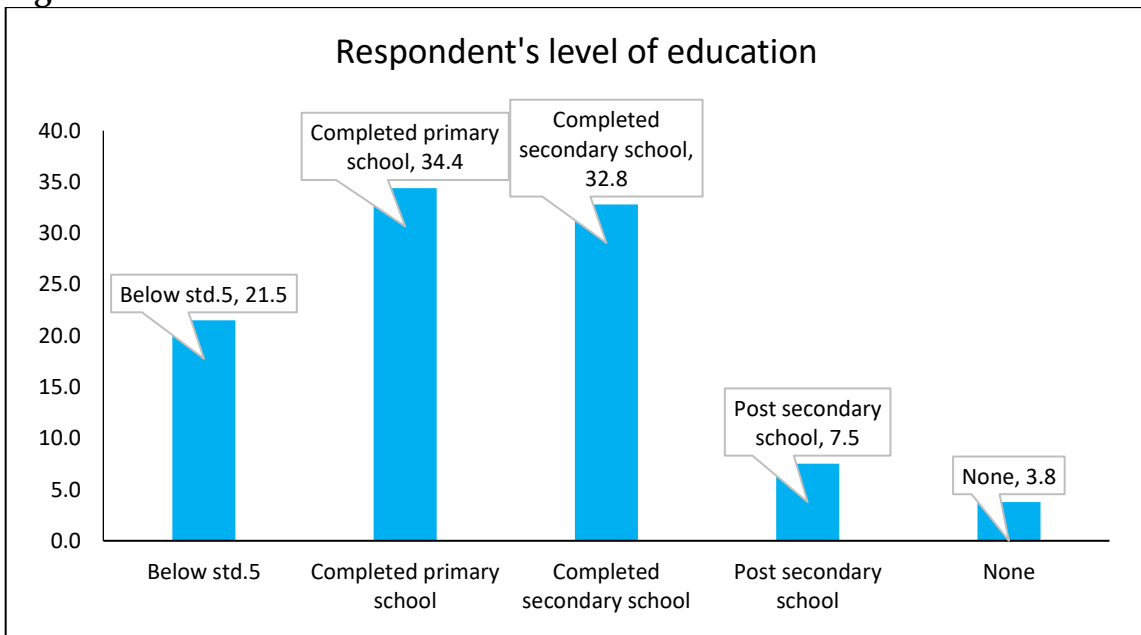


Figure 5-1: Position in the Household

5.1.3 Education

7.5% have post-secondary school education, 32.8% and 34.4% completed secondary and primary school respectively as their highest level of education. 21.5% did not go past primary school education.

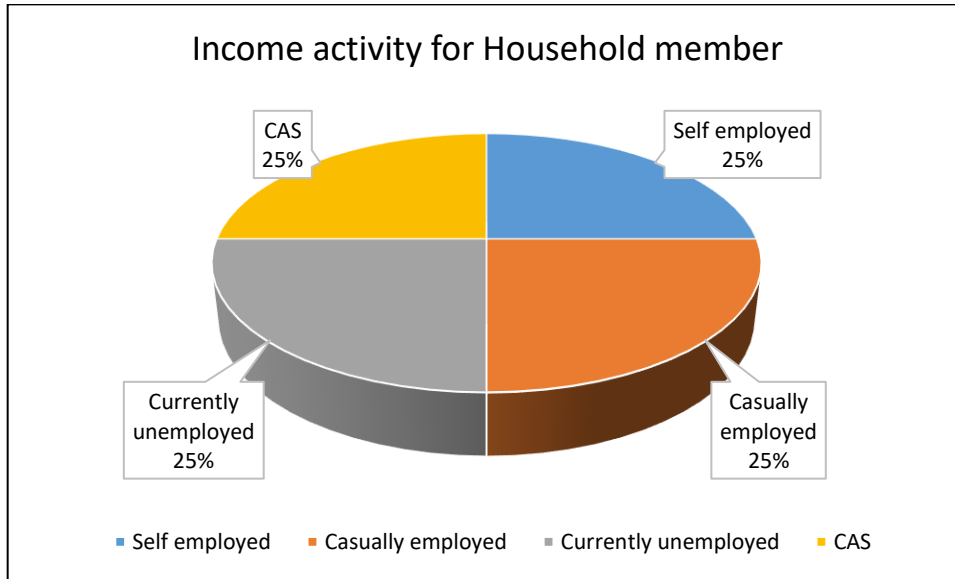
Figure 5-2. Education of Household Head



5.1.4 Household Income and Possessions

The socio-economic survey indicates that household income is fairly distributed from self-employment, currently unemployed and casually employed as shown in the figure 5-3 below.

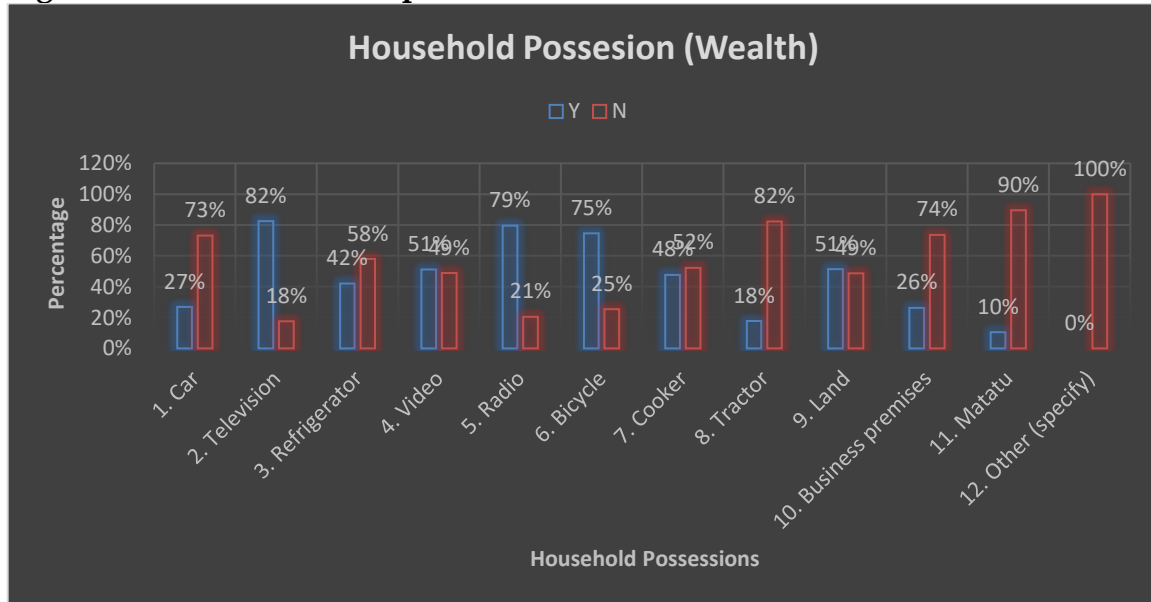
Figure 5-3. Forms of Employment



5.1.5 Household Expenditure and Asset Ownership

The bulk of the mean monthly expenditure for households is on food 30%, followed by loan repayments and school fees at 17%, each. Water is at 2%, clothes, groceries; transport, fuel and telephone expenses average 6% each. For the case of water supply the mean average spent by majority of respondents on water was computed at Kshs.590.

