



THE GOVERNMENT OF KENYA

MINISTRY OF WATER AND IRRIGATION

KENYA WATER SECURITY AND CLIMATE RESILIENCE PROGRAM (KWSCRIP)

Revised Draft

**RESETTLEMENT POLICY FRAMEWORK  
(RPF)**

March 2015

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## ACRONYMS AND ABBREVIATIONS

ADR	Alternative Dispute Resolution
AfD	Africa Development Bank
APL	Adaptable Program Loan
AM	Aide Memoire
ARAPs	Abbreviated Resettlement Action Plans
AWSB	Athi Water Services Board
CDA	Coast Development Authority
CPS	Country Partnership Strategy
CRWC	County Resettlement Working Committee
CWSB	Coast Water Service Board
DPs	Displaced Persons
EIA	Environmental Impact Assessment
EMCA	Environmental Management Coordination Act
EMP	Environmental Management Plan
FY	Financial Year
GCRC	Gross Current Replacement Cost
GOK	Government of Kenya
IDA	International Development Association
JICA	Japanese International Development Agency
KMD	Kenya Meteorological Department
KSHS	Kenya Shillings
KWSCRP	Kenya Water Security and Climate Resilience Program
KWSCRP-1	First Kenya Water Security and Climate Resilience Project
KWSCRP-2	Second Kenya Water Security and Climate Resilience Project
KWSCRP-AF	Additional Financing for KWSCR-1
LA	Land Act 2012
LACT	Land Acquisition Compensation Tribunal
LEP	Livelihoods Enhancement Programme
LGI	Local Government Institutions
LVNWSB	Lake Victoria North Water Services Board
LRA	Land Registration Act 2012
LRCC	Locational Resettlement and Compensation Committees
M&E	Monitoring and Evaluation
MDGs	Millennium Development Goals
MENR	Ministry of Environment and Natural Resources
MOF	Ministry of Finance
MORDA	Ministry of Regional Development Authorities
MEWNR	Ministry of Water and Irrigation
MTR	Mid-Term Review
NEMA	National Environment Management Authority
NGO	Non-Governmental Organisation
NLC	National Land Commission
NIB	National Irrigation Board
NLP	National Land Policy
OP	Operational Policy
OVC	Orphaned Vulnerable Children
PAD	Project Appraisal Document
PAP	Project Affected Persons

PCDP	Public Consultation Disclosure Procedures
PCU	Project Coordination Unit
PIM	Project Implementation Manual
PLO	Project Liaison Officer
PPT	Project Preparation Team
RAPs	Resettlement Action Plans
RPF	Resettlement Policy Framework
SCDC	Sub-County Development Committee
SCLO	Sub-County Land Office
SCRCC	Sub-County Resettlement and Compensation Committees
STI	Science, Technology and Innovation
USD	United States Dollar
VMGF	Vulnerable and Marginalised Groups Framework
VMGP	Vulnerable and Marginalised Groups Plan
VRB	Valuation Registration Board
WaSSIP	Water and Sanitation Services Improvement Program
WB	World Bank
WSBs	Water Services Boards
WSPs	Water Services Providers
WUA	Water Users Association
WRMA	Water Resources Management Authority

# I. BASIC INFORMATION

## 1. Country and Program Name:

Kenya - Water Security and Climate Resilience Program

## 2. Project Development Objectives (KWSCR-1):

To improve water security and build climate resilience by financing water-related investments, strengthening water investment planning and preparation, strengthening integrated water resource planning and management, improving water and climate risk management, and building a solid institutional framework

### Specific objectives

- I. Increase productive uses of water;
- II. Improve the quality of investment planning and preparation for water security and climate resilience; and
- III. Strengthen climate risk decision making and preparedness.
- IV. Strengthen water resources management capacity of MEWNR and other related entities.]

## 3. Project Outcomes:

- I. To increase productive uses of water.
- II. To improve the quality of investment planning and preparation for water security and climate resilience
- III. To strengthen climate risk decision making and preparedness.

## 4. Expected Project Benefits:

Inclusive and sustained growth in Kenya through the achievement of water security and resilience to climate variability

## 5. Identified Project Social Risks:

The project investment is expected to lead to economic and physical displacement of the beneficiaries

**Recipient:** Government of Kenya – Ministry of Environment, Water and Natural Resources (MEWNR)

**Responsible Government/Country Agency for RPF Implementation:** MEWNR

**Total Program Cost (USD million):** Approx. USD\$350 million

IDA/IBRD (USD million): Approx.350

Government (USD million):

Other-Co-financing (USD million): KfW – Appr.USD\$40 m

**Total Cost of RPF (USD million): USD\$2.8 million**

Project preparation (USD million): USD\$ 3.4 million

Government (USD million):

**Name/Contacts of Consultant/Consulting Firm who prepared RPF:**

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**Date RPF Prepared:** January 2013  
**Date RPF Updated:** March 2015

**Date RPF** 2013

**Country:** Kenya

**Social Safeguards Specialist:** Lazarus Kubasu Nolasco and Tito Kodiaga

**Safeguard policies triggered?**

**Applicable**

Environmental Assessment (OP/BP 4.01)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Natural Habitats (OP/GP 4.04)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Forestry (OP 4.36)	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Pest Management (OP 4.09)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Cultural Property (OP 4.11)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Indigenous Peoples (OP 4.10)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Involuntary Resettlement (OP 4.12)</b>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Safety of Dams (OP/BP 4.37)	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Projects in Disputed Areas (OP/BP 7.60)	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Projects on International Waterways (OP/BP 7.50)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No



## 2. DESCRIPTION OF THE PROGRAM AND POTENTIAL INVESTMENTS CAUSING RESETTLEMENT

### PROGRAM CONTEXT

The achievement of Kenya's development objectives on food security, poverty reduction, and economic growth depends on the ability of the country to efficiently use and manage its available water resources. Water is a productive input into priority economic sectors under Kenya's Vision 2030 such as agriculture, industry, energy and tourism, and lack of water security causes economic losses and constrains growth potential. In 2004, the World Bank estimated that losses from climate variability average about 2.4 percent of GDP per year with a further 0.5 percent loss from water resources degradation. Another World Bank study in 2006 found that the floods of 1997-98 caused transport infrastructure damage and destruction with a replacement cost of USD\$777 million<sup>1</sup>.

According to the Pilot Program for Climate Resilience Climate Variability Index, Kenya has a history of greater disaster risk – particularly droughts and floods – than the majority of sub-Saharan African countries, at least when assessed over the past 30 years seriously impacting the country's economic growth and competitiveness<sup>2</sup>.

With annual freshwater availability of approximately 526 m<sup>3</sup> per capita, Kenya is already classified as water scarce country. Over 80 percent of Kenya's area is arid or semi-arid where a reliable supply of water is a limiting factor for economic development. Rapid increases in water demand are driven by population growth, economic growth, and urbanization. Under investment in water infrastructure in Kenya for the last two decades has resulted in a total water supply storage capacity of 3.1 m<sup>3</sup> per capita, one of the lowest levels in the world, which leaves the country vulnerable to climate and hydrologic variability. The Ministry of Water and Irrigation (MEWNR) is currently increasing water storage to 16 m<sup>3</sup> per capita by 2012 through the construction of new water supply reservoirs, though much more is needed in order to achieve water security. Catchment degradation compounds these challenges by increasing the intensity of flooding and reducing water storage capacity through reservoir sedimentation.

Government of Kenya (GoK) has planned a large scale water investment program to address these challenges and to close the massive infrastructure gap that has been estimated at US\$ 5-7 billion in various existing and on-going studies<sup>3</sup>. The Ministry of Water and Irrigation, Water Sector Strategic Plan (2010) and the draft Water Harvesting and Storage Management Policy (2010) focus on reducing the water infrastructure gap through single and multipurpose storage. This approach is in line with a recent World

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<sup>1</sup> World Bank – Project Appraisal Document (PAD) – Kenya Water Security and Climate Resilience Program.

<sup>2</sup> Adger, W.N., N. Brooks, M.Kelly, S. Bentham, and S. Eriksen, 2004, New Indicator of Vulnerability and Adaptive Capacity, Tyndall Capacity Technical Report 7.

<sup>3</sup> KWSCR - PAD, 2012 pg 12

Bank report that found substantial opportunities for multipurpose storage to secure reliable water supply, manage floods, provide irrigation and generate hydropower<sup>4</sup>.

In response to these challenges, the Government of Kenya is implementing a Kenya Water Security and Climate Resilience Program. Currently, KWSCRCP has two projects, the Kenya Water Security and Climate Resilience Project (KWSCRCP-1) (P117635) and the Coastal Region Water Security and Climate Resilience Project (KWSCRCP-2) (P145559). Additional Financing is being considered for WSCRCP-1 (P151660). This RPF applies to those projects, as well as any future projects in the KWSCR Program.

The long-term objective of the program is to improve water security and build climate resilience by financing water related investment, strengthening water investment planning and preparation, improving water and climate investment risk management, and building a solid institutional framework. The primary indicator of success by the end of the program will be increased water storage capacity to regulate water availability for productive use and increased climate resilience.

*The First Kenya Water Security and Climate Resilience Project<sup>5</sup>(KWSCRCP-1)*, financed through a credit by the International Development Association (IDA), is being implemented by MEWNR from 2013-2020. The project was agreed by the Government of Kenya and the World Bank in the World Bank's Country Partnership Strategy (2010-2013) to support a significant transformation of the water sector fully aligned with Kenya's Vision 2030, as well as the productive, environmental and social needs of the country.

KWSCRCP-1 includes the following components: (i) water resources development investments, including storage for all purposes; (ii) climate resilience and climate risk management investments; (iii) water resources management investments, including institutional support.

The KWSCRCP-1 is a "framework operation" that will establish eligibility criteria and preparation guidelines that must be met in order for sub-projects/investments to be funded under the project. The framework is intended to set the 'rules of the game' by establishing a rigorous evidence-based investment selection and preparation process, including specifying the technical, economic, financial, environmental, social, institutional, etc. requirements for sub-project funding.

An Investment Framework will be developed that will establish the eligibility and preparation criteria and procedures that are required to be met in order for sub-projects/investments to be funded under the Project.

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<sup>4</sup> World Bank, 2012, Toward a Strategic Analysis of Water Resources Investment in Kenya

<sup>5</sup> In this document, KWSCRCP is referred to the investment framework or the overall project which will have a number of investments not yet defined. Investment(s) and project(s) are used interchangeably and refer to the future investments and projects under KWSCRCP.

## **PROJECT DEVELOPMENT OBJECTIVES**

The project development objectives of the WSCR-1 are to: to (i) increase availability and productivity of water for project beneficiaries; and (ii) enhance the institutional framework and strengthen capacity for water security and climate resilience in the country.

## **KENYA WATER SECURITY AND CLIMATE RESILIENCE PROJECT COMPONENTS**

### *Component 1:- Water Resources Development*

This component support climate resilience and water security for economic growth by financing and supporting the preparation of water resources development investment/sub-projects that meet the requirement of an IF. The IF establishes the ‘rule of the game’ by making transparent the decision making process on sub-project selection and ensuring that selected sub-projects are well prepared, effectively contribute to realizing the objective of building water security and climate resilience and are implemented in a sustainable manner. The advantage of the framework approach is that it provides GoK and the World Bank the opportunity to invest early in ‘low hanging’ infrastructure and related activities provided that they are well prepared, while establishing principles for selecting and preparing subsequent investment. IF will have a longer life, in that it will eventually be fully integrated into the planning process, indeed the principles of the IF are the indispensable extension of any solid planning system.

IF consists of two parts (i) sub-project selection/eligibility criteria and (ii) technical, economic, financial, social, environmental and institutional guidelines for preparing investment at the feasibility level. Both parts of the IF must be met in order for the proposed sub-project to receive project financing. Sub-projects that could be considered for financing under the project include infrastructure and related activities for one more of the following:

- Bulk water supply, including storage for use and flow regulation and groundwater development.
- Water for productive and consumptive use
- Flood management infrastructures or drought mitigation; and
- Watershed management

Component 1 will include two sub-components: *sub-component 1.1 Water Sector Investment and sub-component 1.2 Water Investment Pipeline Facility*. Water Sector Investment will include potential sub-projects that are selected and prepared in accordance with the Investment Framework. An initial pipeline of potential sub-projects is being advanced.

Sub-component 1.2 - *Water Investment Pipeline Facility* will contribute to closing the large infrastructure gap in Kenya water sector at around US\$5-7 billion in various existing and on-going exercises. In particular, the National Water Resources Master Plan 2030 (supported by Japanese International Cooperation Agency) is a major planning

effort that is identifying water investment that are consistent with Kenya social and economic development aspirations and could contribute to building the water investment pipeline. Consequently, this sub-component will finance preparation activities for a range of potential investment – from water supply and irrigation scheme to large scale water investment and including those investments in the initial pipeline – requiring preparation budget of up to US\$10 billion. It is envisioned that those investments meeting the requirements of the IF will be eligible for project financing in the first phase or later stage of the project. Specifically the sub-component will finance pre-feasibility studies, feasibility studies and detailed designs as required by the IF. Other support will include: (i) development of safeguard instrument (ii) surveys and tests; (iii) preparation of terms of reference (TORs) for consulting services to support sub-project implementation and (iv) preparations of operations manuals.

### ***Component 2 – Water Sector Reforms and Management Instrument***

Component 2 will support the current sector institutions as well as the preparation, implementation and full financing of the new legal and institutional framework resulting from alignments with the new constitution of Kenya. It will also support the development of integrated and participatory water investment planning that leads to the development of a preliminary pipeline of investment proposals. The overall objective of this component will be to strengthen the enabling institutional and legal framework to sustainably advance Kenya’s vast water sector investment program in order to achieve water security and climate resilience. To this end, Component 2 includes two sub-components: (i) *support for water sector reforms* and (ii) *strengthening water management and investment planning*.

*Sub-component 2.1 Support for water sector reforms* is supporting the current sector institution as well as the preparation, implementation and full functioning of the new legal and institutional framework. The objective of this support will be to enhance the capacity of water sector institutions to fulfil their mandates, policies and strategies specifically related to the sustainability of the water sector investment program. Thus the emphasis on this sub-component will be on institutional and legal issues that contribute most directly to meeting project objectives and furthering the investment program. Targeted support will be provided on a need basis to broader water sector reforms that could indirectly impact on the project objectives. This sub-component will have the following specific activities.

- Activity 2.1.1 - Contingency support to key water sector institutions
- Activity 2.1.2 – Building the capacity for water sector institutions
- Activity 2.1.3 – Supporting institutional and legal reforms
- Activity 2.1.4 – Supporting the legal and institutional transitional process.

*Sub-component 2.2 Strengthening water management and investment planning* will purpose to develop, test and install new system for integrated, multi-sector water investment planning, and support use of this system to develop a preliminary pipeline of investments. The water investment planning process will aim to generate well defined, coordinated and sustainable investment options that increase water available for

productive, economic, and social uses, strengthen livelihoods and reduce climate risks. Both enhancing stakeholder participation and modernizing and improving the water knowledge base and monitoring system central to the investment planning. Catchment or basin vulnerability assessment and preparation of basin disaster risk management plans could be supported under this sub-component. Specific activities under this sub-component will include:

- Activity 2.2.1-. Developing and applying a water investment planning system
- Activity 2.2.2 – Developing a system for stakeholder participation
- Activity 2.2.3 – Strengthening water information system

### ***Component 3 – Support Project Implementation of KWSCR***

This component will support the establishment of the KWSCR/PMU to provide for effective project implementation throughout the reform period (that is, prior to the launch of the reforms, during the transition period and beyond, to the extent needed. Specifically, the component will finance the required office space, goods (e.g. vehicles, equipments such as computers), staff, consultant services, travel, training and operating costs that will allow PMU to carry out its responsibilities for project implementation. These responsibilities will include project management and coordination, procurement and financial management, project monitoring and evaluation, social and environmental safeguards management and oversight project communications and outreach, investment sub-project selection and execution.

### **RESETTLEMENT IMPLICATIONS OF WSCR**

During the implementation of KWSCR, specific investments in bulk water supply including infrastructure for storage use, flow regulation and ground water development; infrastructure for flood management; infrastructure for water for productive and consumptive use will more likely lead to acquisition of a sizeable portion of hectares of land in project sites. This is likely to lead to land acquisition on a permanent or temporary basis for investments' specific infrastructures. These investments will also likely affect livelihoods.

The impact will vary in degree depending on the nature of investment under the KWSCR. For instance, the building of reservoirs and other structures related to multipurpose dams could result in the total loss of land, assets, and livelihoods of the communities in the project area. Such projects could require relocation and displacement due to submergence of land and structures as well as other assets. On the other hand, some investments such as boreholes, water supply system and transmission lines even though small could cause land take and resettlement and impact livelihood, and may not necessarily cause physical displacement of a great number of people. At this point, the exact impact of the future investments under the KWSCR is not yet known and it will only be known when investments under KWSCR are identified. Nonetheless, all the future investments will be of large nature which will involve land accusation and impact on livelihoods. Cultural and community assets as well as spiritual sites may also be lost. Some villages will lose their farmlands permanently.