Figure 5-4. Asset Ownership



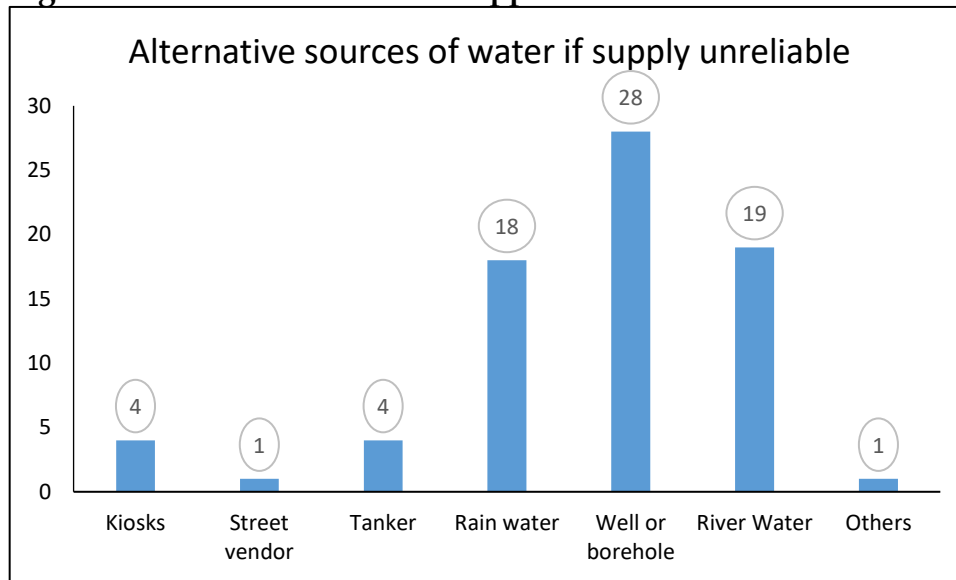
79% of the respondents own radio while 51%, 26% of the respondents own land and with the same margin owning business premises respectively. Other current

assets are distributed within the population with 75% owning a bicycle and 27% owning car.

5.1.6 Water Sources and Supplies

In determining the sources of water supplies including time spent in drawing water, according to the socio-economic survey, 28% rely on water from well/borehole, 4% from Kiosks, at 18% from rain water, and 19% from the river, while 1% rely on water from street vendors.

Figure 5-5: Water Sources and Supplies



5.1.6.1 Water Storage Facilities

64.6 % have water storage facilities.

Water for domestic use accounts for 93.2%, 78.2% says that the

water is adequate to meet their needs. As shown in the table below, a majority of the respondents indicated their ability and willingness to pay for water supply. At least 43% of the respondents were willing to pay 100-500 Kshs for water, 56.8% were willing to pay 500-1,000.

Table 5-1: Willingness to Pay for Water Services

	Frequency	%
1. Between Kshs. 100 - 500	127	43.6%
2. Between Kshs. 500 - 1000	164	56.3%
3. Between Kshs. 1000 - 1500	0	0.0%
4. Between Kshs. 1500 - 2000	0	0.0%
5. Between Kshs. 2000 - 3000	0	0.0%
6. Above Kshs. 3000	0	0.0%
	291	100.0%

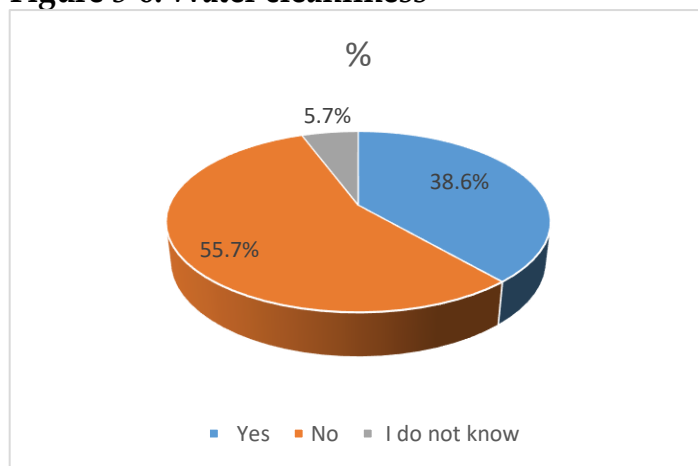
5.1.7 Sanitation

According to the survey, with respect to distance travelled to access sanitary facilities, the study found out that sanitary facilities are largely less than 100m walk from the households (96.6%). With respect to sharing of sanitary facilities, the study found out that between 1-5HH (45.8%) shared sanitary facilities.

The study found out that the area is mainly served by municipal sewer (47.7%), septic tank (31.3%) and pit latrine (21%). As shown in figure 9 below, the cost of sanitation is free for 65.9% of the respondents while 5.7% pay for their sanitation bills separately with 3.4% of the households having the sanitation bills included in the water bill.

38.6% of the respondents think the water they use is clean and safe; drinking water is mainly not treated (42.2%) or treated by boiling (49.3%). Only 3.6% have been rendered ill due to water and sanitation conditions.

Figure 5-6. Water cleanliness



Majority of the respondents dispose their waste through dumping (91.3%), collection by government trucks (3.6%) and collection by registered youths and burning at (2.2%). Solid waste is disposed of by burning (55.5%), dumping (18.2%) and collection by government trucks and youths were recorded at less than (1%).

5.1.8 Source of Information about the Project

The PAHs 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/Governments
- 2) National Government
- 3) Neighbors

4) Family Members

6 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.

6.1 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.

- 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

6.2 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

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

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.

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.

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

6.3 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

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).

and expressed through national law, in various Act of parliament e.g. Land Act 2012, Land Registration Act, 2012, Community Land Act 2016 of the Laws of Kenya).

6.3.1 Elements of Land Act 2012, 2016

Lessee's pre-emptive rights of allocation

Timelines have now been set in respect of the renewal of an expired leasehold tenure. The Commission is required to notify the lessee of the pre-emption rights of allocation within five years before the expiry of a leasehold tenure. Thereafter, the lessee has a period of one year from the notification to respond to it. Pre-emptive allocation rights are still reserved only for the Kenyan citizens and only where the land is not required by the national or county government for public purposes. The amendment however does not provide for a mechanism to challenge the refusal to renew the lease.

6.3.2 Land Adjudication Act, Cap. 284

An Act of Parliament to provide for the ascertainment and recording of rights and interests in Trust land, and for purposes connected therewith and purposes incidental thereto;

Section 13.

(1) Every person who considers that he has an interest in land within an adjudication section shall make a claim to the recording officer, and point out his boundaries to the demarcation officer in the manner required and within the period fixed by the notice published under section 5 of this Act.

(2) Every person whose presence is required by the adjudication officer, demarcation officer, recording officer, committee or board shall attend in person or by a duly authorized agent at the time and place ordered.

(3) If any person who is ordered to attend fails to attend in person or by a duly authorized agent, the demarcation, recording, adjudication or arbitration, as the case may be, may proceed in his absence.

(4) If the demarcation officer or the recording officer considers that a person who has not made a claim has an interest in land within the adjudication section, he may but is not bound to, proceed as if that person had made a claim.

Land tenure refers to the terms and conditions under which rights to land and land-based resources are acquired, retained, used, disposed of, or transmitted. Rules of tenure define how property rights to land are to be allocated within societies. They define how access is granted to rights to use, control, and transfer land, as well as associated responsibilities and restraints. In simple terms, land tenure systems determine who can use what resources, for how long, and under

what conditions. Land tenure relationships may be well-defined and enforceable in a formal court of law or through customary structures in a community. Alternatively, they may be relatively poorly defined with ambiguities open to exploitation. In broad terms, land tenure rights are often classified according to whether they are formal/statutory or informal/customary.

- Public Land;
- Formal property rights may be regarded as those that are explicitly acknowledged by the state and which may be protected using legal means. Statutory land tenure system is governed by modern law and supported by documentary evidence, such as a title deed or lease certificate, and administered by the government.
- Land ownership under the statutory tenure system is often built on freehold or leasehold entitlements to the land and offers exclusive rights to the owner, which guarantee land tenure security.
- Informal property rights are those that lack official recognition and protection. Customary land tenure system is governed by unwritten traditional rules and administered by traditional leaders. Active occupation or usage of a piece of land is the main evidence of ownership or an existing interest on the land. In customary tenure, access to land is contingent upon tribal or community membership controlled by the chief. Households have strong, exclusive residential rights, seasonally exclusive rights to arable land, and shared rights to grazing land and natural resources. Land is not alienable from the community trust, so it cannot be used as collateral for loans. Land tenure is often categorized as:

Public Land

This is land owned by the Government for own purpose and which includes unutilised or delineated 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 Registration Act, 2012.

Private Land

Private land refers to land held by an individual or other entity under freehold or leasehold tenure. It is the assignment of rights to a private party who may be an individual, a married couple, a group of people, or a corporate body such as a commercial entity or non-profit organization. For example, within a community, individual families may have exclusive rights to residential parcels, agricultural parcels and certain trees. Other members of the community can be excluded from using these resources without the consent of those who hold the rights. Alienation of private rights to land should take into account all other legitimate rights or

interests (spouses and children rights or interests) held or claimed by other persons over the affected land. Private land may be held under either of the following tenures;

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 of the Laws of Kenya governs freehold land. Freehold connotes the largest quantum of land rights, which the sovereign can grant to an individual. The absolute proprietorship was introduced with the intention of extinguishing customary tenure and replacing it with rights that would be individually and exclusively held.

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 to certain conditions, which must be observed. e.g. relating to developments and usage. Leasehold involves the derivation of rights from a superior title for a period of time, certain or capable of being ascertained and the enjoyment of such rights in exchange for specific conditions including, but not limited to, the payment of rent. Leasehold tenure provides a flexible mechanism for transacting rights in land and for land use control. It is a private contractual right subject to the conditions imposed by the owner and grants exclusive rights to the leaseholder. Other tenure types include;

Land Related Legal Issues

Broadly, interests in land can be grouped into two.

- The rights that are held through traditional African systems and
- Rights that derive from the English system introduced and maintained through laws enacted first by colonialists and later by the Independent Kenya governments.

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 national law, in various Acts of Parliament.

Other Interests include:

- Reservations of other government or trust land to government ministries, departments or Parastatals for their use.
- Non-formalised defacto tenure by which people, individually or in groups invade and occupy other people's government land particularly in the major urban centres.
- Minor interest such as easements, way-leaves and temporary occupation licences.

6.3.3 The Land Registration Act 2012

This is an Act of Parliament intended to revise, consolidate and rationalize the registration of titles to land, to give effect to the principles and objects of devolved government in land registration, and for connected purposes.

Section 7(1) of the Act provides for establishment of a land registry in each registration unit which shall keep registers of the following regarding land:

- A land register, in the form to be determined by the Commission;
- The cadastral map;
- Parcel files containing the instruments and documents that support subsisting entries in the land register.
- Any plans which shall, after a date appointed by the Commission, be geo-referenced;
- The presentation book, in which shall be kept a record of all applications numbered consecutively in the order in which they are presented to the registry;
- An index, in alphabetical order, of the names of the proprietors; and
- A register and a file of powers of attorney.

Further, section 9 (1) provides that the Registrar shall maintain the register and any document required to be kept under this Act in a secure, accessible and reliable format. These documents include:

- Publications, or any matter written, expressed, or inscribed on any substance by means of letters, figures or marks, or by more than one of those means, that may be used for the purpose of recording that matter;
- Electronic files; and
- An integrated land resource register.

The register, as provided for in part 2 of section 9, shall contain the following particulars;

- Name, personal identification number, national identity card number, and address of the proprietor;
- In the case of a body corporate, name, postal and physical address, certified copy of certificate of incorporation, personal identification numbers and passport size photographs of persons authorized and where necessary attesting the affixing of the common seal;
- Names and addresses of the previous proprietors;
- Size, location, user and reference number of the parcel; and
- Any other particulars as the Registrar may, from time to time, determine.