Due to the complex and varied nature of the investment under the KWSCRП, the impact and the severity of resettlement will also be very different, as noted above. As a rule, each sub project investment which will affect land and assets will trigger preparation of the investment specific resettlement action plan (RAP) based on this RPF. However, the level of details and complexity of each RAP will depend on the investment and type and the level of impact. Since there is an existing RPF, the investment specific RAPs which will be submitted as a condition of a given investment financing need not include the policy principles, entitlement and eligibility criteria. The investment specific RAPs, though, need to include detailed baseline census and socio-economic survey information; specific compensation rates and standards; policy entitlements related to any additional impacts identified through the census or survey; description of resettlement sites and programs for improvement or restoration of livelihoods and standard of the living; implementation schedule or resettlement activities; and detail cost estimate. In addition, the RAP will include a detailed description of the project and its impacts.

## 3. METHODOLOGY & AN OVERVIEW OF IMPACTS

This Resettlement Policy Framework (RPF) was prepared using the following approaches and methodologies;

### **DETAILED AND IN-DEPTH LITERATURE REVIEW**

Existing baseline information and literature was reviewed in preparing this RPF. Documents reviewed include:

- *Project Aide Memoire (AM)*
- *Draft Project Appraisal Document (PAD)*
- *Project Implementation Manual*
- *Financing Agreement*
- *Constitution of Kenya,*
- *Government of Kenya Valuation Act*
- *World Bank Involuntary Resettlement Operational Policy 4.12.*
- *Land Act 2012*
- *Land Registration Act 2012*
- *Land Adjudication Act*
- *Existing pre-feasibility and feasibility studies*

### **INTERACTIVE DISCUSSIONS**

As part of stakeholder consultations and engagement process, institutional specific consultations and discussions were held with relevant key institutional stakeholders related to this project, in order to integrate their views, opinions and comments regarding this RPF. To this end, consultations were held with:

- Ministry of Environment, Water and Natural Resources (MEWNR),
- National Irrigation Board (NIB),
- National Environment Management Authority (NEMA),
- Ministry of Regional Development Authorities (MORDA),
- Athi Water Services Board (AWSB),
- Coast Water Services Board (CWSB)
- Water Resources Management Authority (WRMA),
- Ministry of Finance (MOF)
- Mombasa Water Sewerage Company (MOWASCO)
- County Government of Mombasa, Kwale, Busia, Siaya, Nakuru, Nyandarua

These individual stakeholder consultations were conducted between August 2012 and December 2014 with the consultant holding individual institutional consultations with heads of different institutions that could benefit as implementing agency from KWSCRIP investments.



## **DEFINITION OF PROJECT AFFECTED PERSONS**

According to this RPF, Project Affected Persons (PAPs) are considered to be those who stand to lose as a consequence of the project, all or part of their physical and non-physical assets, including homes, communities, productive lands, resources such as forests, fishing areas or important cultural sites, commercial properties, tenancy, income-earning opportunities as well as social and cultural networks and activities. Such impacts may be permanent or temporary. This might occur through land expropriation, using eminent domain or other regulatory measures, and could include restricted or reduced access to legally designated fishing areas and protected areas such as gazetted forests as well as grazing land.

The RPF under KWSCRП applies to all economically and/or physically displaced persons regardless of the total number of affected or the severity of impact and whether or not PAPs have legal title to the land. Particular attention will be paid to the needs of vulnerable groups among those economically and/or physically displaced especially those below the poverty line, the landless, the elderly, women and children, including orphans, marginalized groups, ethnic minorities and other historically disadvantaged groups or other economically and/or physically displaced persons who may not be protected through Kenya's land compensation legislation.

## **PROJECT ACTIVITIES WITH DISPLACEMENT POTENTIAL**

The main investments/projects<sup>6</sup> envisaged to have displacement potential are listed below.

However, this list is not exhaustive and other types of investments identified under the KWSCRП during the course of its implementation. The following works will include both construction and /or rehabilitation of:

- Multipurpose dams
- Diversion weirs
- Irrigation schemes
- Flood Management Structures
- Well fields
- Boreholes
- Water supply networks, including transmission lines
- Water treatment networks
- Access roads
- Watershed catchment protection

## **POTENTIAL IMPLEMENTING <sup>7</sup> AGENCIES (IA)**

The list is not exhaustive and could include other ministries and agencies

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<sup>6</sup> Investment and projects are used interchangeably in this document. They refer to investment which will be funded under KWSCRП

<sup>7</sup> Executing organizations/agencies, which are also referred in this document as implementing agencies, refer to institutions which will prepare and implement projects under KWSCRП.



- Ministry Environment, Water and Natural Resources (MEWNR)
- Department of Regional Development Authorities (RDA)
- National Irrigation Board (NIB)
- Coastal Water Services Board (CWSB) and other Water Services Boards
- Coast Development Authority (CDA)
- Athi Water Service Board (AWSB)
- Water Resources Management Authority (WRMA)
- Kenya Meteorological Department (KMD)
- Seven Water Service Boards in the country Water Supply Companies in Kenya
- County Governments

### **CATEGORIES OF PAPS**

The likely displaced persons (economically or physically) under various KWSCRIP investments are categorized into three groups namely:-

- Project affected persons (PAPs) are individuals whose assets may be lost and/or affected, including land, property, other assets, livelihoods, and/or access to natural and/or economic resources as a result of activities related to a given investment under KWSCRIP.
- Project affected households are groups of PAPs in one household and where one or more of its members are directly affected by a given investment/project under KWSCRIP. These include members like the head of household, male, and female members, dependent relatives and members, tenants, etc.
- Vulnerable groups who could be a member of affected households. The investment/ project will separately identify the vulnerable members, such as those who are too old or too ill; children; those stricken with HIV/AIDS; women; unemployed youth, and orphans; households headed by women that depend on sons, brothers, and others needing support and are especially vulnerable. The vulnerable groups are eligible for additional assistance under this RPF, as it is explained later in *Entitlement Matrix, Table 4*.

The categories given above may not cover all types of affected persons. In addition, the categories are not mutually exclusive. The KWSCRIP investment activities should have well prepared and comprehensive RAPs that would be specific and comprehensive enough, listing all affected groups and people and the impacts

Affected local community – A community is affected if project activities affect their socio-economic and/or social-cultural relationships or cohesion. For example project activities could lead into loss of welfare or cultural erosion etc. In addition, the investments under KWSCRIP can cause breakdown of communities and social networks due to physical separation as a result of the investment specific infrastructures if not mitigated.

### **APPROXIMATE NUMBER OF PAPS**

Determination of the number of all the PAPS is not possible at this time due to the nature of KWSCRCP, which is a framework approach and as a result the investments which will be funded under the KWSCRCP have not been fully identified in terms of location, nature, scope and magnitude. At this stage, project descriptions exist for few sub project investments to allow estimation of number of the PAPS. The purpose of this RPF is therefore to establish the mechanisms, procedures and principles for compensation and livelihood restoration for all potentially affected people under KWSCRCP and guide the preparation of the RAPs for individual investments under KWSCRCP.

Each sub-project investment which might require physical and/or economic resettlement, the number of PAPS will be established through the census which will be undertaken as part of the preparation of the investment specific RAP.

### **POTENTIAL RELOCATION AREAS**

During the development of KWSCRCP investments, location for resettlement if necessary will be identified during the development of the RAPs by the RAP consultants, the Sub-County Resettlement and Compensation Committee (SCRCCSCRCC) and project affected persons.

## 4. PRINCIPLES & OBJECTIVES

### GOVERNING RESETTLEMENT PREPARATION & IMPLEMENTATION

This RPF applies to all components of the various sub project investments under the KWSCR. It applies to all eligible persons regardless of the severity of impact and whether or not they have legal title to land.

#### **THE OBJECTIVES OF THE RESETTLEMENT POLICY FRAMEWORK (RPF):**

The objectives of the Resettlement Policy Framework (RPF) are to:

- Establish the KWSCR resettlement and compensation principles and implementation arrangements;
- Describe the legal and institutional framework underlying Kenyan approaches for resettlement, compensation and rehabilitation;
- Define the eligibility criteria for identification of project affected persons (PAPs) and entitlements;
- Describe the consultation procedures and participatory approaches involving PAPs and other key stakeholders; and
- Provide procedures for filing grievances and resolving disputes.

The RPF will apply to all sub project investments which will be financed under the KWSCR. The procedures will be carried out throughout preparation and implementation of the projects, and impacts of any potential resettlement will be included in monitoring and evaluation (M&E). When a sub project RAP is required, it will be prepared in accordance with guidance provided in this RPF. The RPF follows the guidance provided in the World Bank Operational Policy on Involuntary Resettlement (OP4.12), as described in *Annex 8* as well as Kenyan laws related to land acquisition.

The RPF ensures that any possible adverse impacts of sub project activities are addressed through appropriate mitigation measures, in particular, against potential impoverishment risks. These risks can be minimized by:

- Avoiding displacement of people without a well designed compensation and relocation process;
- Minimizing the number of PAPs, to the extent possible;
- Holding extensive consultation with project beneficiaries and project affected persons.
- Compensating for losses incurred and displaced incomes and livelihoods; and
- Ensuring resettlement assistance or rehabilitation, as needed, to address impacts on PAPs livelihoods and their wellbeing.

## **RATIONALE FOR PREPARING THE RPF**

Given the nature of the KWSCR, few project investments have been identified while others have not been identified at the time of preparation of this RPF. This RPF therefore will be the basis for preparing the project investments specific Resettlement Action Plans (RAPs). The RPF will set out the procedures for the development of more detailed RAPs for those investments/projects and associated facilities that have an impact on land, assets, and livelihoods. The RPF ensures that any possible adverse impacts are addressed through appropriate mitigation measures, in particular, against potential impoverishment risks.

## **FLEXIBILITY OF THE RPF**

Since this RPF is prepared for a 10 year program it needs to be flexible to respond to the changes which may happen during the life of the KWSCR. Such changes will include:

- Changes in relevant legislations; introduction of new acts and legislations;
- The upcoming constitutional reforms which includes reforms in the water and land sector which may affect existing ministerial arrangements,
- Possible adjustments to the new devolved structures etc.

As a result, Mid-Term Review (MTR) will be carried out to assess how effectively the safeguard instruments have been implemented and if any updates/revisions are required. In other words, the RPF is a living document and if need be, will be revised to reflect issues that may not have been foreseen now but may arise in the future as well as reflect legal, institutional, and policy changes that could occur during the life of the program. In addition, in the event that there are changes that arise anytime during the implementation of the program not covered in the RPF, the document will be updated accordingly.

## **RPF PRINCIPLES UNDER KWSCR**

- 1. Involuntary resettlement and land acquisition will be avoided where feasible, or minimized, where it cannot be eliminated.*
- 2. This RPF applies to all PAPs regardless of the total number affected, the severity of the impact and whether or not they have legal title to the land. Informal or customary tenure is to be treated in the same manner as formal, legal titles.*
- 3. Where involuntary resettlement and land acquisition are unavoidable, resettlement and compensation activities will be conceived and executed as sustainable development programs, providing resources to give PAPs the opportunity to share project benefits.*
- 4. PAPs will be meaningfully consulted and will participate in planning and implementing of the resettlement activities.*
- 5. PAPs will be assisted in their efforts to ideally improve their livelihoods and standards of living or at least to restore them, in real terms, to pre-displacement*

- levels or levels prevailing prior to the beginning of the project implementation, whichever is higher.*
- 6. Measures to address resettlement shall ensure that project affected peoples are informed about their options and rights pertaining to resettlement, are included in the consultation process and given the opportunity to participate in the selection of technically and economically feasible alternatives. They will also be provided prompt and effective compensation at full replacement cost for losses of assets and access attributable to the project investments.*
  - 7. Projected affected persons if resettled will be supported to integrate economically and socially into host communities so that adverse impacts on host communities and vice versa are minimized. To this end, appropriate patterns of social organization will be promoted and existing social and cultural institutions of PAPs will be supported to the greatest extent possible.*
  - 8. All PAPs will be identified and recorded as early as possible, preferably at project investment identification stage, in order to protect those affected by the project and prevent an influx of illegal encroachers, squatters, and other non-residents who will wish to take advantage of such benefit.*
  - 9. Particular attention will be paid to the needs of vulnerable groups among those displaced; especially those below the poverty line, the landless, the elderly, women and children, orphans, marginalized groups and the ethnic minorities or other displaced persons who may not be protected through the Kenyan law. The objective is to provide whatever additional assistance may be necessary to restore pre-project living standards.*
  - 10. The implementation of individual RAPs must be completed prior to the implementation of the investments under KWSCRIP.*

Furthermore, this RPF applies to other activities resulting in involuntary resettlement, that in the judgment of the Bank and Government of Kenya are a) directly and significantly related to KWSCRIP investments; b) necessary to achieve its objectives as set forth in the project documents; and c) carried out, or planned to be carried out, at the same time as the project.

As noted above, investments under KWSCRIP will avoid or at least minimize involuntary resettlement to the extent possible. However, where it is unavoidable, appropriate measures to mitigate adverse impacts will be carefully planned and implemented following the general framework outlined in this document.

## **INVOLUNTARY RESETTLEMENT**

Involuntary resettlement, if left unmitigated, normally gives rise to severe economic, social, and environmental risks. People face impoverishment when their productive assets or income sources are lost and social networks are weakened. Some of the impacts of

resettlement, if not mitigated, include: (a) *Landlessness* (b) *Joblessness* (c) *Homelessness* (d) *Marginalization* (e) *Increased morbidity and mortality* (f) *Food insecurity* (g) *Educational loss* (h) *Loss of access to common property and* (i) *Social displacement*.

## **ENTITLMENT UNDER RPF**

### ***PHYSICAL DISPLACEMENT***

If people must move to another location due to the implementation of a sub project under KWSCR, the GoK, through the Implementing Agency (IA) with engagement of National Land Commission<sup>8</sup> (NLC) as is required by the Land Act 2012, will offer displaced persons choices among others feasible resettlement options, including adequate replacement housing, land or cash compensation based on the replacement cost where appropriate. In accordance with OP.4.12 (*Annex 8*), displaced PAPs will also be provided full relocation costs above the compensation amount. Particular attention will be paid to the needs of the poor and the vulnerable, who will be assisted through capacity empowerment during the RAP implementation to adapt to new environments.

In the case of physically displaced persons with recognized or recognizable rights, the project will offer the choice of replacement property of at least equal value, equivalent or better characteristics and equal or better location or cash compensation at full replacement value. Where displaced persons own and occupy structures, the project will compensate them for the loss of assets other than land, such as dwellings and other improvements to the land, at full replacement cost.

Compensation in kind will be offered in lieu of cash compensation based upon mutual agreement between the EA and PAPs as provided for by the Land Act 2012. The Land Act 2012, the legal instrument governing land acquisition and compensation in Kenya, specifies that all PAPs must get just compensation. It is specific in regard to costs related to moving, disturbances, and legal fees for land transactions of the PAPs. This presents a gap where if not properly interpreted may not see the PAPs getting compensation for the above related costs unless the Bank procedures are followed. For that reason, in all instances where compensation will be undertaken, unless the interpretation of just and fair compensation by NLC is taken to mean all other related costs of relocation mentioned above then the Bank policies will apply and will require that these costs are fully met (full replacement costs) by the implementing agency.

### **ECONOMIC DISPLACEMENT**

The Land Act 2012, Part VIII, section 111 and 125, talks of just, full and prompt payment in the assessment of NLC in case of economic displacement. There is no specific mention of moving allowance and disturbance allowance as part of the compensation. Again, as highlighted above unless “just payment” is interpreted to include related costs of economic displacement, the bank procedures that provide for the same will be

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<sup>8</sup> National Land Commission (NLC) is the legally constituted body authorized to undertake or give approval to compulsory acquisition of Land, according to Land Act 2012. However by the time of writing this document the body had not been appointed by the President of the Republic of Kenya.

followed instead of the host country regulation. If land acquisition for a given sub project funded under KWSCRП causes loss of income or livelihood, regardless of whether or not the affected people are physically displaced, the project will meet the following requirements:-

- a) *Promptly compensate economically displaced persons for loss of assets or access to assets at full replacement cost;*
- b) *In cases where land acquisition affects commercial structures, compensate the affected business owner for the cost of re-establishing commercial activities elsewhere, for lost net income during the period of transition, and for the cost of transfer and reinstallation of plants, inventory, machinery and other equipment;*
- c) *Provide replacement property (e.g., agricultural or commercial sites) of equal or greater value, or cash compensation at full replacement cost where appropriate, to persons with legal rights or claims to land which are recognized or recognizable;*
- d) *Compensate economically displaced persons who are without legally recognizable claims to land for lost assets (such as crops, irrigation infrastructure and other improvements made to the land) other than land, at full replacement cost;*
- e) *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;*
- f) *Provide transitional support to economically displaced persons, as necessary, based on a reasonable estimate of the time required to restore their income earning capacity, production levels, and standards of living.*

In particular, the taking of land and related assets will take place only after full compensation has been paid and where applicable, resettlement sites, new homes, related infrastructure, public services and relocation costs have been provided to economically or physically displaced persons.



## 5. LEGAL AND REGULATORY FRAMEWORK

The chapter sets out the legal operating environment for acquisition of land as anticipated in the implementation of the KWSCR. The chapter seeks to highlight major issues related to Kenya's land legislation with regards to compulsory land acquisition and involuntary resettlement. It provides a brief overview of Kenya's Land Policy, Kenyan Constitution 2010 and related provisions connected with land use, planning, acquisition, management and tenure, and more specifically the legislation related with land expropriation or acquisition, land valuation and land replacement. The chapter compares the Kenyan legislation with the World Bank provisions on resettlement, with gaps highlighted and recommendations drawn to fill gaps.

**Table 1. Summary of relevant legal statutes applicable to KWSCR**

<b>Legal Framework</b>	<b>Functional Relationship to Resettlement</b>
Constitution of Kenya 2010	Constitution of Kenya 2010 recognizes individuals' right to acquire and own property provided they are citizens of the country in article 40. However, Article 66 of the same provides for the State to regulate the manner in which these rights may be curtailed for the benefit of the general public. Article 47 of the Constitution provides for administrative action to override the individual rights but the victim has to be given written reason for the action taken that undermines the right.
The Land Act 2012 Laws of Kenya	It is the substantive law governing land in Kenya and provides legal regime over administration of public and private lands. It also provides for the acquisition of land for public benefit. The government has the powers under this Act to acquire land for projects, which are intended to benefit the general public. The projects requiring resettlement are under the provision of this Act.
Land Registration Act, 2012	The law provides for the registration of absolute proprietorship interests over land (exclusive rights) that has been adjudicated or any other leasehold ownership interest on the land. Such land can be acquired by the state under the Land Act 2012 in the project area.
National Land Commission Act 2012	The act establishes the National Land Commission with the purpose of managing public land and carrying out compulsory acquisition of land for specified public purposes.
The Land Adjudication Act Chapter 95 Laws of Kenya	Provides for ascertainment of interests prior to land registrations under the Land Registration Act 2012 through an adjudication committee that works in liaison with adjudication officers.
The Valuers Act 532	The act establishes valuers registration board, which has the responsibility of regulating the activities and conduct of registered valuers in accordance with the provision of the act.
Environment and Land Court Act, 2011	This act establishes Environment and Land Court, a court with status of high court which shall facilitate the just, expeditious, proportionate and accessible resolution of disputes related to land and environment, including compulsory land acquisition, land tenure, titles, boundaries, compensation, valuations, rates, land use and environmental planning.



## THE NATIONAL LAND POLICY

The National Land Policy (“NLP” or “Policy”)<sup>9</sup> 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.<sup>10</sup> 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.”<sup>11</sup> Under the current Constitution,<sup>12</sup> 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.<sup>13</sup> Similarly, the NLP empowers the National Land Commission to compulsorily acquire land.<sup>14</sup>

According to the NLP, the exercise of compulsory acquisition in the past has been conducted with abuses and irregularities.<sup>15</sup> The NLP therefore calls for a revision of such power and requires the GoK:

1. To review the law on compulsory acquisition to align it with the new categories of land ownership (public, private and community land);<sup>16</sup>
2. To harmonize the framework for compulsory acquisition to avoid overlapping mandates;<sup>17</sup>
3. To establish compulsory acquisition criteria, processes and procedures that are efficient, transparent and accountable;<sup>18</sup>
4. To institute legal and administrative mechanisms for the exercise of the power of compulsory acquisition by the State through the National Land Commission;<sup>19</sup> and
5. 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.<sup>20</sup>

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<sup>9</sup> *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](http://www.lands.go.ke/index.php?option=com_content&task=view&id=238&Itemid=48), accessed May 25, 2011.

<sup>10</sup> 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.

<sup>11</sup> *Sessional Paper No. 3 of 2009 on National Land Policy*, § 45.

<sup>12</sup> The Constitution of Kenya, 1963, was replaced in 2010.

<sup>13</sup> Land Act, § 6, 2012.

<sup>14</sup> *Sessional Paper No. 3 of 2009 on National Land Policy*. §233(d).

<sup>15</sup> *Id.* at Chapter 3.2.1.1, article. 46.

<sup>16</sup> *Id.* at Chapter 3.2.1.1, article. 47(a).

<sup>17</sup> *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.)

<sup>18</sup> *Sessional Paper No. 3 of 2009 on National Land Policy*, Chapter 3.2.1.1, § 47(c).

<sup>19</sup> *Id.* at Chapter 3.2.1.1, p. 47(d).

<sup>20</sup> *Id.* at Chapter 3.2.1.1, §47(e).

## THE CONSTITUTION OF KENYA

The Constitution of Kenya, 2010,<sup>21</sup> protects the sanctity of private property rights and states that no property can be compulsorily acquired by the Government except in accordance with law.<sup>22</sup> Article 40(3) states:

*“The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation” –*

- a) 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*
- b) is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that –*
  - (i) Requires prompt payment in full, of just compensation to the person; and*
  - (ii) Allows any person who has an interest in or right over, that property a right of access to a court of law.<sup>23</sup>*

The Constitution empowers the state to exercise the authority of compulsory acquisition. Land Act, 2012 designates the NLC as the institution empowered to compulsorily acquire land.<sup>24</sup> Article 40 of the Constitution provides that the state may deprive owners of property only if the deprivation is "for a public purpose or in the public interest," but neither the Constitution nor any law provides an exclusive list of permissible public purposes or interests. The state's exercise of this power is left at the discretion of NLC, and requires the state to make full and prompt payment of "just compensation" and an opportunity for appeal to court.

Article 40(3)(a) refers to acquisition and conversion of all kinds of land in Kenya (private, public, community land and foreign interests in land). The Constitution further provides that payment of compensation shall be made to “occupants in good faith” of land acquired by the state who do not hold title for such land.<sup>25</sup> An occupant in good faith is a “bona fide” occupant. On the other hand, under the Constitution, those who have acquired land illegally are not regarded as deserving any compensation.<sup>26</sup>

In addition to Article 40, Chapter 5 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

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<sup>21</sup> The Constitution of Kenya, 2010, was adopted by the Government of Kenya on 27 August 2010. The full text is available at [http://www.kenyalaw.org/klr/fileadmin/pdfdownloads/Constitution/Constitution\\_of\\_Kenya2010.pdf](http://www.kenyalaw.org/klr/fileadmin/pdfdownloads/Constitution/Constitution_of_Kenya2010.pdf), accessed May 25, 2011.

<sup>22</sup> Constitution of Kenya, art. 40.

<sup>23</sup> Id.

<sup>24</sup> The Land Act, 2012 The Government of Kenya, Section 8.

<sup>25</sup> Constitution of Kenya. Id. at art. 40(5).

<sup>26</sup> Constitution of Kenya. Id. at art. 40(6).

ecologically sensitive areas.<sup>27</sup> These principles must be implemented through a national land policy reviewed regularly by the national government and through legislation.<sup>28</sup>

## **LAND TENURE SYSTEM IN KENYA**

Land tenure in Kenya is classified as public, community or private.<sup>29</sup> Public land consists of government forests (other than those “lawfully held, managed or used by specific communities as community forest, grazing areas or shrines”<sup>30</sup>), government game reserves, water catchment areas, national parks, government animal sanctuaries and specially protected areas.<sup>31</sup> Public land will be managed by the National Land Commission.<sup>32</sup> 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.”<sup>33</sup> Rights are also held through traditional African systems, and rights that derive from the English system introduced and maintained through laws enacted by colonial and then the national parliament. The former is loosely known as customary tenure bound through traditional rules (customary law). The latter body of law is referred to as statutory tenure, secured and expressed through national law, in various Act of parliament e.g. Land Act 2012, Land Registration Act, 2012, Trust Land Act (cap 288) of the Laws of Kenya.)

### *Customary Land Tenure*

This refers to unwritten land ownership practices by certain communities under customary law. Kenya being a diverse country in terms of its ethnic composition has multiple customary tenure systems, which vary mainly due to different agricultural practices, climatic conditions and cultural practices. However most customary tenure systems exhibit number of similar characteristics as follows:

- First, individuals or groups by virtue of their membership in some social unit of production or political community have guaranteed rights of access to land and other natural resources.
- Individuals or families thus claim property rights by virtue of their affiliation to the group.

### *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. Freehold land is governed by the Land Registration Act, 2012. The Act provides that the registration of a person as the proprietor of the land vests in that person the absolute ownership of that land together with all rights, privileges relating thereto. A freehold title generally has no restriction as to the use and occupation but in practice there are conditional freeholds,

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<sup>27</sup> *Id.* at art. 60.

<sup>28</sup> *Id.* at art. 60(2).

<sup>29</sup> *Id.* at art. 61.

<sup>30</sup> *Id.* at art. 63(d)(i).

<sup>31</sup> *Id.* at art. 62(g).

<sup>32</sup> *Id.* at arts. 62(3), 67(2)s (a).

<sup>33</sup> *Id.* at art. 63(d)(i) and (ii).

which restrict the use for say agricultural or ranching purposes only. Land individualization was demanded by the colonial settlers who required legal guarantee for the private ownership of land without which they were reluctant to invest.

### *Leasehold Tenure*

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

### *Public Tenure*

This is where land owned by the Government for her own purpose and which includes unutilized or un-alienated government land reserved for future use by the Government itself or may be available to the general public for various uses. The land is administered under the Land Act 2012. These lands were vested in the president and who has, normally exercised this power through the Commissioner of Lands, to allocate or make grants of any estates, interests or rights in or over un-alienated government land. However the new constitution grants those rights to the NLC which is governed by the *National Land Commission Act, 2012* that specifies the role of NLC as:

- to identify public land, prepare and keep a database of all public land, which shall be geo-referenced and authenticated by the statutory body responsible for survey;
- evaluate all parcels of public land based on land capability classification, land resources mapping consideration, overall potential for use, and resource evaluation data for land use planning; and
- acquire land for public purposes
- solve land disputes and deal with historical land injustices
- share data with the public and relevant institutions in order to discharge their respective functions and powers under this Act; or
- may require the land to be used for specified purposes and subject to such conditions, covenants, encumbrances or reservations as are specified in the relevant order or other instrument.

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

Notwithstanding the fore-going, it is a common law doctrine to the effect that common property resources such as rivers, forests and parks are held by the state in trust for the general public. Consequently, the state cannot alienate these resources or use them in a way detrimental to public interest. This is the doctrine that would ensure that public land

cannot be alienated or committed to waste to the detriment of public interest. It is the case that the statutory framework for land ownership in Kenya is heavily influenced by common law jurisprudence on land ownership-the owner's rights include the rights of use and abuse. In Kenya however, the development of physical planning legislation has vested in the state the cumulative rights of other land owners. The regulatory power is referred to as police power.

### **LAND ACT, 2012**

The Land Act <sup>34</sup> is the Kenya's framework legislation regulating compulsory acquisition of land (i.e. land, houses, easements etc.). The LA was adopted on 2<sup>nd</sup> May 2012 and provides for sustainable administration and management of land and land based resources including compulsory acquisition. The Act is based on the 2010 Constitution that recognizes the rights of the landowner and the necessity for fair and just compensation.<sup>35</sup>

### **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; 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 NLC will prescribe a criteria and guidelines to be adhered to by the acquiring authorities in the acquisition of land. But at the same time the NLC may 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.

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<sup>34</sup> Land Act, 2012.

<sup>35</sup> The Constitution of Kenya, 2010 recognizes just fair and full compensation when compulsory acquisition of land is made.

### ***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*.<sup>36</sup> It will then serve a copy of the notice to every person interested in the land and deposit the same copy to the Registrar.<sup>37</sup> 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.<sup>38</sup> NLC will therefore be required to make a comprehensive notice that includes description of land, public purpose for which the land is acquired and the acquiring public body.

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, the NLC then schedules a hearing for public inquiry. NLC must publish notice of this hearing 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 instruct those interested in the land to deliver to the NLC, no later than the date of the inquiry, a written claim for compensation.<sup>39</sup>

### ***Holding of a public hearing***

The NLC convenes a public hearing not earlier than 30 days after publication of the Notice of Intention to Acquire. On the date of the hearing, the 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.<sup>40</sup>

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 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

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<sup>36</sup> The *Kenya Gazette* is the official government journal in Kenya published by the Government Printing Press.

<sup>37</sup> Land Act, 2012, 107

<sup>38</sup> 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=](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](http://www.kenyalaw.org/CaseSearch/view_preview1.php?link=49186237036025529910634), accessed May 25, 2011.

<sup>39</sup> Land Act, 2012 (112).

<sup>40</sup> *Id.* at article 112.



inquiry. It will also provide opportunity to those interested in the land 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 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 persons interested in the 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 stipulated that it will develop. Nonetheless, just compensation could also be interpreted as market rated. 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:***

Market value of the property, which is determined at the date of the publication of the acquisition notice.<sup>41</sup> 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. 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 Commissioner takes possession of the land.*<sup>42</sup>

### ***Matters not to be considered in determining compensation:***

- a) *The degree of urgency which has led to the acquisition.*
- b) *Any disinclination of the person’s interest to part with the land.*
- c) *Damages sustained by the claimant which will not represent a good cause of action.*

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<sup>41</sup> *Id.* at article 112 and article 111.

<sup>42</sup> Schedule 2 governing compensation.

- d) 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.
- e) Increased land value accrued by its future use.
- f) Any development at the time of acquisition notice, unless these improvements were necessary for maintaining the land.<sup>43</sup>

### ***Award of compensation***

Under the Land Act 2012 section 117, the State may award a grant of land in lieu of money compensation (“land for land”), upon agreement, and provided the value of the land awarded does not exceed the value of the money compensation that would have been allowable.<sup>44</sup> The law stipulates that any dispossessed person shall be awarded the market value of the land.<sup>45</sup> The new law is silent on relocation support or disturbance allowance support.

Upon the conclusion of the inquiry, and once the National Land Commission (NLC) has determined the amount of compensation, NLC prepares and serves a written award of compensation to each legitimate claimant.<sup>46</sup> The 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.<sup>47</sup> LA, 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<sup>48</sup> before a notice of acquisition is issued. Section 119 provides a supplementary condition and states that if the size of land is greater than the size of land in respect of which the award has been made, then NLC shall compensate for excess size “as soon as practicable.”<sup>49</sup> 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.<sup>50</sup>

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 any persons interested 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

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<sup>43</sup> Schedule 3 governing compensation for compulsory acquisition.

<sup>44</sup> *Land Act*, 117.

<sup>45</sup> *Land Act*, Schedule

<sup>46</sup> *Land Act*, 115

<sup>47</sup> *Land Act*, 115

<sup>48</sup> *Land Act*, This language reflects the language of the Kenya Constitution, 1963.

<sup>49</sup> *Land Act*, 119

<sup>50</sup> *Land Act* 115.



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***

Once first offer payment has been awarded, the NLC serves notice to all persons with interest 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.<sup>51</sup>

### ***Temporary Possession***

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.

### ***Urgent Acquisition***

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, and on the expiration of that time the Commission 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 Court<sup>52</sup>. 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 alternative dispute resolution (ADR), including traditional dispute

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<sup>51</sup> *Land Act, 115 and 116*

<sup>52</sup> Land Act 2012, Section 128

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.*<sup>53</sup>

Parties will pay fees as determined by Environment and Land Court, which may waive them completely or in part on grounds of financial hardship.<sup>54</sup>

### **CHILDREN AND ORPHANS PROVISION OF LAND POSSESSION**

The Land Act 2012, Part III, section 27<sup>55</sup> recognizes the capacity of a child as being capable of holding title to land through a trustee and such a child shall be in the same position as an adult with regard to child's liability and obligation to the land.

### **THE VALUERS ACT**

Valuation of land is a critical aspect of compulsory acquisition practice. Compensation awards will be made by the National Land Commission based on land valuation determined by registered valuers. The Valuers Act<sup>56</sup> establishes the Valuers Registration Board, which regulates the activities and practice of registered valuers. All valuers must be registered with the Board to practice in Kenya. The Board shall keep and maintain the names of registered valuers which shall include the date of entry in the register, the address of the person registered the qualification of the person and any other relevant particular that the Board may find necessary. As of March 2011, there were 285 registered valuers in Kenya.<sup>57</sup> The Valuers Act does not provide for a description of the valuation procedures and methods.