6.3.4 The Land Laws (Amendment) Act, 2016

This is an Act of Parliament to make further provision as to the functions and powers of the National Land Commission, qualifications, and procedures for appointments to the commission; to give effect to the objects and principles of devolved government in land management and administration, and for connected purposes.

Section 8 of the Land Act is amended to include a new provision requiring NLC to keep a register of all private and community land converted into public land through compulsory acquisition. For private land, it also requires that the NLC keep a record of the names and addresses of all persons whose land was compulsorily acquired.

Section 77 also revises the procedures through which NLC can acquire land on behalf of the national and county government to cover all land not just public land. It also includes additional clauses for applications that would be rejected by substituting with the following:

(4) In the event that the Commission has not undertaken the acquisition in accordance with subsection (3) for the reasons stated in subsection (3) within thirty days, it shall give to the acquiring authority the reasons for the decline and the conditions that must be met.

6.3.5 The Environment and Land Court Act 2011

This is an Act of Parliament to give effect to Article 162 (2) (b) of the Constitution; to establish a superior court to hear and determine disputes relating to the environment and the use and occupation of, and title to, land, and to make provision for its jurisdiction functions and powers, and for connected purposes. The principal objective of this Act is to enable the Court to facilitate the just, expeditious, proportionate and accessible resolution of disputes governed by this Act.

Section 13 (2) (b) of the Act outlines that in exercise of its jurisdiction under Article 162 (2) (b) of the Constitution, the Court shall have power to hear and determine disputes relating to environment and land, including disputes:

- Relating to environmental planning and protection, trade, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
- Relating to compulsory acquisition of land;
- Relating to land administration and management;
- Relating to public, private and community land and contracts, chooses in action or other instruments granting any enforceable interests in land; and
- Any other dispute relating to environment and land.

Section 24 (2) also states that the Chief Justice shall make rules to regulate the practice and procedure, in tribunals and subordinate courts, for matters relating to land and environment.

6.3.6 The Matrimonial Property Act 2013

The Matrimonial Property Act 2013 sets out the law and procedures for creation and division of a marital estate. It also stipulates how and by whom matrimonial property should be managed as well as how it should be divided at the end of a marriage.

Under section 6 of the Act, Matrimonial Property is described as the matrimonial home, household goods and effects in the matrimonial home, immovable property owned by either spouse, which provides basic sustenance for the family and any other property acquired during the subsistence of the marriage which the spouses expressly or impliedly agree to be matrimonial property.

Under section 3 (2) of the act, the parties to a marriage have equal rights and obligations at the time of the marriage and at the dissolution of it. Matrimonial property shall be deemed to vest in the spouses in equal shares regardless of the contribution of either of them towards the acquisition thereof.

Section 12(1) provides that no estate or interest in any matrimonial property shall be alienated in any manner without the prior consent of both spouses and that neither spouse shall be liable to be evicted from' the matrimonial homes except in accordance with a court order.

6.4 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*.²⁷ It will then serve a copy of the notice to every person interested in the land and deposit the same copy to the Registrar²⁸ 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.²⁹ 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

²⁷ The *Kenya Gazette* is the official government journal in Kenya published by the Government Printing Press.

²⁸ Land Act, 2012, 107

²⁹ 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.

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.

instruct owner of land to deliver to the NLC, no later than the date of the inquiry, a written claim for compensation.³⁰

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.³¹ 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.

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 compensation³² 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.³³ Determination of the value has to take into consideration the conditions of the title and the regulations that classify the land use e.g. agricultural, residential, commercial or industrial.

³⁰ Land Act, 2012 (112).

³¹ *Id.* at article 112.

³² Schedule explaining ‘just compensation’ has not been assessed and released by NLC. The Land Act 2012 say NLC should develop the schedule.

³³ *Id.* at article 112 and article 111.

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.³⁴

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.³⁵

Valuation of Land for Pipeline

The excavation and laying of the pipeline in private land owned by 5 PAHs will be via easements (wayleave acquisition) which is the typical mode of acquisition for pipelines.

Easement:-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.

³⁴ Schedule 2 governing compensation 2000.

³⁵ Schedule 3 governing compensation for compulsory acquisition.

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 purchaser's 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:

- Consideration for acquiring the wayleave (i.e. capital value of that part of that land subject to the wayleave); and,
- Compensation for the damage caused in the laying of 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:

- 1 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.
- 2 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.
- 3 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.³⁶ The law could be interpreted that any dispossessed person shall be awarded the market value of the land.³⁷ 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.³⁸ 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.³⁹ 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.⁴⁰ Section 119 provides a different condition and states that the NLC “as soon as practicable” will pay such compensation.⁴¹ Where such amount is not paid on or before the taking of the land, 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.⁴²

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.

Transfer of Possession and Ownership to the State

³⁶ *Land Act*, 117.

³⁷ *Land Act*, Schedule

³⁸ *Land Act*, 115

³⁹ *Land Act*, 115

⁴⁰ *Land Act*, This language reflects the language of the Kenya Constitution, 1963.

⁴¹ *Land Act*, 119

⁴² *Constitution of Kenya*, article 162

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.⁴³

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.

Opportunity for Appeal

The Kenya Constitution establishes Environment and Land Court⁴⁴. 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 endeavor to encourage application of alternative dispute

⁴³ Land Act, 115 and 116

⁴⁴ Land Act 2012, Section 128

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 alternative dispute resolution (ADR), 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.*⁴⁵

Parties will pay fees as determined by Environment and Land Court or the court may choose to waive them completely or in part on grounds of financial hardship.⁴⁶

6.5 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

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

1. to manage public land on behalf of the national and county governments;
2. Compulsory acquire land for national and county governments
3. Compensate acquired land on behalf of national and County government
4. To recommend a national land policy to the national government;
5. To advise the national government on a comprehensive programme for the registration of title in land throughout Kenya;
6. To conduct research related to land and the use of natural resources, and make recommendations to appropriate authorities;
7. To initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress;

⁴⁵ *Land Acquisition Act*. at article 29(7).

⁴⁶ *Land Acquisition Act* at article 43.

8. To encourage the application of traditional dispute resolution mechanisms in land conflicts;
9. To assess tax on land and premiums on immovable property in any area designated by law; and
10. 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 PAHs, since legally they are the constitutional body charged with this responsibility.

6.6 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.

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 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.