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"<sup>58</sup> and are paid by those who requested the valuation.

KWSCRIP sub-project RAPs will make use of the services of registered valuers who are approved by Valuers Registration Board.

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<sup>53</sup> *Land Acquisition Act*. at article 29(7).

<sup>54</sup> *Land Acquisition Act* at article 43.

<sup>55</sup> "A child shall be capable of holding title to land through a trustee and such child be in the same position as an adult with regard to the child's liability and obligations to the land".

<sup>56</sup> The Valuers Act, Chapter 532, [http://www.kenyalaw.org/kenyalaw/klr\\_app/frames.php](http://www.kenyalaw.org/kenyalaw/klr_app/frames.php), accessed May 25, 2011.

<sup>57</sup> Government of Kenya, Kenya Gazette notice no. 2892, March 18, 2011. Registered and Practicing Valuers.

<sup>58</sup> *Legal Notice* 32.

## **6. COMPARISON OF KENYA LAWS AND WORLD BANK REQUIREMENTS**

Table 2 next page outlines World Bank policies on involuntary resettlement and compares them to Kenyan legislation on the same. The World Bank's Operational Policy on Involuntary Resettlement (O.P. 4.12 is widely accepted as reflecting international standards on involuntary resettlement. Laws on land administration in Kenya are comprehensive but differ in several ways with the Bank's OP 4.12 (Involuntary Resettlement) policy. For example, entitlements for payment of compensation are essentially based on the right of ownership, which limits the rights of non-formal occupants like slum dwellers or squatters which the Bank's OP 4.12 policy recognizes. The table also includes a comparative analysis of Kenya's Land Laws and Bank's OP. 4.12 with recommendations on addressing areas of conflict. In all cases where the Kenyan regulations appear less stringent than OP. 4.12 the bank procedures is proposed to apply.

**Table 2. Comparative Analysis of World Bank OP 4.12 and Government of Kenya requirements including measures to address gaps**

OP 4.12	Kenyan Legislation	Comparison	Recommendation to Address Gap
<b>GENERAL REQUIREMENTS</b>			
World bank OP4.12 has overall policy objectives, requiring that: <ol style="list-style-type: none"> <li>1. Involuntary resettlement should be avoided wherever possible, or minimized, exploring all alternatives.</li> <li>2. Resettlement programs should be sustainable, include meaningful consultation with affected parties, and provide benefits to the affected parties.</li> <li>3. Displaced persons should be assisted in improving livelihoods etc, or at least restoring them to previous levels.</li> </ol>	<ol style="list-style-type: none"> <li>1. According to Kenyan Legislation, involuntary resettlement may occur as a result of projects implemented in public interest.</li> <li>2. The Land Act, 2012 Act outlines procedures for sensitizing the affected population to the project and for consultation on implications and grievance procedures.</li> <li>3. The Land Act 2012 guarantees the right to fair and just compensation in case of relocation.</li> </ol>	<ol style="list-style-type: none"> <li>1. The Law 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.</li> <li>2. Same as the World Bank</li> <li>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 is does not talk about improving livelihood or restoring them to pre-project status.</li> </ol>	<ol style="list-style-type: none"> <li>I. For each of the KWSCRP subproject, ensure that resettlement issues are considered at the design stage of the project in order to avoid/ minimize resettlement.</li> </ol> <p>Implement World Bank OP 4.12 policy - displaced should be assisted in improving their livelihood to pre-project status.</p>
<b>PROCESS REQUIREMENTS</b>			
<b>Consultation:</b> Displaced persons should be meaningfully consulted and should have opportunities to participate in planning and implementing resettlement programs	The Land Act outlines procedures for consultation with affected population by the NLC and grievance management procedures.	Same as World Bank	Implement consultation procedures as outlined in both Kenyan legislation and World Bank.

OP 4.12	Kenyan Legislation	Comparison	Recommendation to Address Gap
<p><b>Grievance:</b> 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><b>Eligibility Criteria</b>  <i>Defined as:</i>            (a) those who have formal legal rights to land (including customary and traditional rights recognized under the laws of the country);             (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); and19            (c) those who have no recognizable legal right or claim to the land they are occupying   <i>To determine eligibility:</i>            Carry out resettlement census. Cut off date for eligibility is the day when the census begins.</p>	<p>The Land Act 2012 provides that written and unwritten official or customary land right 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>Land Act 2012 provides for census through NLC inspection and valuation process</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>Same as World Bank</p>	<p>Ensure ALL users (including illegal squatters, laborers, rights of access) of affected lands are included in the census survey or are paid (see Section 4).</p> <p>Implement cut-off procedures as outlined in the RPF and Kenyan Law</p>

OP 4.12	Kenyan Legislation	Comparison	Recommendation to Address Gap
<p><b>Measures:</b> Preference should be given to land based resettlement strategies for displaced persons whose livelihoods are land-based.</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 for Land provided for in the Land Act but act not specific on when it should be applied except when the affected person chooses to receive land to land award.</p>	<p>Ensure that all alternative options are considered in preference to providing cash compensation (as outlined in the Entitlement Matrix).</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>Land Act 2012 appears to prefer mode of compensation by the Government to the affected population.</p>	<p>Cash based compensation seems to be the preferred mode of awarding compensation to the affected population by Government of Kenya</p>	<p>Use World Bank OP4.12 procedures in determining form of compensation</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 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>Land Act talks of prompt, just and full compensation before the acquisition of land. However, interpretation of just compensation is yet to be clearly outlined through a specific schedule defining just and fair compensation have not been put in place.</p>	<p>Just compensation as stipulated in the Land Act not yet specifically defined.</p>	<p>Implement prompt and effective compensation at full replacement cost for the losses of the assets.</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 included in just compensation</p>	<p>Land Act very clear on attorney fees that it is not included. OP 4.12 includes those cost as part of full replacement</p>	<p>Implement World Bank policy on Attorney's fees.</p>
	<p>The Act does not out rightly stipulate assistance for relocation but we can interpret that relocation cost will be included in just compensation.</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>Ensure that ALL resettlement options are agreed on with PAPs and put in place BEFORE displacement of affected persons.</p>

OP 4.12	Kenyan Legislation	Comparison	Recommendation to Address Gap
<p><b>Valuation:</b> 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 fair and 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 fair and 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 and fair 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 and fair compensation has not be defined.</p> <p>Interpretation of just and fair compensation not clear</p> <p>Interpretation of just and fair 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>
<p><b>Monitor</b> Adequate monitoring and evaluation of activities to be undertaken.</p>	<p>According to Land Act can be undertaken County Land Boards.</p>	<p>Both Kenyan Law and World Bank policy advocates for Monitoring and Evaluation</p>	<p>Implement as prescribed in the World Bank OP4.12 and Kenyan Law.</p>

## COMPARATIVE ANALYSIS OF WORLD BANK OP 4.12 AND KENYA'S REQUIREMENTS RELEVANT TO THE PROCESS

**Table 3: Comparative Analysis of World Bank OP 4.12 and Kenya's requirements Relevant to the Process**

Category of PAPs and Type of Lost Assets	Kenyan Law	World Bank OP4.12
Land Owners	Fair and just compensation which could be in form of cash compensation or Land for Land	Recommends land-for-land compensation. Other compensation is at replacement cost
Land Tenants	Constitution says that 'occupants of land' entitled to some level of pay in good faith. Land Act stipulates that they are entitled to some compensation based on the amount of rights they hold upon land under relevant laws. However, those who acquired land illegally not entitled to any.	PAPs are entitled to some form of compensation whatever the legal/illegal recognition of their occupancy.
Land Users	Land Act not clear on Land Users although in some cases they can receive some form of compensation depending on the determination by NLC	Entitled to compensation for crops and investments made on the land; livelihood must be restored to at least pre-project levels.
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	Just and fair compensation for the loss of crops	As per specifications of this RPF, once approved by the Bank and disclosed at the Bank info shop,



## 7. ELIGIBILITY CRITERIA, ENTITLEMENT, VALUATION AND COMPENSATION

This chapter is a summary description of the category of the affected groups under the KWSCRIP and the potential type of impacts related to involuntary resettlement. In addition, this chapter describes entitlements for each type and category of impact, and sets out the detailed requirements for determining the value of affected assets and outlining the process by which valuation will be undertaken. It also explains entitlement and compensation measures.

### CATEGORY OF PROJECT AFFECTED PERSONS

Affected groups under KWSCRIP sub-project investments in this RPF will include:

Affected Individual – An individual who suffers loss of land, property, other assets or investments made on land, livelihood, and/or access to natural and/or economic resources as a result of the sub project investments funded under KWSCRIP.

Affected Household – A household is affected if one or more of its members is affected by KWSCRIP sub projects, either by loss of property, land, and access, or otherwise his or her livelihood could be affected in any way by project activities. They include:

- *any members in the households, men, women, children, dependent relatives and friends, tenants;*
  - *vulnerable individuals who may be too old or ill to farm along with the others;*
  - *relatives who depend on one another for their daily existence;*
- a. Vulnerable Groups and Households – Vulnerable groups, individual or part of the households may have different land needs from most households or needs unrelated to the amount of land available to them, e.g.:
- Female headed households;
  - Poor
  - non-farming residents;
  - the elderly;
  - the sick;
  - the disabled;
  - Persons Living With HIV/AIDS;
  - Marginalized and Vulnerable Persons; and
  - Orphans and Vulnerable Children
  - Slum Dwellers
  - Fisherfolk

Following is a brief explanation of some of the vulnerable groups identified for this RPF and measures to address their vulnerabilities

- **Orphans** -Due to the impacts of the AIDS crisis in Kenya and the past conflicts around the country, there are a considerable (some estimates put it at 20% of all

children or 1.7<sup>59</sup> million) number of orphaned children, who have lost at least one parent. These children today fall into three categories of care namely (i) those being looked after by close relatives, (ii) those being looked after by the government, local authorities or NGOs and (iii) those living alone and providing for themselves and other siblings. These children are more vulnerable since they are often “voiceless” because they have no parents to defend or stand up for them and also because they are considered too young to be heard.

*Measures mitigate vulnerabilities:* The project shall ensure that any orphaned children impacted by the project are well taken care off - access food, education, health among other social needs and their right to lost assets are not lost.

- **Unmarried women**-These are women who may be dependent on male members or others for support. Since an affected individual is able to name the person with whom he/she is linked in dependency as part of the household, resettlement will not sever this link.

*Mitigation measures:* The KWSCRIP project shall ensure they do not lose their access to family support and keep their rights to lost assets and get support to initiate livelihood related activities. **HIV/AIDS afflicted persons**-Relatively high percentages of the poor and total population are living with HIV or are terminally ill with HIV/AIDS. Many are beneficiaries of numerous health programmes from the government, international organizations and the NGO community.

*Mitigation measures:* The KWSCRIP project shall ensure HIV/AIDS affected household continue to access to medical treatments and related nutritional support. Livelihood support programs will also be initiated

- **Widow-Female-headed households**-These may depend on relatives, sons, brothers, or others for support. These women should not be resettled in a way that separates them from their households as the very survival of their households may depend on them. Their compensation must take into account all these factors.

*Mitigation measures:* The KWSCRIP project shall ensure they do not lose their access to family support and keep their rights to lost assets and get support to initiate livelihood related activities.

- **Small-scale female farmers**-Small-scale female farmers are also vulnerable because they may not have men available within the household to carry out male specific land preparation tasks. Either male relatives in other households help them voluntarily, or they hire men for cash, or food. Land compensation will specifically include the labour costs of preparing new land.

*Mitigation measures:* The KWSCRIP project shall ensure they small-scale female farmers receive necessary support and farm in-puts to produce sufficient food and support themselves. Their tenure rights will also be protected.

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<sup>59</sup> According Kenya Bureau of Statistics (KBS) there over 1.7 million orphans, of this, UNAIDS reports 1.1 HIV/AIDS affected orphaned.

- ***Elderly persons***-Elderly people farm or work as long as they are able. Their economic viability may depend on how much land they farm or how much they produce because, by producing even small amounts of food to “exchange” with others, they can subsist on cooked food and generous return gifts of cereal from people such as their kith, kin and neighbours. Losing land will affect their economic viability and resettlement would damage their economic viability even more than losing land since it will separate them from the person or household on whom they depend for their support.

*Mitigation measures:* The KWSCR project shall ensure that affected small-scale female farmers receive necessary support and farm in-puts to produce sufficient food and support themselves. Their tenure rights will also be protected.

- ***Non-farming households depending on farming household's*** -This is another category of affected people who could be among the vulnerable. They are non-farming individuals who are engaged in other works, including some agricultural work and their livelihoods could be affected as a result of the project they include landless labourer, fishermen, whose main income come from fishing, sand harvesters, and small businesses relaying on the farming communities. In addition, women non-farmers. These women earn income from other sources and/or depend on relatives for “exchanges” of staple foods. Since they do not farm they will not be affected by the sub-projects need for agricultural land. However, if their buildings lie on land needed by a subproject. They will lose at minimum their social network that they rely on if not resettled together.

*Mitigation measures:* The project shall ensure that those affected are assisted to restore their livelihoods. Where livelihoods cannot be restored, the affected will be trained on alternative livelihoods.

- ***Affected local community*** – A community is affected if project activities affect their socio-economic and/or social-cultural relationships or cohesion. For example project activities could lead into loss of welfare or cultural erosion etc. In addition, the investments under KWSCR can cause breakdown of communities and social networks due to physical separation as a result of the investment specific infrastructures if not mitigated.

*Mitigation measures:* The KWSCR investments will be very kin to avoid affecting social-cultural relationships or cohesion. Where this is occasioned, a Social Impact Assessment (SIA) will be undertaken to mitigate unintended social impacts. Secondly, an Indigenous Peoples Plan will be prepared.

- ***Slum dwellers:*** Slum dwellers are category of people who stay in urban informal settlements. Their situation is characterised by a lot of vulnerabilities. They are vulnerable to evictions due to lack of secure property rights. They are vulnerable to exploitation by vested interests, criminal gangs, sanitation, environmental hazards and labour hazards.

*Mitigation Measures:* KWSCR will be sensitive to their vulnerability and ensure that before any sub-project investment that affects them is implemented, they are

meaningfully consulted and engaged and resettled. KWSCRP project may negatively impact on their incomes making them highly vulnerable. This group is also exposed to HIV/AIDS, droughts, storms and changes in fishing stock.

- ***Fisherfolk***: This group has also been identified as vulnerable because of potential loss of landing site in program implemented by KWSCRP and the impact this may have on their livelihood income.  
*Mitigation Measures*: The project will undertake extensive Social Impact Assessment and prepare a Local Area Development Plan to ensure that they are fully integrated in the project with less negative impacts.

These household types are not mutually exclusive, and a female heading a household may be a small-scale farmer or an orphan may be an HIV/AIDS affected person. These groups are particularly vulnerable to land acquisition activities, and as such the following considerations will be made when project sites are identified and PAPs listed. In addition, the list above is not an exhaustive list and the socioeconomic survey which will be done for preparation of project specific RAPs under the KWSCRP needs to be exhaustive in the category of the affected people and their sources of livelihoods.

#### **ELIGIBILITY TYPE FOR COMPENSATION**

The following are some of the category of impacts eligible for compensation. The list, though, can be added to when socio-economic study and census undertaken for individual investments under KWSCRP, where other types of impacts could be identified.

- Land
- Property
- Land and property
- Structures on land
- Crops and trees
- Livelihoods
- Grazing land
- Businesses
- Community assets
- Landing sites

All affected persons irrespective of their status or whether they have formal titles, legal rights or not, are eligible for some kind of assistance if they occupied the land before the entitlement cut-off date. The entitlement cut-off date refers to the time when the assessment of persons and their property in the area is carried out for the preparation of investment specific RAPs. **Table 4** below summarizes the entailments for each group of affected persons.

## ENTITLEMENT MATRIX

**Table 4: Entitlement Matrix**

Land and Assets	Types of Impact	Person(s) Affected	Compensation/Entitlement/Benefits
Agricultural land	Less than 20% of land holding affected  Land remains economically viable.	Farmer/ title holder	Cash compensation for affected land equivalent to replacement value
		Tenant/ lease holder	Cash compensation for the harvest or product from the affected land or asset, equivalent to average market value of last 3 years, or market value of the crop for the remaining period of tenancy/ lease agreement, whichever is greater.
	Greater than 20% of land holding lost  Land does not become economically viable.	Farmer/ Title holder	<p>Land for land replacement where feasible, or compensation in cash for the entire landholding according to PAP's choice equal to replacement cost.</p> <p>Land for land replacement will be in terms of a new parcel of land of equivalent size and productivity with a secure tenure status at an available location which is acceptable to PAPs. Transfer of the land to PAPs shall be free of taxes, registration, and other costs.</p> <p>Relocation assistance (costs of shifting + assistance in re-establishing economic trees + livelihood rehabilitation assistance )</p> <p>Relocation assistance (costs of shifting + assistance in re-establishing economic trees + livelihood rehabilitation assistance )</p>
		Tenant/Lease holder	<p>Cash compensation equivalent to average of last 3 years' market value for the mature and harvested crop, or market value of the crop for the remaining period of tenancy/ lease agreement, whichever is greater.</p> <p>Relocation assistance (costs of shifting + assistance in re-establishing economic trees + livelihood rehabilitation assistance )</p>

<b>Land and Assets</b>	<b>Types of Impact</b>	<b>Person(s) Affected</b>	<b>Compensation/Entitlement/Benefits</b>
Land users	Impact on livelihood	Land less, encroachers	Compensation to restore livelihood and ensure they will not be worse off as a result of the investments' activities.
Commercial Land	Land used for business partially affected  Limited loss	Title holder/ business owner	Cash compensation for affected land  Opportunity cost compensation equivalent to 5% of net annual income based on tax records for previous year (or tax records from comparable business, or estimates where such records do not exist).
		Business owner is lease holder	Opportunity cost compensation equivalent to 10% of net annual income based on tax records for previous year (or tax records from comparable business, or estimates where such records do not exist)
	Assets used for business severely affected  If partially affected, the remaining assets become insufficient for business purposes	Title holder/business owner	Land for land replacement or compensation in cash according to PAP's choice. Land for land replacement will be provided in terms of a new parcel of land of equivalent size and market potential with a secured tenure status at an available location which is acceptable to the PAP.  Transfer of the land to the PAP shall be free of taxes, registration, and other costs.  Relocation assistance (costs of shifting + allowance)  Opportunity cost compensation equivalent to 2 months net income based on tax records for previous year (or tax records from comparable business, or estimates)
		Business person is lease holder	Opportunity cost compensation equivalent to 2 months net income based on tax records for previous year (or tax records from comparable business, or estimates), or the relocation allowance, whichever is higher.  Relocation assistance (costs of shifting)  Assistance in rental/ lease of alternative land/ property (for a maximum of 6 months) to re-establish the business.
Residential Land	Land used for residence partially affected, limited loss	Title holder	Cash compensation for affected land
	Remaining land viable for present use.	Rental/lease holder	Cash compensation equivalent to 10% of lease/ rental fee for the remaining period of rental/ lease agreement (written or verbal)
	Land and assets used for residence severely affected	Title holder	Land for land replacement or compensation in cash according to PAP's choice, based on the replacement cost.  Land for land replacement shall be of minimum plot of acceptable size under the

<b>Land and Assets</b>	<b>Types of Impact</b>	<b>Person(s) Affected</b>	<b>Compensation/Entitlement/Benefits</b>
	Remaining area insufficient for continuing use or become smaller than minimally accepted under zoning laws		<p>zoning law/ s or a plot of equivalent size, whichever is larger, in either the community or a nearby resettlement area with adequate physical and social infrastructure systems as well as secured tenure status.</p> <p>When the affected holding is larger than the relocation plot, cash compensation to cover the difference in value.</p> <p>Transfer of the land to the PAP shall be free of taxes, registration, and other costs.</p> <p>Relocation assistance (costs of shifting + allowance)</p>
	<p>Land and assets used for residence severely affected</p> <p>Remaining area insufficient for continued use or becomes smaller than minimally accepted under zoning laws</p>	Rental/lease holder	<p>Refund of any lease/ rental fees paid for time/ use after date of removal</p> <p>Cash compensation equivalent to 3 months of lease/ rental fee</p> <p>Assistance in rental/ lease of alternative land/ property</p> <p>Relocation assistance (costs of shifting + allowance)</p>
Buildings and structures	Structures are partially affected	Owner	Cash compensation for affected building and other fixed assets
	Remaining structures viable for continued use	Rental/lease holder	<p>Cash assistance to cover costs of restoration of the remaining structure</p> <p>Cash compensation for affected assets (verifiable improvements to the property by the tenant).</p> <p>Disturbance compensation equivalent to two months rental costs</p>
	<p>Entire structures are affected or partially affected</p> <p>Remaining structures not suitable for continued use</p>	Owner	<p>Cash compensation for entire structure and other fixed assets without depreciation equal to replacement cost, or alternative structure of equal or better size and quality in an available location which is acceptable to the PAP.</p> <p>Right to salvage materials without deduction from compensation</p> <p>Relocation assistance (costs of shifting + allowance)</p> <p>Rehabilitation assistance if required (assistance with job placement, skills training)</p>
		Rental/lease holder	<p>Cash compensation for affected assets (verifiable improvements to the property by the tenant)</p> <p>Relocation assistance (costs of shifting + allowance equivalent to four months rental costs)</p> <p>Assistance to help find alternative rental arrangements</p> <p>Rehabilitation assistance if required (assistance with job placement, skills training)</p>

Land and Assets	Types of Impact	Person(s) Affected	Compensation/Entitlement/Benefits
		Squatter/informal dweller	<p>Cash compensation for affected structure without depreciation</p> <p>Right to salvage materials without deduction from compensation</p> <p>Relocation assistance (costs of shifting + assistance to find alternative secure accommodation preferably in the community of residence through involvement of the project)</p> <p>Alternatively, assistance to find accommodation in rental housing or in a squatter settlement scheme, if available)</p> <p>Rehabilitation assistance if required assistance with job placement, skills training)</p>
		Street vendor (informal without title or lease to the stall or shop)	<p>Opportunity cost compensation equivalent to 2 months net income based on tax records for previous year (or tax records from comparable business, or estimates), or the relocation allowance, whichever is higher.</p> <p>Relocation assistance (costs of shifting)</p> <p>Assistance to obtain alternative site to re- establish the business.</p>
Standing crops	Crops affected by land acquisition or temporary acquisition or easement	PAP (whether owner, tenant, or squatter)	Cash compensation equivalent to average of last 3 years market value for the mature and harvested crop, plus the labour cost.
Trees	Trees lost	Title holder	Cash compensation based on type, age and productive value of affected trees plus 10% premium
Loss of access to grazing	On livelihood	Households undertaking grazing activities in the affected areas.	<p><i>Alternate Arrangements:</i> Encourage adoption of zero-grazing techniques,</p> <p><i>Economic rehabilitation assistance:</i> Provide assistance to facilitate this transition... For example, assistance with and payment for construction of new zero-grazing structures on alternative lands; provision of buffer lands for growth of cattle fodder; assistance with cultivation of fodder, provision of cattle fodder for lag period until cultivated cattle fodder becomes available.</p> <p>Ensure that the livestock owners have access to land for grazing or ways to sustain their livelihoods.</p>
Loss of access to water sources	Loss of access to water for household use, for household plots, etc.	Affected households	<i>Replace water access:</i> Provide alternate access to water sources in the interim period. Ensure that the investments' design take into consideration different use and need for water and accommodate the users accordingly.
Loss of communal properties such as burial grounds and places of worship, community centres, and social	Loss of access to these sites, temporarily or permanently, loss of investment made.	Communities affected	<i>Consultation:</i> Undertake consultation with affected households to determine appropriate arrangements and compensation if suitable. Replacing the social building such as schools and dispensaries.



<b>Land and Assets</b>	<b>Types of Impact</b>	<b>Person(s) Affected</b>	<b>Compensation/Entitlement/Benefits</b>
buildings			
Loss of livelihoods	Loss of means of livelihoods such as small production, such as collection of forest product, fishery, bee keeping, small dependent jobs on affected assets, such as sand, forest, inaccessible water bodies and forest	Communities engaging in non-farming livelihoods such as hunters and gatherers, fisher folk, beekeeper.	Livelihood restoration programs: Undertake to help the affected communities restore their livelihood.
Temporary Acquisition	Temporary acquisition	PAP (whether owner, tenant, or squatter)	Cash compensation for any assets affected (e. g. boundary wall demolished, trees removed)

## **PROCESSES OF COMPENSATION AND ENTITLEMENT**

### ***Formal Processes Involved With Compulsory Acquisition of Land***

The following is the formal processes involved when land needed for public development projects is acquired.

**Step 1:** An acquiring authority makes a formal request to the NLC indicating the purpose of the land to be acquired. The request should prove that the land is needed for public purpose.

**Step 2:** The Commission will consider the request in view of the guidelines. If the Commission is convinced that the land is required for public purpose, the Commission will write to the Acquiring Agency to that effect, and directs the them to acquire the land.

**Step 3:** The Commission will then give “Notice of Intention” to acquire the land in the “Kenya Gazette or County gazette” side by side with the “Notice of Inquiry”. The public announcements will be made widely in standard mass communication avenues such as newspapers and on the radio.

The “Notice of Intention” must mention the public body or the public purpose for which the land is to be acquired. The “Notice of Inquiry” must mention places and fixed dates when persons interested in the subject land are to submit their claims to the NLC or their appointee.

**Step 4:** NLC will inspect the land and undertake valuation through any of the registered valuer for just compensation before issuing an award depending on their own assessment and the representations of interested parties as submitted at the inquiry.

**Step 5:** The award will then be issued in the prescribed form indicating the amount of compensation awarded while the statement form gives the landowners option of acceptance or rejection of the award. If the landowner accepts the award, NLC or acquiring authority will issue a first offer cheque, which may be interpreted as the first tranche in settlement. During receipt, the landowner will sign an acceptance letter when receiving the first tranche.

**Step 6:** After receipt of first tranche a “Notice of Taking Possession and Vesting” will be issued by NLC or acquiring authority on the exact date of taking possession. The notice will instructs the landowner to take his/her title for amendment or cancellation. It is copied to the Government Land Registrar to make necessary changes to the affected deed. On the other hand, if the owner rejects the award, the NLC or acquiring authority deposits the money in special account pending the former’s appeal. Compensation will be based on ‘just compensation’.

**Step 7:** After notice has been served NLC or acquiring authority shall promptly pay, in full, the remaining compensation in accordance with the award to the persons entitled

**Step 8:** After the full compensation and after land has been acquired, NLC or acquiring authority shall as soon as practicable ensure that a final survey is undertaken of the land acquired.

Section 117 of Land Act 2012 allows for in-kind compensation as follows:-  
*“Notwithstanding anything contained in the Lands Act, where the land is acquired for the Government or County government, NLC may agree with the person whom he has determined to be the proprietor of the land that person, instead of receiving an award, shall receive a grant of land, not exceeding in value the amount of compensation which NLC considers would have been awarded, and upon the conclusion of the agreement that person shall, be deemed conclusively to have been awarded and to have received all the compensation to which he is entitled in respect of his interest. An agreement under subsection (1) shall be recorded in the award. Such a grant can be another land or anything equivalent to the value of the land<sup>60</sup>”.*

### ***Establishment of Sub-County Resettlement and Compensation Committee (SCRCC)***

For the purpose of this RPF, at each Sub-County level where most sub-project investments are likely to be, an ad hoc Sub-County Resettlement and Compensation Committee (SCRCC) will be established to help ensure that all legal processes involving valuation and compensation are followed in a just and transparent manner. This committee is proposed to ensure participation and inclusion of stakeholders. It should be noted that the Land Act 2012 provides for establishment of NLC which shall establish County Land Board (CLB). The roles of the CLB as regards land acquisition and resettlement has not been defined. In a sense, the NLC will advise the role of CLB as regards acquisition. However, ad hoc SCRCC is proposed for the time being and is subject to replacement once the NLC advises otherwise.

The SCRCC will ensure effective communication among between affected persons, NLC, CLB and implementing agency. The SCRCC will include representative of NLC, representative of implementing agency or acquiring authority<sup>61</sup>, Sub-County land office, social service department, representative of an NGO, representative of the PAPs among other members. The SCRCC will liaise between the PAPs at the lower levels through the Locational Resettlement and Compensation Committee (LRCC).

### **METHOD TO DETERMINE CUT-OFF DATES**

The entitlement cut-off date refers to the time when the assessment of persons and their property in particular project areas is carried out, which is the time when the census or economic survey is initiated. The establishment of a cut-off date is required to prevent opportunistic invasions/rush migration into the area.

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<sup>60</sup> Land Act 2012, section 117.

<sup>61</sup> Acquiring authority is the Implementing agency that has made formal request to acquire land.

Where there are clearly no identified owners or users of land or assets, the respective Sub-County and County Administration will notify the community leaders and representatives to help to identify and locate the land users and owners. These leaders and representatives will also be charged with the responsibility to notify their members about the established cut-off date and its significance. The PAPs will be informed through both formal notification in writing and by verbal notification delivered in the presence of the community leaders or their representatives.

## **METHODS OF ASSETS VALUATION**

Valuation is the process of determining the value of land, or an asset that PAPs possesses or use. Compensation for all land use and assets in kind or cash will be required for the following:

- *Land;*
- *Residential buildings, structures and fixtures;*
- *Cultivated crops (both cash and food crops) and trees; and*
- *Loss of businesses or employment.*

In addition, resettlement and economic rehabilitation assistance will be provided to the PAPs, as outlined in the Entitlement Matrix. It is essential that if cash compensation is selected then replacement values are used to establish actual compensation for all projects funded under WSCR. A registered valuer with Valuers Registration Board (VRB) will undertake the valuation exercise, using existing market price, to establish replacement cost. This will be done as part of the preparation of each investment specific RAP.

Although the type of compensation will be the individual's choice, compensation in kind will be preferred as cash payments raises issues regarding inflation and security. In addition, provision of cash does not ensure that the PAP's income will be restored. For payment of compensation in-kind, the timing and alternative locations will have to be decided and agreed upon by each recipient, in consultation with the individual project SCRCC.

## **VALUATION PROCESS OF ASSETS**

### ***Development of Standard Valuation Table***

Due to the expected investments under KWSCR and the localized nature of the majority of project interventions, it is anticipated that a relatively large number of small-scale asset valuations will need to be carried out during the course of the implementation of KWSCR.

### ***Field Preparation of asset inventory***

The first step will be to carry out an asset valuation survey as part of the RAP preparation. The team will include the consultant contracted by the implementing agency to carry out the RAP and the Sub-County and/or registered land valuer who will work closely with SCRCC, which will be established for the implementation of the RAP in a given project Sub-County. It will include a representative of the PAPs. Each asset will

be enumerated and inscribed on an inventory and a valuation of the asset carried out using the approach described above. The values of each asset will then be recorded in a register and shown to the affected person for agreement. The register will be signed and a copy given on the spot to the affected person. At this time, a copy of the grievance procedure will also be given to the affected person as stated in the grievance redress mechanism. The information collected, including census, will have been compiled in electronic and hard copy form, with a separate file for each affected household, including:

- *Census results;*
- *Asset inventory and valuation;*
- *Photographs; and*
- *Any other relevant information.*

The type of compensation will be an individual choice although every effort will be made to instil the importance and preference of accepting in kind compensation if the loss amounts to more than 20% of the total loss of subsistence assets. **Table 5** below describes the forms of compensation.

**Table 5. Forms of Compensation**

FORMS OF COMPENSATION	
Cash Payments	Compensation will be calculated in Kenya Shillings, based on the replacement cost. Rates will be adjusted for inflation.
In-kind Compensation	Compensation may include items such as land, houses, and other buildings, building materials, seedlings, agricultural inputs and financial credits for equipment.
Resettlement and Economic Rehabilitation Assistance	Assistance may include livelihood restoration measures, moving allowance, transportation and labour

One purpose of using in-kind compensation will be to reduce inflationary pressure on the cost of goods and services. Local inflation may still occur and thus market prices will be monitored within the time period that compensation is being made to allow for adjustments in compensation values. The issue of security, especially for people who will be receiving cash compensation payments will be addressed by the local administration. The timing and venue for in-kind compensation will be decided by each implementing agency in charge of specific investment with consultation with the PAPs and with the assistance of SCRCC.

### **METHODS FOR VALUING ASSETS IN KENYA**

Valuation is not an exact science. There are, however, certain fundamentals and basic appraisal methods which will enable the valuer to arrive at a logical and supportable estimate of value of property owned by PAPs. Any valuation model to have validity it will have to produce an accurate estimate of the market price. The method will therefore have to reflect the market culture and conditions at the time of valuation. The following method will be considered:-

### ***Investment method***

The investment method will treat property like any other investment in the market, where the main factors influencing investment decisions are security of principal, adequate yield, security of income, administrative costs and capital growth. The procedure is to capitalize the rental income (net of expenses or outgoing) using a coefficient based on the prevailing market yield. Yield adjustments will have to be made where income is terminable. Where ownership will accrue in future or the expected income stream is likely to change, the benefit is deferred at an appropriate rate, where adequate market data are available. Where sale and rental transactions are rare, and there is scarcity of comparative data on rental and capitalization rates, the method will not be used.

### ***Direct comparison method***

The method will be used to value assets by comparing like with like. It is a very reliable method if current market information is available on sale prices and rentals. It is usual to reduce sales or rented information to unit price for compensation purpose.