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

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.*

6.7 Evictions Guidelines 2010

According to the Eviction Guidelines section 4.9.1 drafted by Ministry of Lands (2010), the Government shall ensure that evictions only occur in exceptional circumstances. Evictions require full justification given their potential extremely negative impact on a wide range of international recognised human rights. Any eviction must be warranted by law, reasonable in the circumstances, proportionate and can only be carried out in accordance with the Guidelines and international human rights and humanitarian law.

The Government shall ensure that exceptions to the prohibition on forced evictions such as the 'interest of society' or 'public interest' should be read restrictively, so as to again ensure that evictions only occur in exceptional circumstances.

Where eviction is considered to be justified it should be carried out in strict compliance with the following procedures: -

- (a) Appropriate notice given to the affected individual or groups clearly stating the modalities, day and time of the eviction.
- (b) Consultations with the affected individual or group on the proposed eviction modalities and resettlement plans.
- (c) Holding of public hearing with affected persons and other stakeholders to provide an opportunity to discuss alternative proposals for resettlement.
- (d) Provide opportunity for the parties to seek legal redress where there is a stalemate or dispute.
- (e) The eviction notice should contain a detailed justification for the decision, among others:-
 - (i) Be a language that is understood by all individuals concerned
 - (ii) The full details of the proposed alternative
 - (iii) Where no alternatives exist, all measures taken and foreseen to minimize the adverse effects of evictions

Section 4.95 on Alternative land and housing states that the Government shall ensure that evictions do not result in individuals being rendered homeless or vulnerable to the violation of other human rights. The Government shall, where those affected are unable to provide for themselves, take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.

6.8 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 MAWASCO.

6.9 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.

6.10 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 endeavor 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.

⁵² Land Act 2012, Section128

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

6.11 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 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 consulted on and offered resettlement choices that are economically and technically feasible and that they be compensated at full replacement cost and assisted with relocation/resettlement during the transition period.

For this Project, cash compensation will be applied in view of the fact that 95% of PAHs are encroachers and hence not entitled to land compensations. The 5 PAHs identified as land owners are also entitled to cash compensation for land in view of the fact that the acquisition methods is through easement/wayleave acquisition for the pipeline which does not require land for land.

6.12 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

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

⁵⁴ Land Acquisition Act at article 43.

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)

6.13 Comparison of Kenya Land Laws & World Bank

Table 6-1 below 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.

Table 6-1: Comparative Analysis of World Bank OP 4.12 and Government of Kenya requirements including measures to address gaps

OP 4.12	Kenyan Legislation	Comparison	Gap filling measures
GENERAL REQUIREMENTS			
<p>World Bank OP4.12 has overall policy objectives, requiring that:</p> <p>5) Involuntary resettlement should be avoided wherever possible, or minimized, exploring all alternatives.</p> <p>6) Resettlement programs should be sustainable, include meaningful consultation with affected parties, and provide benefits to the affected parties.</p> <p>7) Displaced persons should be assisted in improving livelihoods etc., or at least restoring them to previous levels.</p>	<p>1. According to Kenyan Legislation, involuntary resettlement may occur as a result of projects implemented in public interest.</p> <p>2. The Land Act, 2012 Act outlines procedures for sensitizing the affected population to the project and for consultation on implications and grievance procedures.</p> <p>3. The Land Act 2012 guarantees the right to fair and just compensation in case of relocation.</p>	<p>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.</p> <p>2. Same as the World Bank</p> <p>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.</p>	<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	Gap filling measures
PROCESS REQUIREMENTS			

OP 4.12	Kenyan Legislation	Comparison	Gap filling measures
<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 resettlement plan (see Annex 10 A, para. 7(f)); and</p> <p>(c) those who have no recognizable legal right or claim to the land they</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 occupants of land. However, this does not include those who illegally acquired land</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 encroachers, laborers, rights of access) of affected lands are included in the census survey or are paid</p> <p>Implement cut-off procedures</p>

OP 4.12	Kenyan Legislation	Comparison	Gap filling measures
<p>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>Land Act 2012 provides for census through NLC inspection and valuation process</p>	<p>Same as World Bank</p>	<p>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 for losses of assets attributable directly to the project. If physical relocation is an impact, displaced persons must be provided with</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 schedule defining just compensation have not been put in place.</p>	<p>Land for Land provided for in the Land Act based on agreement by the PAH.</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	Gap filling measures
<p>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>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 PAHs and put in place BEFORE displacement of affected persons.</p>

OP 4.12	Kenyan Legislation	Comparison	Gap filling measures
<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	Gap filling measures
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.

Table: 6-2 Comparative Analysis of World Bank OP 4.12 and Kenya's requirements Relevant to the Process

Category of PAHs 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.	PAHs 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 compensation must be granted to the owner for the permanent building	Entitled to in-kind compensation or cash compensation at full replacement cost including labor and relocation expenses, prior to displacement.
Perennial Crops	Compensation for the loss of crops	Entitled to in-kind compensation or cash compensation at full replacement cost including labor and relocation

		expenses, prior to displacement
Informal Traders/Mobile Traders/Vendors	Not specific on livelihood. The constitution says some pay maybe made in good faith	Compensation and Livelihood restoration to pre-displacement level.

7 PROJECT DISPLACEMENT IMPACTS

7.1 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.

7.2 Impact on Land: The Project-Affected Area

The proposed project will have impact on land due to the fact that there will be easement of land from 5 PAHs who are private land owners. During the socio-economic survey, it was further observed that there are crops and trees which will be affected hence in equal measure, compensation for loss of crops and trees will be undertaken through replacement cost method.

7.3 Impacts on People and Livelihoods

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

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

7.4 Overview of the Results of the Census

The project will affect a total of 269 PAHs. 264 PAHs are categorized as encroachers. Out of the 264 PAHs, 6 are institutions while 258 are individual households. There are 5 PAHs who have recognized land rights. Table 7-0 below shows the breakdown of numbers of the PAHs by area.

Table 7-0: Number of PAHs by Areas

Area	Number of PAHs
Blue Valley	03
Commercial	29
Gathugu	29
Giakairu	42
Industrial Area	82
Kariandudu	08
Market	08
Sofia	68
Total PAHs	269

7.5 Impact on Structures

There are mobile movable commercial structures affected in the project area (on the ROW). There are no residential structures affected by the project.

7.6 Impact on Public and Community Infrastructure

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

7.7 Impact on Cultural Sites

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

7.8 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 PAHs and this RAP states 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 MAWASCO.

8 RESETTLEMENT COMPENSATION STRATEGIES

8.1 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 PAHs will be eligible for compensation:

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

8.2 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 PAHs and other community members during the community dialogues and stakeholder consultations.