### ***Replacement Cost Approach***

Replacement Cost Approach, is where market sale and rental information is not available, value can be arrived at by using the cost approach - that the costs of replacing assets is based on damages caused by project operations. The approach involves direct replacement of expropriated assets and covers an amount that is sufficient for asset replacement, moving expenses and other transaction costs. **This is the method that will be preferred when compensating all KWSCRП project affected persons.**

### ***Gross Current Replacement Cost***

Gross Current Replacement Cost (GCRC) is defined as the estimated cost of erecting a new building having the same gross external area as that of the existing one, with the same site works and services and on a similar piece of land.

## **OTHER METHODS**

### ***Rates from Contractors:***

When rate schedules do not exist or are out of date, recent quotations by contractors for similar types of construction in the vicinity of the project will be used for calculating replacement costs. In projects offering the options of cash compensation or alternative accommodation, the construction cost estimates for alternative accommodation could be used for calculating cash compensation payable.

### ***Schedule of rates from Ministry of Public Works:***

Ministry of Public Works have a schedule of rates for preparing estimates for construction projects, which the consultant can use to assess costs for construction materials and labour. When applied to calculate replacement cost, rates current for the period of actual replacement must be used.

As noted earlier, to comply with OP 4.12, under this RPF the replacement cost approach will be used, which includes all expenses to replace a lost property and/or land. No depreciation will be used since the crux of this approach is that the people who lose land and assets will be able to replace them at least at the pre project level.

### **CALCULATION OF COMPENSATION BY ASSETS**

The following methods of calculation will be adopted for the preparation of the aforementioned standardized asset valuation tables and/or the application of specific case by case valuations in the case of projects that have significant impacts.

#### ***Compensation for Land in urban areas***

The compensation will be based on replacement cost, which will be the market price plus the cost of buying a new plot of land and the fees and taxes involved.

#### ***Compensation for Agricultural Land***

The KWSCRП project will provide first replacement of land for any affected land. If receiving land as compensation, the affected party will then be compensated for the labour required to replant the crops. In the case where there is no alternative land available, cash compensation at full replacement value will be provided. This will be valued based on the prevailing market value in the locality to purchase an equally productive plot of land in the same locality.

Any associated costs of purchasing the land i.e., taxes, registration fees will be included in the compensation. Compensation will also be done for any improvement made on the land with calculation made using current prevailing market rates for labour, equipment and materials. In cases where land lost is only a small fraction of total land owned by the PAP, but renders the remaining land as unusable, the compensation provided will be calculated based on the total land affected (i.e., the actual land lost plus the remaining unusable land). In addition, the PAPs will be compensated for any permanent improvements made to the land (for instance water distribution and supply lines). This will be calculated based on the price of making the permanent improvement at current prevailing market rates for labour, equipment and materials.

Compensation for land is aimed at providing a farmer and land owners whose land is acquired and used for project purposes, with compensation for land labour and crop loss. The farmer's labour is one of the biggest investments he/she makes in producing a crop which is higher than all other inputs such as seed and fertilizer. As a result, compensation relating to land will cover the market price of labour invested as well as the market price of the crop lost.

#### ***Land Measurement***

For purposes of measuring land under KWSCRП, the unit of measurement would be that which is used and understood by the affected farmers and if a traditional unit of measure exists in the rural areas, that unit will be used. If a traditional unit of measurement does not exist in a particular area then it is recommended that land should be measured in metres or any other internationally accepted unit of measurement.



However, in such an event, the unit that is being used must be explained to the affected farmers/users and must somehow be related to easily recognizable land features that the communities are familiar with, such as using location of trees, stumps, etc as immovable pegs. The most important concern of this exercise is to ensure that the affected person is able to verify using his/her own standards/units of measurement, the size of land that is being lost. This will ensure transparency in the system and will thus avoid subsequent accusations of wrong measurements or miscalculation of areas. A farmer should know how much land he/she is losing, in terms of size and the replacement land must be at least of that same size and comparable value as land lost.

### ***Calculation of Crops Compensation Rate***

The compensation of the crops will be paid at market rate for the production lost. This rate incorporates the value of crops and the value of the labour invested in preparing new land. Market value is equivalent to average of last 3 years market value for the mature and harvested crop. The value of the labor invested in preparing agricultural land and ploughing will be compensated at the average wage in the community for the same period of time.

### ***Crop Values Determination***

The value of each staple crop affected will be taken as the highest market price (over 3 years) reached during the year. This will be validated from current market prices of crops as kept by Sub-County Agricultural office.

The labor cost for preparing replacement land is calculated on what it would cost a farmer to create a replacement land. This value is found by adding together the average costs of clearing, ploughing, sowing, weeding twice, and harvesting the crop.

The labor costs will be paid in Kenya Shillings at the prevailing market rates. For transparency reason, all land labor will be compensated for at the same rate. If the land is needed at agriculturally critical date when farmer or PAPs will not have enough time to prepare another land without assistance, support will be provided in the form of labor intensive village hire, or perhaps mechanized clearing, so that replacement land will be ready by the sowing dates. The farmer will still continue to receive his/her cash compensation to enable him/her to pay for sowing, weeding and harvesting.

### ***Compensation for Buildings and Structures***

Compensation will be paid by replacing structures such as houses, buildings, huts, farm, outbuildings, latrines and fences on alternative land provided as an in-kind compensation. Cash compensation would be available as preferred option for structures lost, that are not the main house or house in which someone is living. The ongoing market prices for construction materials will be determined. Alternatively, compensation will be paid in-kind for the replacement costs without depreciation of the structure. The second option is provision of cash compensation at full replacement value. Replacement values will be based on:



- *Measurements of structures and detail of materials used;*
- *Average replacement costs of different types of household buildings and*
- *Structures based on collection of information on the numbers and types of materials used to construct different types of structures (e.g. poles, bricks, rafters, bundles of straw, corrugated iron sheets, doors etc.).*
- *Prices of these items collected in different local markets;*
- *Costs for transportation and delivery of these items to acquired/ replacement land or building site;*
- *Estimates of construction of new buildings including labor required;*
- *Any associated taxes, registration fees.*

### ***Compensation for Community Assets***

Community assets include community-owned assets such as water points, wells, marketplaces and community/ public facilities (e.g., schools, clinics police posts). Community assets will be identified through the census and enumerated. In the event that community assets are affected, in-kind and new facilities will be provided even if there are existing facilities at the new location, except if such assets are not needed in the new place. However, if community trees are affected, the community will be compensated through provision of new seedlings equivalent to the value of lost trees. Some community assets such as burial grounds in rare case may need to be moved, therefore the cost of moving graves and related structures will be considered by the project.

### ***Compensation for Sacred Sites***

This RPF is conscious of the fact that valuation of sacred places is a difficult undertaking because of the complexity of placing monetary value on a cultural site. Additionally, most sacred sites belong not only to an individual but a family, village or community.

Under this RPF to the largest extent possible, the sacred sites and use of land that is defined to be cultural and/or sacred property by the Banks Safeguards OP 4.11 will be avoided. Sacred sites will include but not restricted only to; museums, altars, initiation centres, ritual sites, ancestral tombs, trees, stones, and cemeteries which are considered sacred by the project affected persons. It will also include other such sites or places/features that are accepted by local laws (including customary), practice, tradition and culture as sacred. However, if the impact on some cultural sites is unavoidable, utmost care will be taken to ensure that all related activities affecting such sites and compensation is culturally appropriate and acceptable to the involved community and that all the processes are done in a consultative manner and with full participation of the affected communities.

### ***Compensation for Loss of Enterprises***

Business structures in project areas will be replaced in an appropriate location as outlined above. In addition, compensation will be paid for the lost income, profits and production during the transition period (time lag between losing the business and re-establishment). If it is not possible or preferable to provide replacement site for an affected business/enterprise, the full replacement cost to re-establish the business, as described above, will be provided.

### ***Compensation for vegetable gardens and beehives***

Most vegetable garden, form part of the residential space of most homes - though miniature in size, they make critical component of most family's food and nutritional supplement through provision of vegetables. Until a replacement garden starts to bear, the family displaced (economically or physically), will have to purchase vegetables in the market for daily use. The replacement costs therefore, will be calculated based on the average amount that an average town dweller spends on buying these items for one year per adult from the local market. Beehives are placed in various locations in the bush by individuals specializing in honey gathering. If such hives will be disturbed by the project activities, or access to hives is denied, beekeepers will be free to move them, and hopefully the bees will adapt to the new locations. Beekeepers will be compensated by the value of one season's production costs of honey for each hive that is moved and any reasonable costs associated with moving the hive.

### ***Compensation for horticultural, floricultural and fruit trees***

Papaya, Banana, Guava, spice crops, medicinal and aromatic crops will form a set of primary fruit trees that are likely to be found in project targeted area and are estimated to account for a significant amount of all fruit bearing trees. They are primarily important as a source of: *subsistence food for families; cash produce that contribute to the export economy; petty market income in some areas, and shade (in the case of mango trees)*. For banana trees, they have a relatively much shorter productive life, normally, than mango trees. For species, banana trees will not bear fruit more than once a year. Therefore, compensation for banana trees will be based on the full market rates for bananas harvested in that year and for one additional year. The second year payment is for the replacement cost of planting a new tree, looking after it and harvesting it which could all be done in one year. This method in general is used for trees/plants that have a relatively short life.

Mango tree and other fruit bearing trees with longer life span will be compensated on a combined replacement/market value. Mango trees used for commercial purposes will be compensated at market value based on historical production records.

If households choose to resettle, they will be compensated for the labour invested in the trees they leave behind. For this RPF, the compensation rate will be based on the value of the mango and other fruits harvested in one season multiply by the years of the maturity of the tree. The compensation could also be in the form of providing a combination of new grafted and local trees to farmers, as well as cash payments to offset lost yearly income.

### ***Other domestic fruit, shade trees,***

As defined in this RPF, individuals will be compensated for wild trees which are located in their land. Wild productive trees belong to the community when they occur in the bush as opposed to fallow land. These trees will be compensated for under the umbrella of the community compensation.

***Compensation for livelihood that are not necessarily land base***

For those who have small production and that production is a major part of their livelihoods, such as forest fruit and herbs collectors, fishermen, beehive keepers, livestock owners, tenants, those working on land, sand collectors, earning an income, which is affected by any of KWSCRIP sub project investment. The RPF proposes full livelihood restoration and support to such vulnerable groups affected by the project activities. The livelihood restoration support will be in the form of cash of about Kenya Shillings **90,000** plus training and capacity building to engage in new occupation, including activities created by a given project.

## 8. PREPARING & APPROVING RESETTLEMENT AND COMPENSATION PLANS

This chapter describes how a determination will be made (screening) on whether KWSCRP sub project investments will lead to physical or economic displacements. If through the screening process, it is determined that displacement will occur, then the section highlights the steps, process and methodologies for preparing RAPs. The RAPs for each investment will be prepared in accordance with this RPF.

### THE SCREENING PROCESS

#### Screening

Given the diverse types of investments under the KWSCRP and as a result different severity of impacts, each investment that is proposed to be included under KWSCRP will be screened by the KWSCRP/PMU which will be established under MEWNR for overall coordination of KWSCRP related activities, and classified according to its potential social, economic and environmental impacts. Screening will be based on the defined area of impact, primary engineering drawings, maps and if available satellite images of the project area showing homes, farms, workplaces, schools, health posts, places of worship and other individual and community assets.

If screening determines that resettlement is likely, the next step will be to initiate resettlement planning, consultation and the preparation of a RAP. The steps to be undertaken for each individual Resettlement Action Plan (RAP) include; an identification of Project Affected Persons (PAPs), a socioeconomic census and asset inventory of the area, and consultation. Each RAP when prepared will contain the analysis of alternative sites undertaken during the land screening process.

Once the decision is made on the location of a given project under KWSCRP and screening done by the PMU indicate that the project will affect land and/or livelihood, the implementing agency will make a written request to NLC<sup>62</sup> of the intention for the acquisition of the identified area for the proposed KWSCRP subproject land. NLC will inspect the land and grant approval for the land to be acquired for the implementation of the project. With this approval, NLC shall then go ahead and make a written notification through the *Kenya Gazettee* or *County gazette* of the intention to acquire the identified land for public purposes

Since NLC is a relatively new institution with limited devolved structures of her own, this RPF proposes the constitution of an ad hoc *Sub-County Resettlement and Compensation Committee (SCRCC)*, whose membership and functions is comprehensively described in *Chapter 9 of Institutional Arrangement* later:

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<sup>62</sup> NLC is the legal body, approved by the law to make all compulsory acquisitions (Land Act 2012, National Land Commission Act 2012 and Constitution of Kenya 2010).

With this committee in place, the RAP process will be set in motion

First, the SCRCC will begin by meeting with the affected community to inform them about the potential project in their area and its possible impacts on land and livelihoods. A RAP shall then be prepared by the qualified consultants contracted by the implementing agency for the identified KWSCR investment. The consultants will work closely with the technical design team, PMU Safeguards team and SCRCC.

The following procedural guidelines will apply when it is determined that a RAP would be developed.

- All affected individuals will be notified by NLC either directly or through County Land Board (CLB);
- All potential PAPs will be identified (through a scoping exercise) and informed about their options and rights pertaining to compensation for land and assets to be acquired by a given project;
- PAPs will be consulted about land acquisition and compensation and offered technical and financial options, including the most economically feasible alternatives;
- PAPs will receive reasonable compensation at full replacement cost for losses of assets and access attributable to the sub-project.
- PAPs will be enabled to restore and preferably improve their living standards compared to pre-project ones.

#### **PREPARATION OF A PROJECT SPECIFIC RAP**

As soon as investment/project is approved to be financed under the KWSCR, the implementing agency will initiate a consultative and participatory process for preparing the RAP as follows:

- (i) A socio-economic survey/census will be completed to determine scope and nature of resettlement impacts including the number of PAPs, the number and size of the assets, the economic activities, the other socio-economic data, and productive assets to be affected, among others.
- (ii) The socio-economic assessment will focus on the potential affected communities, including some demographic data, description of the area, livelihoods, the local participation process, socio-cultural characteristics of the population. This together with the census will establish baseline information on livelihoods and income, landholding, etc.

Aside from the census and socioeconomic survey, which are the basis for collecting data and information on the PAPs and their assets, the following guidelines will be used when the RAP is being developed.

- (i). Consultation and participatory approaches; A participatory approach will be adopted to initiate the compensation process. Consultations will start during the planning

stages when the technical designs are being developed, and at the land selection/screening stage. The process therefore seeks the involvement of PAPs throughout the census and socioeconomic study for identifying eligible PAPs and throughout the RAP preparation process.

- (ii). Notification; All eligible PAPs will be informed about the project and the RAP process. A cut-off date will be established as part of determining PAPs eligibility, which is the date the census or the socioeconomic survey is initiated. In special cases where there are no clearly identifiable owners or users of the land or asset, the RAP team must notify the respective local authorities and leaders. A “triangulation” of information – affected persons; community leaders and representatives; and an independent agent (e.g. local organization or NGO; other government agency; land valuer) – may help to identify eligible PAPs. The RAP team will notify PAPs about the established cut-off date and its significance. They will be notified both in writing and by verbal notification delivered in the presence of all the relevant stakeholders.
- (iii). Documentation and verification of land and other assets; NLC, legal agency responsible for the approval of compulsory land acquisition and compensation for national and county development projects, together with a contracted registered valuer, and the SCRCC, will arrange meetings with PAPs to discuss the compensation and valuation process. For each individual or household affected by a given investment/sub-project, the RAP preparation team will complete a Compensation form containing necessary personal information on the PAPs and their household members; their total land holdings; inventory of assets affected; and demographic and socio-economic information for monitoring of impacts. This information will be documented in a report, and witnessed by an independent or locally acceptable body such as SCRCC or an NGO in the locality. The reports will be regularly updated and monitored.
- (iv). Compensation and valuation. All types of compensation will be clearly explained to the individual and households involved by consultant, NLC representative and SCRCC. This will refer especially to the basis for valuing the land and other assets, which will always be done in the presence of the PAPs or their representatives. Once such valuation is established, the NLC will produce, in presence of SCRCC, a Contract or Agreement that lists all property and assets that will be acquired by the project and the types of compensation selected. **Table 4** above provides a sample of entitlements that are eligible for compensation. These options include in-kind (e.g. replacement housing) and cash compensation. All compensation should occur in the presence of the affected persons and the community local leaders. If cash compensation is the preferred choice of the PAPs, the means to provide such cash compensation will be decided by the PAPs, e.g., through a cheque, direct deposit to the PAPs account or direct payment in cash to PAPs given that access to banking is sometimes a challenge in remote environment.