- i. Compensation and livelihood restoration of PAHs will be carried out in compliance with relevant Kenyan laws and WB standards.
- ii. All PAHs affected by the project shall be adequately, promptly and equitably compensated before the commencement of works at the project-affected sites.
- iii. 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).
 - (a) The project will consider a 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.

8.3 Eligibility for compensation

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

8.4 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 **13th August 2018**. The entitlement ‘cut-off’ date refers to the time when the census and assessment of PAHs and their property in the project area commenced. This was explained to the community members and PAHs during community dialogues and the PAH census. Thereafter, no new cases will be entertained for compensation.

Upon commencing of the census and asset inventory surveys, and in order to avoid an influx of additional persons, cut-off date was established to be **13th August 2018**. The cut-off date was advertised, through discussions with PAHs 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 the pipeline.
- (b) People whose houses/structures (commercial or residential) will be affected by re-acquisition of ROW or the physical project activity implementation; (encroachers).

The list of the identified PAHs is attached as **Appendix B**. During the community and public consultations, compensation alternatives were explained to the PAHs and other stakeholders.

8.4.1 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 8-1).

8.4.2 Exclusion For Eligibility

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

- a) 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;
- b) 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);
- c) 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.

8.5 Ownership Category and Category of Losses

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

- a) Land (legal/formal land ownership) as per Land Act 2012
- b) Structures (business or residential)
- c) Informal business (stand owner, business operator or rent tenant, but not informal sub-tenants)
- d) Crop and trees owners

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.

8.6 FORMS OF COMPENSATION

8.6.1 Cash Compensation

This strategy will be through adequate and prompt monetary compensation and will apply to all the PAHs. This strategy will include cash compensation for land, structures, crops and trees and other resettlement assistance including income restoration to enable all categories of PAHs to restore their livelihoods as described in the entitlement matrix. This strategy was arrived at after consideration of the following factors:

- (a) All of the PAHs (5 in number) who are land owners with formal tenure and thus entitled to land compensation will have their land acquired via easements/wayleave acquisition which provides for cash compensation with continued use of the land thereafter. This RAP has calculated the cost of land to be acquired via easements for all the 5 PAHs.
- (b) Encroachers on the ROW are not entitled for land for land compensation because they have no claims on such type of land to warrant compensation for loss of land. Encroachers will be paid for loss of income (temporary) until the laying of the pipelines is completed upon which they will return to their trading spots.
- (c) The PAHs also prefer cash compensation as opposed to in-kind compensation as demonstrated by the results of the socio-economic survey which indicated that all PAHs have a preference to cash compensation.

8.7 Educational Facilities/Schools

The project does not impact or displace any educational facilities.

8.7.1 Relocation of Graves/cultural assets

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

8.7.2 Religious Institutions

The project has no impacts on any religious institution

8.7.3 Encroachers

Encroachers 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. The project will affect a total of **269** PAHs. 264 PAHs are categorized as encroachers. Out of the 264 PAHs, 6 are institutions while 258 are individual households. OP 4.12 requires those without legal title to affected land be compensated at replacement cost for their structures, land improvements, and will qualify for other resettlement and rehabilitation assistance including livelihood restoration, disturbance allowance.

In this RAP, the structures of the PAHs are mobile and movable and will not be destroyed as a result of the project. For this reason, there will be no compensation for structure loss instead the PAHs will be asked to move their structures temporarily to pave way for excavations and laying of pipelines after which they will re-establish their businesses by moving the structures back into the previous trading areas and will continue with their livelihood activities as usual. It will take about 3-5 days to lay the pipes (based on contractor estimates) and PAHs will be given an equal amount of daily income normally generated as part income restoration for the period of construction.

The RAP recognizes that there will be impacts associated with destruction of verandahs and that the contractor will reinstate the affected assets to their previous conditions at the contractor's cost. This cost has been factored in the BoQ and tender documents.

8.8 Associated obligations, special considerations and entitlements

- Vulnerable people

There are **2 PAHs** who meet the criteria or definition of vulnerable groups based on the census survey conducted. These PAHs will be provided with the following additional assistance namely: -

- Additional income restoration of 10 days instead of 3 days to cushion them from any delays associated with the estimated construction timeline.
- 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 or inform persons during moving, and;
- Health care if required at critical periods;
- Priority in processing disbursement of compensation packages

8.8.1 Strategy for Loss of Income and Assets

The resettlement measures or strategies have been developed in close consultation with community members, the PAHs 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 PAHs are aware of these options, including those who requested further consultations with other household and family members.

8.8.2 Cash Compensation

This strategy will be through adequate and prompt monetary compensation and will apply to all the PAHs. This strategy will include cash compensation for land, structures, crops and trees and other resettlement assistance including income restoration to enable all categories of PAHs to restore their livelihoods as described in the entitlement matrix. This strategy was arrived at after consideration of the following factors: -

- (d) All of the PAHs (5 in number) who are land owners with formal tenure and thus entitled to land compensation will have their land acquired via easements/wayleave acquisition which provides for cash compensation

with continued use of the land thereafter. This RAP has calculated the cost of land to be acquired via easements for all the 5 PAHs.

- (e) Encroachers on the ROW are not entitled for land for land compensation because they have no claims on such type of land to warrant compensation for loss of land. Encroachers will be paid for loss of income (temporary) until the laying of the pipelines is completed upon which they will return to their trading spots.
- (f) The PAHs also prefer cash compensation as opposed to in-kind compensation as demonstrated by the results of the socio-economic survey which indicated that all PAHs have a preference to cash compensation.

After compensation, it is anticipated that PAHs will re-establish themselves and will continue with the economic activities they were performing before the project. This is because the easement rights allow them to continue cultivating crops on the section of land where the pipe traverses up to certain depths for those owning land while those trading on ROW will return to their previous place of business.

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 PAHs to plan for the restoration of their livelihood enterprises and other necessary adjustments.

8.9 Replacement in Kind

The project will promote and provide in-kind compensation as an option. 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.

Cut-off Date

Upon commencing of the census and asset inventory surveys, and in order to avoid an influx of additional persons, cut-off date was established to be **13th August 2018**. The cut-off dates were advertised, through discussions with PAHs

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 8-1 below.