- (v). From this point, the provisions of this RPF will be utilised up to payment of the compensation package including resettlement support where appropriate. The costs associated with resettlement or relocation will be included in the RAP budgets for all sub-projects under KWSCRP.
- (vi). Payments: The Government of Kenya through the Ministry of Finance will provide funding to the Ministry of Water and Irrigation (MEWNR), which is the overall implementing agency for the KWSCRP. MEWNR shall upon receipt of the approved RAP, provide funds directly to NLC with the approved RAP for the actual compensation purposes and acquisition of land. NLC with the help of SCRCC and CLB will make award to the PAPs.
- (vii). Grievance Mechanism: Establishment of grievance mechanism will be one of the key requirements of the RAP processes in every KWSCRP investment. One of the key roles of the proposed SCRCC, under individual KWSCRP investment will be to address disputes. Grassroots based disputes will be dealt by Location Resettlement and Compensation Committee (LRCC) led by the administrative chiefs. All PAPs will be informed by the SCRCC and LRCC how to register grievances or complaints, including specific concerns about compensation and relocation as well as dispute regarding livelihood restoration measures. The PAPs will be informed about the dispute resolution process, specifically about how the disputes will be resolved in an impartial and timely manner.
- (viii). Environmental and Land Court will provide opportunity for appeal when a solution will not be found using the established local mechanisms. The court will deal with land and compensation related disputes. However, the Land Act 2012 and Environment and Land Court Act 2011 advocates for alternative dispute resolution (ADR) methods in tackling land related disputes. Alternative dispute resolution approaches will be given preference and based on customary rules, arbitration or third-party mediation. ADR will be promoted or defended as a resolution to disputes related to resettlement and land.
- (ix). Consultation: Following disclosure of all relevant information through the project communication channels and the independent grievance mechanism, all the KWSCRP sub-projects will provide for informed participation of affected persons and communities, including host communities, in decision making processes related to resettlement.

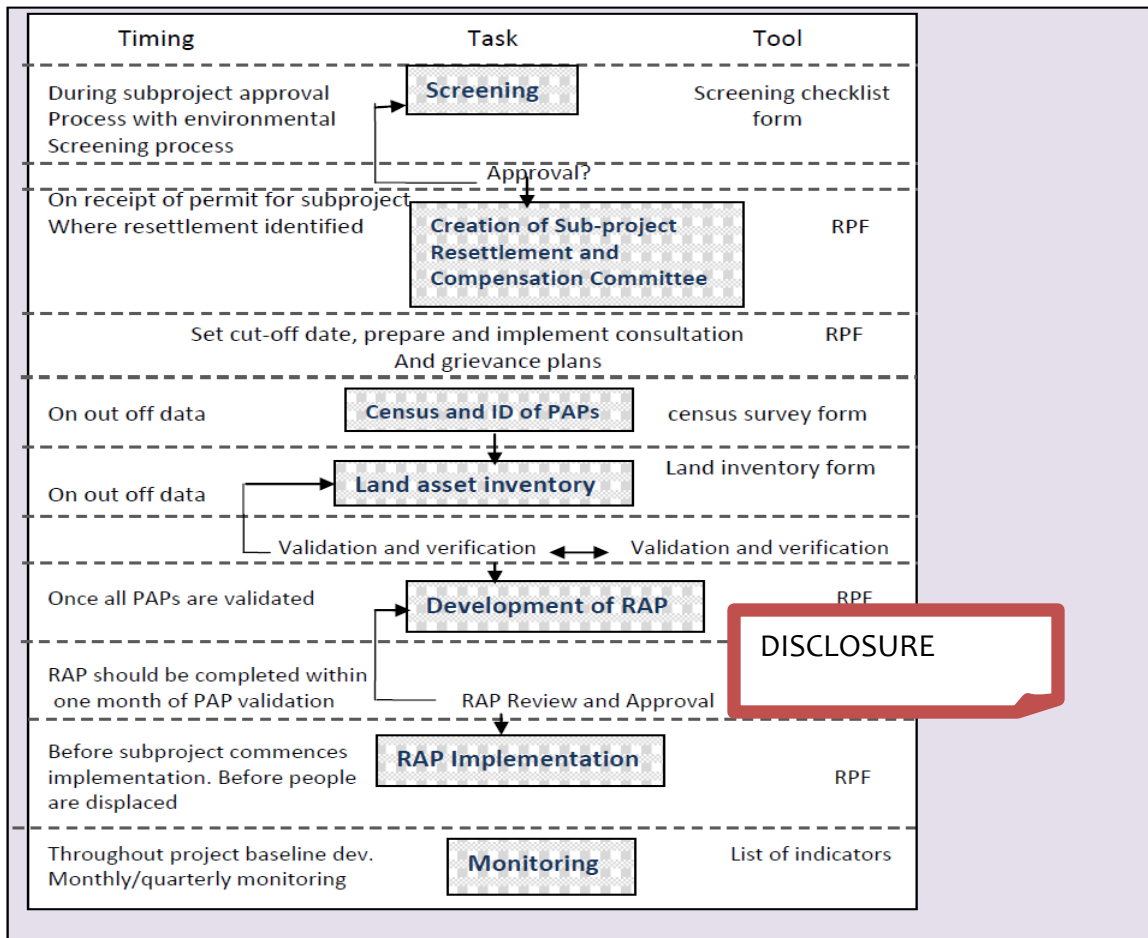
#### **APPROVAL OF RESETTLEMENT ACTION PLANS:**

All RAPs developed for KWSCRP project investments will be reviewed by the KWSCRP/PMU and the World Bank. For quality assurance, it is required that RAPs prepared for specific investments be submitted to the World Bank for review to ensure that they are produced in line with principles of this RPF and safeguards quality control. Gaps in quality shall be addressed through reviewers and the contracted consultants.



Once the individual RAPs are approved, they should be disclosed in the country and in the Bank info shop. In addition, each RAP should be available in the localities where the investments are intended for. The entitlement section of each RAP and the entitlement matrix should be translated into the local language and be distributed among the affected communities.

**FIGURE 1. RAP SCREENING AND APPROVAL PROCESS**





## 9. IMPLEMENTATION ARRANGEMENTS

The overall coordination of the projects under the KWSCRIP will be provided by the Ministry of Environment, Water and Natural Resources (MEWNR) through the KWSCRIP/PMU. The PMU has the overall role of the coordination and quality control, and among its other roles, it ensures that the investment prepare the needed safeguards instrument, in this case the RAP, in accordance to the RPF. However, each investment under KWSCRIP is implemented by an implementing agency listed earlier in this RPF. KWSCRIP/PMU will screen proposed projects to determine their viability and feasibility. Once a project is proposed for funding, PMU will prepare a ToRs for the RAP consultant, the RAP developed as required, and subsequently reviewed. The preparation and implementation of individual RAPs is the responsibility of the relevant implementing agencies.

### **INSTITUTIONAL ROLES FOR RAPS PREPARATION AND IMPLMENTATION UNDER KWSCRIP**

Resettlement implementation under KWSCRIP, will be done at three levels namely National – Ministry of Environment, Water and Natural Resources, Implementing agencies and National Land Commission; at the Sub-County level the Sub-County Resettlement and Compensation Committee; and then at the grassroots level, Locational Resettlement and Compensation Committee.

#### *Ministry of Water and Irrigation (MEWNR)*

The main agency involved in implementation of the RPF will be the Ministry of Water and Irrigation (MEWNR), as an overall implementing agency, it will have overall responsibility for the implementation of KWSCRIP and will act as the central agency responsible for holding all information relevant to the RPF and subsequent RAPs. MEWNR shall have the responsibility of mobilization of financial resources from Government for resettlement and compensation purposes of specific approved RAP.

#### *Project Management Unit (PMU)*

The PMU will be set up under the KWSCRIP and its role will be the day-to-day coordination of the KWSCRIP investment pipeline, screening of projects and keeping records of the implementation of KWSCRIP project. To assist implementing agencies, the PMU, will be staffed with a social safeguards specialist. The first role of the PMU with regards to the preparation of the RAPs will be to screen all sub projects to be funded by the KWSCRIP and to determine if they need to prepare a RAP.

The necessary screening will be done through a clear outline screening procedure as outlined in *Figure 1* of this RPF. Once a proposed project is accepted to be funded under the KWSCRIP, the PMU will prepare the TOR before it is used to hire the consultant to prepare the RAP. Once the RAP is prepared, the PMU will review the RAP for consistency of such document with RPF under all KWSCRIP financed projects. As part of this review, it will collect all the needed information and documentation on the RAP implementation. Even though NLC and implementing agencies are responsible for direct

implementation of RAP, All the RAP information prepared will be passed to the PMU for review, documentation and filing.

### ***Individual Implementing agencies***

Each implementing agency for a given investment is in charge of preparation and implementation of the RAP. For example, the first investment under KWSCR, NIB will be the implementing agency in charge of implementation for Lower Nzoia irrigation project. The specific responsibilities include: seeking approval from NLC for the acquisition of project land; contracting of the consultant and overseeing the consultant's work; working with the NLC to establish the SCRCC and LRCCs, providing budget for SCRCC and LRCCs operations; making funding request from MEWNR for RAP implementation and compensation through NLC; ensuring the grievance committees are established and working; collecting all the needed documentation for compensation as well as grievances and compiling them; and monitoring of the RAP implementation.

### ***National Land Commission (NLC)***<sup>63</sup>

The National Land Commission (NLC) is the legal agency under the new constitutional dispensation responsible for compulsory acquisition of private land for public development by national government and county governments. NLC is governed by National Land Commission Act 2012, which stipulates one of its roles as that of compulsory acquiring land for national government and county governments' development projects among other roles. Key roles of NLC in the implementation of this RPF and subsequent RAPs under KWSCR will include: provide approval to request made by implementing agency under KWSCR to acquire land; notifies landholders in writing of the intention to acquire land; assist in resolving disputes related to compensation; undertake public consultation on intended acquisition with the help of SCRCC; receive money from MEWNR for actual payment of entitlement awards to PAPs.

### ***Sub-County Resettlement and Compensation Committees (SCRCC)***

NLC does not yet have structures on the ground and hence for the purposes of efficient implementation of the KWSCR RAPs; this RPF proposes the constitution of *ad hoc* SCRCCs for each sub project at the Sub-County level. These structure are not official but have within it members Government staff in charge of relevant Ministries related to resettlement and land acquisition. Depending on how NLC establishes her new cascading institutions in the counties, this RPF will be updated accordingly. For purposes of this RPF, SCRCC will help NLC carry out its mandate efficiently-particularly ensuring effective communication of NLC with the affected communities. The implementing agency in consultation with NLC will put in place SCRCC. The members to SCRCC will include representation from the following agencies and entities

- Representative of NLC, as the chair of SCRCC to grant legitimacy to the acquisition and resettlement process and ensure that legal procedures as

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<sup>63</sup> National Land Commission is established by National Land Commission Act 2012 and Chapter 8 of Land Act 2012 outlines its specific role in compulsory acquisition process.

outlined in Land Act 2012 and binding document of the RPF are adhered to.

- Representative of the implementing agency as the acquiring institution interested in the ‘settled’ land and benefiting from the acquisition and resettlement process.
- The County Administration representative, which will provide the much needed community mobilization, and political support to the project and to the process of resettlement
- Sub-County Land Survey Officer to help with survey works and demarcation of land to be acquired.
- The Sub-County Gender and Social Development Officer which will be responsible for livelihood restoration programs.
- The Sub-County Lands Registrar Office will help with validation and verification of the documentation provided by the affected persons.
- Two PAP representative from Location Resettlement Committee – act as voice for the PAPs
- NGOs and CBOs locally active in relevant fields to ensure effectiveness, fairness, just compensation, and transparent process in the whole acquisition process.

The SCRCC will have the following specific responsibilities:

- Ensuring effective flow of information between NLC and PAPs
- Coordinate Locational Resettlement and Compensation Committees (LRCCs), validate inventories of PAPs and affected assets; monitor the disbursement of compensation funds; guide and monitor the implementation of relocation
- Coordinate activities between the various organizations involved in relocation; facilitate grievance and conflict resolution; and provide support and assistance to vulnerable groups.
- Conducting extensive public awareness and consultations with the affected people so that they can air their concerns, interests and grievances. t.
- Resolving disputes that may arise relating to resettlement process. If it is unable to resolve any such problems, will channel them through the appropriate formal grievance procedures laid out in this RAP.
- Assist with the livelihood restoration

#### ***Locational Resettlement and Compensation Committee (LRCC)***

Since Sub-County are fairly large, further decentralized resettlement unit will be formed at the locational level of the project area of a particular KWSCRIP investment. Subsequently, Locational Resettlement and Compensation Committees (LRCCs), based in each administrative location will be established. The LRCCs will be constituted by implementing agencies and SCRCC through PAPs consultative meetings and will act as the voice of the PAPs. The LRCCs will work under guidance and coordination of SCRCC and implementing agencies. LRCCs will be formed two to three weeks after the formation of the SCRCC. Their membership will comprise of the following:

- The locational Chief, who is the Government administrative representative at the locational unit and who deals with community disputes will represent the Government in LRCC
- Assistant Chiefs, who support the locational Chief and Government in managing local community disputes in village units will form membership of the team.
- Female PAP, elected by women PAPs, will represent women and children related issues as regards resettlement and compensations
- Youth representative, elected by youths, will represent youth related concerns in the LRCCs
- Vulnerable persons representative, will deal and represent vulnerable persons issues in the LRCC.
- Business representative, will represent business people concerns in LRCC
- CBO representatives

Membership of LRCCs will be elected by each category of PAPs except the locational Chief and assistant chiefs who will automatically be members of the team by virtue of their positions. Each of LRCCs will elect their own chairperson and a secretary among themselves. The roles of LRCCs will include among others the following:

- Conducting extensive public awareness and consultations with the affected people.
- Help ensure that local concerns raised by PAPs as regards resettlement and compensation among others are promptly addressed by relevant authorities.
- Assist the effective working of RAP consultants in preparation and validation of the RAP
- Resolve manageable disputes that may arise relating to resettlement and compensation process. If it is unable to resolve, help refer such grievances to the SCRCC.
- Ensure that the concerns of vulnerable persons such as the disabled, widowed women, orphaned children affected by the project are addressed and included in the RAP.

## **10. IMPLEMENTATION SCHEDULE, LINKING RESETTLEMENT IMPLEMENTATION TO CIVIL WORKS**

Before any sub project investment is implemented, PAPs will need to be fully compensated by NLC in accordance with the RAPs. For activities involving land acquisition or loss, denial or restriction to access, it is further required that these measures include provision of compensation and of other assistance required for relocation prior to displacement and preparation of resettlement sites with adequate facilities, where required. Taking of land and related assets may take place only after compensation has been paid and where applicable, resettlement sites and moving allowances have been provided to displaced persons. For project activities requiring relocation or loss of shelter, the policy further requires that measures to assist the displaced persons are implemented in accordance with the RPF and individual RAPs.

The schedule for the implementation of activities related to specific RAPs, will be prepared based on the principles of this RPF, and must be agreed between the NLC, implementing agency, MEWNR, SCRCCs and affected PAPs to give legitimacy to the whole process as outlined in the law.

These will include the target dates for start and completion of civil works, the dates of the possession of land that PAPs are using, dates of the full compensation, dates of transfer of titles to NLC, and date of hand over of land to implementing agency. This schedule will be agreed upon by the implementing agency, NLC, SCRCC, and the PAPs. The consultation process will ensure that RAPs contains acceptable measures agreed upon among all stakeholders that link resettlement activity to civil works under each specific investment in compliance with this policy.

The timing mechanism of these measures will ensure that no individual or affected household would be displaced (economically or physically) due to civil works activity before compensation is paid and resettlement sites with adequate facilities are prepared and provided for to the individual or homestead affected. Once the RAP is approved by the local and relevant national authorities, the individual RAPs should be sent to the KWSCR/PMU and the World Bank for final review and approval.

### **IMPLEMENTATION SCHEDULE**

Given the nature of KWSCR, preparing an implementing schedule at moment is not possible. Each investment once identified and screened, if required, will prepare an individual implementation schedule together with PMU which will be included in the RAP for that investment. Therefore all RAPs will include an implementation schedule for each activity covering initial baseline and preparation, actual relocation, and post relocation economic and social activities. The plan will include a target date when the expected benefits for resettled persons and hosts community, if relevant, would be achieved. Arrangements for monitoring of implementation of the resettlement and

evaluating its impact will be developed during the preparation of individual RAPs implementation schedules. The principles for preparation of monitoring and evaluation are discussed in *Chapter 14, Monitoring and Evaluation*. Target dates for achievement of expected benefits to resettled persons and hosts will be set and the various forms of assistance to the resettled persons will be disseminated to them.