Entitlement Matrix Table 8-1:

Impact	Description of affected property	Entitled person	Compensation measure
Loss of Land	Partial or permanent loss of land	Land Owner	Cash compensation for taking into account replacement cost for land Disturbance allowance (15%) OR Land for land option Disturbance allowance (15%)
Loss of Land	Partial or permanent loss of land	Vulnerable Land Owner	Cash compensation for taking into account replacement cost for land Disturbance allowance (15%) OR Land for land option Disturbance allowance (15%) Priority in processing and disbursing of compensation
Loss of Structures (commercial)	Partial or permanent loss of structures	Structure Owner	Cash compensation for taking into account replacement cost for structures Compensation for loss of income Right to salvage assets and materials
Loss of structures (commercial)	Partial or permanent loss of structures	Structure Owner (Vulnerable)	Cash compensation for taking into account replacement cost for structures Compensation for loss of income including an additional 10 days of income to cater for delays in laying of pipeline.

			Right to salvage assets and materials Transportation to new locations Priority in processing and disbursing of compensation.
Loss of Crops and Trees	Perennial/annual	Land owner	Cash compensation Disturbance allowance (15%) Right to harvest
Loss of business	Commercial Businesses	Encroachers	Compensation for loss of income Right to salvage assets and materials
Loss of business	Commercial Businesses	Encroachers (vulnerable)	Compensation for loss of income including an additional 10 days of income to cater for delays in laying of pipeline Right to salvage assets and materials
Loss of business	Informal Traders/Vendors Traders/Mobile	Encroachers	Compensation for loss of income Right to salvage assets and materials

9 VULNERABLE PEOPLE

9.1 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 are **2 PAHs** who are categorized or meet the criteria of vulnerable groups. The vulnerable PAHs will be provided with the following additional support including: -

- Additional income restoration of 10 days instead of 3 days to cushion them from any delays associated with the estimated construction timeline.
- 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.

Table 9-0: Vulnerable PAHs

VULNERABILITY	No.
Vulnerable PAHs	02

Table 9-1: Forms of Vulnerability

FORMS OF VULNERABILITY	No.
Elderly	02

10 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.

10.1 Grievance Redress and Resettlement Committees

The GRRC 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.
- Resolving successions related disputes
- Resolving land ownership related disputes

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.

First Level: Village Grievance Resettlement and Compensation Committees

This RAP prefers the first level of grievance or conflict redress on RAP related issues as a result of this project and handles 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 Grievance Resettlement and Compensation Committees** and the membership will include:

- The sub locational chief,
- Assistant chiefs,
- One project affected youth,
- One project affected woman,
- One project affected male
- Farmers representative
- A representative of vulnerable PAHs,
- MAWASCO 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:

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

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).

10.2 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 MAWASCO 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 MAWASCO for actual payment of entitlement awards to PAHs. 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.

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 PAH 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 PAH 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 PAH could go to the environment and land court.

10.3 Grievance Mechanism Steps and Procedures

Step 1: Receipt of complaint/grievance

A verbal or written complaint from a PAH 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 MAWASCO's office.

Box 1. Role of a Grievance Officer

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

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

The grievance team will hold meetings at **Village or Sub County 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 MAWASCO'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. A sample **Grievance Resolution Form** is attached as **Appendix 3** for use by the project. If additional corrective action is not possible alternative avenues may be pursued.

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 MAWASCO
- 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 PAHs or landowners that have any grievances concerning their compensation. The cascading structures they put in place are also expected to take up this responsibility.

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 MAWASCO and committee members.

However, 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 MAWASCO and the GRCCS.

Appointment of Grievance Redress and Compensation Committee Members

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

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.

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.

II 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 PAHs 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. MAWASCO's and WSTFs' Monitoring Officer will be part of the RAP implementation team.

II.1 General Objectives of Monitoring

Monitoring is a key component of the Resettlement Action Plan and is an integral part of MAWASCO'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.

11.2 Internal Monitoring

Monitoring will address the following aspects:

- Social and economic monitoring: follow-up of the status of PAHs, 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 where its regarded as necessary; and
- Grievances and grievance management system.

Indicators and Frequency of Monitoring

During the active phase of resettlement and compensation, the following key progress indicators will be measured internally by MAWASCO 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 PAHs in cases where the project took responsibility of construction;
- 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 PAHs, 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

11.3 External Monitoring

MAWASCO will hire a suitably qualified external social auditor with significant experience in resettlement to carry out one 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 External Monitoring 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 MAWASCO and WSTF.

12 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.

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

This RAP provides detailed information regarding the consultation process and documents the consultation process to date. It also describes information disclosure at different stages. The consultation process established for the project has employed a range of formal and informal consultative methods including in-depth interviews with key informants, focus group discussions, meetings, and workshops. The overall goal of the consultation program is to disseminate project information and to incorporate PAHs views.

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 PAHs, 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 PAHs 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 PAHs.
- 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 PAHs 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

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 PAHs in restoring their livelihoods.

identification and assessment for the PAHs.

12.1 Community Members and Stakeholder 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 2 meetings with relevant county government were held at the various points along the proposed pipeline routing.

Table 12-0: Community Consultations

DATES	VENUE	NO.OF PARTICIPANTS
11 th August 2018	Gathugu Market	23

Table 12-1. Consultation with National and County Government Institutions and Communities.

DATE	VENUE	NO. OF PARTICIPANTS
13 th August 2018	Industrial Area Market	48

12.2 Community and Stakeholders concerns/views

The community, PAHs 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 PAHs and key stakeholders were made. The summary views of the community members are presented in the tables.

Table 12-2: PUBLIC CONSULTATION AT GATHUGU MARKET ON 11th AUGUST 2018.

Comments and Issues	Response
<p>The area chief wanted to know what measures the company (MAWASCO) is planning to put in place in order to bring down cost of water.</p>	<p>The technical manager informed the chief and residence present at the meeting that the water tariffs are provided by WASREB basing on various factors.</p> <p>Residents suggested that the company should incorporate technology in its operations for instance use of solar powered pumps. This will significantly reduce cost of pumping water which will lead to a reduction in water tariffs.</p>
<p>Is the project funded by the county government or it's purely by MAWASCO?</p>	<p>The project is by funded by World Bank through WSTF to MAWASCO</p>
<p>How will the census of potential PAHs be carried out?</p>	<p>The RAP consultant will be in charge of enumerating all the PAHs, this will be done through administering asset register questionnaire that clearly captures the age, land number, vulnerability and the type of asset lost e.g. structure, business or crops and trees.</p>
<p>We utilize our land mainly for subsistence farming, if acquired what will we depend on?</p>	<p>The project will acquire land via easement. PAHs who have legal ownership of land to be affected by the project will be compensated for restricted use of the land where the project will pass through. They will still be able to utilize the land for growing crops and trees.</p>
<p>You have talked of a cutoff date. What does it mean and how does it apply?</p>	<p>Cutoff date is the date we will complete the census exercise and asset inventory. 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</p>

	woodlots) established after the date of completion of the assets inventory, or an alternative mutually agreed on date, will not be compensated.
Some of us have built structures along the road reserves. Will we be compensated for the displacement?	Those who have structures on the ROW 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.
Resident wanted to know the expected commencement date of the project.	The proposed project is expected to commence immediately after all the PAHs are compensated and this is estimated to be in early April 2019.
Will the project benefit us in any other way apart from compensation for easement and disturbance?	The project will provide access to quality water supply regularly. The end result is that with regular water supply and adequate sanitation facilities, public health and sanitation will be enhanced. Jobs will also be available during construction and the operational lifetime of the water supply line.
Is there a grievance redress mechanism system in place and will it be effective?	There is a grievance redress mechanism in place which with cooperation from the PAHs is expected to handle any issues fairly.
Will my whole land be affected?	The water pipeline is only going to affect land size width of 3m & will not affect whole land. In a case where a substantial piece of land is affected rendering the remaining area uneconomical, outright acquisition will apply with full compensation given.
Will compensation be done before or after the pipeline has been constructed?	Compensation will be done before the construction begins.

Table 12-3: PUBLIC CONSULTATION AT INDUSTRIAL AREA MARKET ON 13th AUGUST 2018.

Comments and Issues	Response
When will the project begin?	The project will commence after all the PAHs are compensated. This will be perhaps in April 2019. However, the official date will be communicated after compensation of PAHs.
Will we all be compensated?	All the affected PAHs will be compensated after a valuation of their property is done by a professional valuer
How about those people whose plots the pipe will pass through?	All those affected by the project will be compensated including land owners. Compensation will be for easement rights.
Will the affected persons be informed of when demolition will be done or it will be like what we are watching happening on TV of late?	Sufficient notice will be served to the affected persons and they will also have time to salvage.
How will our youth benefit from this project besides the water supply?	The youth will be given priority when it comes to employment opportunities especially in areas where no skilled labour is required.
Will we be allowed to resume our areas of businesses?	After the pipe is laid and back filling done, affected persons will be allowed to resume and carry on with their businesses.

13 IMPLEMENTATION OF THE RAP

13.1 Implementation Arrangements

All PAHs will be compensated before their structures are demolished or moved, as preferred by the PAP, 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.

MAWASCO will be the lead agency in the RAP implementation and will work together with the County Governments to implement the RAP.

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

The RAP implementation team will be responsible for:

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

13.2 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:

1. MAWASCO Staff (Technical Manager)
2. Independent civil society organization/ NGO representative (1);
3. National Government Representatives (Chiefs) for each affected location (1)
4. County Government Representatives (CEC for Lands and Physical Planning or appointee)
5. Representatives of traders in the affected sites (1)
6. Works Contractor
7. 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 PAH;
- (iv) Report to the MAWASCO's senior management team and stakeholders;
- (v) Ensure that the information needs of the PAHs 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 PAHs with regard to the RAP implementation progress.

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;

- (i) County Government Representatives (CEC for Lands and Physical Planning)
- (ii) Works Contractor
- (iii) Supervising Contractor
- (iv) National Land Commission
- (v) National Government Representatives (Chiefs) for each affected location (1)
- (vi) MAWASCO team

13.3 Schedule of Implementation

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

- (i) target dates for the start and completion of compensation payments;
- (ii) timetables for and the place of compensation payments;
- (iii) target dates for fulfilling the prerequisites for compensation payments and other legal requirements by PAHs;
- (iv) the timetable for special assistance to vulnerable groups;
- (v) dates for vacant possession of the acquired land from the PAHs (this date must be after the payment of all compensation); and
- (vi) the link between the RAP activities to the implementation of the overall sub-project components.

13.4 RAP Implementation Schedule

The activities related to construction of Project are expected to commence in April 2019 by which time the PAHs are expected to have moved from the site. It is expected that by end of March 2019, all the PAHs 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 13-0: Implementation Schedule for the RAP

Project Activities	Weeks-Timeline											
	1	2	3	4	5	6	7	8	9	10	11	12
RAP approval (WB)												
Establishment and Training of GRRC												
RAP disclosure												
1 month notice to PAHs												
Relocation of PAHs												

Grievance management													
Compensation payment													
RAP monitoring													
RAP completion and audit													

13.5 RAP Budget

The total budget for resettlement compensation is **Kshs. 977,250.00** including compensation for temporary loss of income by the traders encroaching on ROW for the duration of construction. In addition administration cost of 30 per cent for the RAP implementation, monitoring and evaluation has been considered. PAHs will be paid their resettlement and compensation entitlements and receive assistance prior to the project works being carried out in the affected project sites and no exceptions will be allowed. Construction will only commence after the PAHs are fully compensated. The source of funding for the RAP is counterpart funding from the MAWASCO.

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

Table 13-1: RAP Compensation Cost

Item	Value
Value of crops and trees	10,000.00
Loss of income (Encroachers)	538,000.00
Partial loss of Land (Easement)	168,000.00
Total Compensation	716,000.00

Table 13-2: RAP Implementation Costs

Aspect	Value (Kshs)
External Monitoring and External Coordination for RAP Implementation	214,800.00
Grand Total	214,800.00

Table 13-3: Total RAP Budget

Total RAP Cost	Kshs
Crops and Trees	10,000.00
Loss of income (Encroachers)	538,000.00
Partial loss of Land (Easement)	168,000.00

External Monitoring and External Coordination for RAP Implementation/Training costs (30%)	214,800.00
Contingency (5%)	46,450.00
Grand Total	977,250.00

The costs for this 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 PAHs.
- e) Mid-term/end-term evaluation and completion report assignments.
- f) Other incidentals estimated.

I4 APPENDICES

14.1 APPENDIX A-VALUATION/ ASSET REGISTER ROLL

I4.2 APPENDIX B-LIST OF ATTENDANTS

I4.3 APPENDIX C- GRIEVANCE REDRESS FORMS (SAMPLE)

14.4 APPENDIX D. SELECTED PHOTOGRAPHS



Training of Research Assistants on-going



The Customer Relations Officer Mr. Mwangi also going through the questionnaire



Affected traders and business people along the routing (ROW)



APPENDIX E- PIPELINE ROUTING AND MAPS