Planning and coordination of the tasks of the various actors involved in the RAP implementation will be key to successful RAPs implementation. To achieve this, workshops will be organized with the stakeholders and other relevant government agencies, at individual project launching and at the commencement of every project investment identified to have adverse social impacts. The workshops will focus on (i) taking stock of the legal framework for compensation, (ii) settling institutional arrangements and mechanisms for payment of compensation, (iii) defining tasks and responsibilities of each stakeholder and (iv) establishing a work plan all in accordance to individual tasks in RAP (v) adherence to principles of RPF

The stakeholders will be requested to participate in the decision making process and provide inputs in the area of their expertise in order to establish a coherent work plan or schedule.

## II. GRIEVANCES REDRESS MECHANISMS

Grievance procedures are required to ensure that PAPs are able to lodge complaints or concerns, without cost, and with the assurance of a timely and satisfactory resolution of the issue. The procedures should also ensure that the entitlements are effectively transferred to the intended beneficiaries. PAPs will be informed of the intention to implement the grievance mechanism, and the procedures will be communicated at the time of the preparation of investments' specific RAPs.

Under KWSCR, grievances may arise from members of communities who are dissatisfied with (i) the eligibility criteria; (ii) valuation of assets and compensation, or (iii) actual implementation of RAPs, among others. This chapter sets out the measures to be used to manage grievances.

### Overview

A key element of resettlement activities will be the development and implementation of a grievance mechanism in all KWSCR investments. Grievances will be actively managed and tracked to ensure that appropriate resolution and actions are taken. A clear time schedule will be defined for resolving grievances under each investment, ensuring that they are addressed in an appropriate and timely manner. The grievance procedure will be simple and will be administered as far as possible, at the project level by the Sub-County Resettlement and Compensation Committee (SCRCC).

SCRCC will be established at the Sub-County level for each investment under the KWSCR which involves land acquisition and impact on assets. However, the SCRCC will be different in size depending on the level of impact and specific circumstances of each KWSCR investment but at the minimum will include a representative of the NLC, implementing agency, Sub-County or county administration, representative of the PAPs, Sub-County land registrar, an active NGO in the area, and Sub-County social gender development officer.

Cascading down, there will be Locational Resettlement and Compensation Committees (LRCCs) based in each administrative location. It will be established by SCRCC through PAPs consultative meetings chaired the representative of implementing agency. S/he will be assisted by the locational chief, who is the government local representative at the location. LRCC will act as the voice of the PAPs and will work under guidance and coordination of SCRCC in handling PAPs' grievances.

The grievance procedure outlined in this RPF will not replace existing dispute and grievance redress in legal system in the country, which PAPs will be persuaded to use a option of last resort if they feel dissatisfied.

Based on consensus, the procedures will seek to resolve issues quickly in order to expedite the receipt of entitlements, without resorting to expensive and time-consuming



legal actions that may delay the implementation of a project. If the grievance procedure fails to provide a result, complainants can still seek legal redress.

The overall process of grievance management will be as follows:-

- *During the initial stages of the valuation process, the affected persons will be given copies of grievance procedures as a guide on how to handle the grievances. This will include who to contact (a phone number, address and location, time) as well as type of grievances they can refer to this committee.*
- *The process of grievance redress will start with registration of the grievances to be addressed for reference at the locational level through LRCC. In all instances, records will be kept to enable progress updates of the cases.*
- *Traditional local mechanisms will be used and will include local leaders and the affected persons trying to find a solution with the concerned parties.*
- *In cases where a solution cannot be found at the locational or LRCC level reference will be made to the SCRCC.*
- *These will ensure transparency, fairness, consensus building across cases, eliminate nuisance claims and satisfy legitimate claimants at low cost.*
- *The response time will depend on the issue to be addressed but all measures will be put in place to ensure efficiency,*
- *Once the grievance is addressed and agreement reached, the compensation will be paid to the PAPs.*

Should a PAP refuse the compensation suggested, the individual PAP has the right to take his/her case to the civil court for litigation.

### **GRIEVANCE REDRESS PROCESS**

As noted earlier, grievance redress will be the functions of the LRCC and SCRCC committees. All the grievances will be channeled to Locational Resettlement and Compensation Committee. A grievance log will be established by SCRCC and copies of the records kept by both LRCC and SCRCC to be used for monitoring of complaints.

The grievance redress mechanisms will be designed with the objective of solving disputes at the earliest possible time which will be in the interest of all parties concerned and therefore implicitly discourages referring such matters to the law courts for resolution which would otherwise take a considerably longer time. If LRCC cannot adequately address the grievance, then reference will be made to SCRCC who shall strive to address the grievances raised.

If a complaint pattern emerges, the implementing agency, SCRCC, and LRCC will discuss possible remedial measures. The above institutions will be required to give advice concerning the need for revisions of procedures. Once they agree on necessary and appropriate changes, then a written description of the changed process will be made. Implementing agencies, SCRCCs, LRCCs and the local leaders will be responsible for communicating any changes to future potential PAPs when the consultation process with them begins.



### *Procedures for grievance management*

The procedure for managing grievances under all KWSCRIP investments will be as follows:

The affected person will file his/ her grievance, relating to any issue associated with the resettlement process or compensation, in writing to the project LRCC. The grievance note should be signed and dated by the aggrieved person. A selected member of the Committee will act as the Project Liaison Officer (PLO) who will be the direct liaison with PAPs.

The PLO will be working in collaboration with the other LRCCs and SCRCC, and will be a member an independent NGO in the locality to ensure transparency and fairness in the process grievance address. Where the affected person is unable to write, the PLO will write the note on the aggrieved person's behalf. Any informal grievances will also be documented by the Project Liaison officer. The note should be embossed with aggrieved person's signature or thumbprint. A sample grievance form is provided in *Annex 5*. A copy of this completed form should be submitted by the Project Liaison Officer to SCRCC.

- 1) The Project Liaison Officer and the project LRCC will consult to determine the validity of claims. If valid, the Committee will notify the complainant that s/he will be assisted and a response will be given in the due time.*
- 2) The project LRCC will meet and respond within 14 days during which time any meetings and discussions to be held with the aggrieved person will be conducted. If the grievance relates to valuation of assets, a second or even a third valuation will be undertaken, at the approval of SCRCC until it is accepted by both parties. These should be undertaken by separate independent valuers than the person who carried out the initial valuation. The more valuations that are required to achieve an agreement by both parties, the longer the process will take. In this case, the aggrieved person must be notified by the Project Liaison Officer that his/her complaint is being considered.*
- 3) If the complainant's claim is rejected by the Committees, the Project Liaison Officer will assist the aggrieved person to take the matter to the SCRCC. The SCRCC will look at the complaint raised by the PAPs and provide direction, explanation and a response. Sometimes, it will necessitate the aggrieved person to present him or herself to SCRCC to explain him/herself. All efforts will be made to try and reach some consensus with the complainant.*
- 4) If the aggrieved person does not receive a response or is not satisfied with the outcome by SCRCC within the agreed time, s/he may lodge his/her grievance to the Sub-County Land Office, also mandated to help resolve such matters). If requested, or deemed necessary by the project Committee, the Project Liaison Officer will assist the aggrieved person in this matter.*

- 5) *Where the matters cannot be resolved through local routes, the grievance will be referred to courts. The SCRCC will provide assistance at all stages to the aggrieved person to facilitate resolution of their complaint and ensure that the matter is addressed in the optimal way possible.*

### ***Grievance Log***

The Project Liaison officer will ensure that each complaint has an individual reference number, and is appropriately tracked and recorded actions are completed. The log also contains a record of the person responsible for an individual complaint, and records dates for the following events:

- *Date the complaint was reported;*
- *Date the grievance log was uploaded onto the project database;*
- *Date information on proposed corrective action sent to complainant (if appropriate);*
- *The date the complaint was closed out; and*
- *Date response was sent to complainant.*
- *Nature and type of grievances being raised*

### ***Monitoring Complaints***

The Project Liaison Officer will be responsible for:

- *Providing the project SCRCC with a weekly report detailing the number and status of complaints;*
- *Any outstanding issues to be addressed; and*
- *Monthly reports, including analysis of the type of complaints, levels of complaints, and actions to reduce complaints.*

### **Management of Grievances in the Kenya Land Laws**

The current Kenyan constitution section 159, Land and Environmental Court Act 2011, National Land Commission Act 2012 and Land Act 2012 advocates for alternative dispute resolution mechanisms before seeking formal legal redress in disputes relating to land and resettlement. ADR is non-adversarial, inexpensive and less time consuming mechanism of dealing with disputes. Where legacy issues will arise in course of the implementation of the KWSCRIP investment, the PMU will raise the National Land Commission who are constitutionally tasked to deal with historical land injustices.

## 12. RPF IMPLEMENTATION BUDGET

The actual cost of resettlement and compensation for each KWSCRIP investment will be determined during each socio-economic study for the preparation of the individual RAPs. The Government of Kenya will finance all the resettlement compensations cost because they are the party that would be impacting livelihoods. The total cost of resettlement under KWSCRIP will depend on the number of investments made.

At this stage, it is not possible to estimate the exact number of people who may be affected under KWSCRIP project since the technical designs and details of all investments have not yet been finalized. It is therefore not possible to provide an estimated budget for the total cost of resettlement that may be associated with KWSCRIP implementation.

However, when these locations are known, and after the conclusion of the site specific socio-economic study, information on specific impacts, individual and household incomes and numbers of affected people and other demographic data will be available, a detailed and accurate budgets for each RAP will be prepared. Each RAP will include a detailed budget, using the following template thus facilitating the preparation of a detailed and accurate budget for resettlement and compensation.

PMU together with the relevant implementing agency for a given investment will prepare the resettlement budget, which will be financed by the Government of Kenya through the Ministry of Finance. At this stage all that can be reasonably and meaningfully prepared is an indicative budget, highlighting key features the budget must contain, inter alia, as follows;

**Table 6. Illustrative Budget Template for the RAP**

Asset acquisition	Amount or number	Total estimated cost	Agency responsible
Land			
Structure			
crops and economic tress			
Community infrastructure			
<b>Land Acquisition and Preparation</b>			
Land,			
structure,			
Crops areas and others			
Community infrastructure			
<b>Relocations</b>			
Transfer of possessions			
Installation costs			
<b>Economic Rehabilitation</b>			
Livelihoods restoration			
Training			
Capital Investments			
Technical Assistance			
NGO support			
Monitoring			
Contingency			

**Table 7: Explanation of Assumptions on Indicative Budget**

#	Item	Costs (in KSHS)*	Assumptions
1	Compensation for loss of Land	/hectare	For land acquisition purposes, based on cost realized in projects involving similar issues in Kenya.
2	Compensation for loss of Crops	/hectare of farm lost	Includes costs of labor invested and average of highest price of staple food crops as per methods described in this RPF.
3	Compensation for loss of access to pastoralists	N/a	Those affected would be provided with shared access, or alternate routes ( decision agreed through consultation and participation of all)
4	Compensation for loss of access to fishing resources.	/fishmonger	Data provided from revised socio-economic study will determine market values of catch, fish products etc. that is produced.
5	Compensation for other livelihoods affected such as gathering medical herbs and plants from the forest, small production such as bee keeper loss of labor income for those dependent on the land taken	n/a	Livelihood restoration program
6	Compensation for Buildings and Structures		This compensation would be in-kind. These new buildings would be built and then given to those affected. Cost based on basic housing needs for a family of ten, including house with four bedrooms, ventilated pit latrines, outside kitchen and storage.
7	Compensation for Trees	/year/tree	Based on methods described in this RPF for compensation for trees.
8	Cost of Relocation Assistance/Expenses	/household	This cost is to facilitate transportation, etc.
9	Cost of Restoration of Individual Income	Say	Assumed to be higher than the GDP/capita.
10	Cost of Restoration of Household Income	Say	Through employment in Program Activities.
11	Cost of Training Farmers , pastoralists and other PAPs		This is a mitigation measure which seeks to involve those affected by the project activities. This figure represents a costs of around Kshs/person
12	NGO support	Number/years	Administrative support to undertake livelihood restoration or monitoring and evaluation of RAPs implementation
	Cost of restoration of livelihood for vulnerable	/year/	Assumed to be higher than the GPP/capita

For the RPF implementation, the following is an indicative budget items may needed.

**Table 8: Indicative Budget for the Next 5 years**

	Indicative Budgetary Item	No.	Unit cost (USD\$)	Total cost (USD\$)
1.	Stakeholders trainings/ consultation forums on RPF	5 <sup>64</sup>	100,000	<b>500,000</b>

<sup>64</sup> In the first 5 years, at least 5 meetings are envisaged for stakeholders involved in resettlement and compensation for KWSCR. They will be organized at cost of US\$100,000 per meeting to update and share lessons learnt in the implementation of the RPF

2.	Monitoring and evaluation studies on the implementation of RAPs under KWSCRCP	10 <sup>65</sup>	80,000	<b>800,000</b>
3.	Evaluation of Livelihood empowerment programs under KWSCRCP <sup>66</sup>	10	100,000	<b>1,000,000</b>
4.	WSCRCP RAP training manual <sup>67</sup>	1	50,000	<b>50,000</b>
5.	Annual RPF audit	8	100,000 <sup>68</sup>	<b>800,000</b>
6.	20% contingency	-	-	<b>530,000</b>
	<b>Total</b>			<b>3,180,000</b>

**Table 9: Assumptions for the RPF Budget line**

Item	Justification
Stakeholders trainings for GoK institutions that will be involved in the implementation of RAPs under KWSCRCP	KWSCRCP Implementing agencies and other GoK legal institutions charged with compulsory acquisition will need to be taken through the principles of this RPF. At the moment we cannot tell the number of meetings that may be needed. However, in the next 5 years we foresee at least one meeting every year. The RPF will be adjusted accordingly depending on the need and changes occasioned by current constitutional reforms.
Monitoring and Evaluation of RAPs under KWSCRCP	To ensure compliance to the principles of RPF, it is expected that the KWSCRCP/PMU will carry out 10 independent studies assessing implemented RAP compliance with RPF principles of various KWSCRCP projects in the implementation of the RAPs. Since KWSCRCP is an investment framework, we foresee at least 10 projects approved under KWSCRCP framework. The M and E studies will help with the review and subsequent adjustments of the RPF.
Evaluation of livelihood programs under KWSCRCP	As part of economic rehabilitation, KWSCRCP/PMU will assess effectiveness of economic rehabilitation of RAPs implemented under KWSCRCP to ensure lesson learning and improvement of effectiveness of such programs over time.
Development of RPF – RAP implementation manual	There will be need to develop a RAP implementation manual that is line with RPF principles building on lessons learnt.

<sup>65</sup> To ensure compliance to the principles of RPF, it is expected that the PMU will recruit consultants to carry out 10 independent studies assessing compliance of the implemented KWSCRCP RAPs with RPF principles.

<sup>66</sup> As part of economic rehabilitation, PMU will assess effectiveness of economic rehabilitation of RAPs under KWSCRCP to ensure lesson learning and improvement.

<sup>67</sup> A consultant will be recruited to prepare a RAP training manual for easier implementation of the KWSCRCP RAPs

<sup>68</sup> An annual audit will be carried out with the engagement of the stakeholder. The amount is the cost of the each audit meetings

RPF Annual Audit	In view of the dynamism of the on-going reforms, the KWSCRPMU shall organize at least one annual audit meeting for RPF Audit and 3 with NLC to review the compulsory acquisition procedures in line with lessons learnt built from previous resettlement program.
20% contingency	Shall support unforeseen contingencies in the implementation of this RPF.

### **13. MECHANISMS FOR CONSULTATIONS AND PARTICIPATION OF DISPLACED PERSONS IN PLANNING, IMPLEMENTATION AND MONITORING**

Public consultations and participation are essential because they afford potential PAPs the opportunity to contribute to both the design and implementation of the project activities and reduce the likelihood for conflicts between and among PAPs and implementing agencies. The way land administration is undertaken in Kenya today is based on long standing a traditional and cultural practice that makes public consultations with the rural communities, indispensable. Effective and close consultations with PAPs is a pre-requisite for project success. In recognition of this, particular attention will be paid to public consultations with project affected individuals/households/homesteads when resettlement and compensation concerns are involved.

Public consultations will take place at the inception of the planning stages when the potential land areas are being considered. The participation strategy will evolve around the provision of a full opportunity for involvement. Therefore, as a matter of strategy, public consultations will be an on-going activity taking place throughout the entire project cycle. For example, public consultation will also occur during the preparation of the (i) the socio-economic study, (ii) the resettlement and compensation plan (iv) the environmental impact assessment and (v) during the drafting and reading of the compensation contract.

Public participation and consultations will take place through meetings, radio programs, request for written proposals/comments, filling in of questionnaires/ application forms, public readings and explanations of project ideas and requirements, making public documents available at the national, local and homestead levels at suitable locations like the official residences/offices of local chiefs/elders. These measures will take into account the low literacy levels prevalent in these rural communities in Kenya by allowing enough time for responses and feedback.

Notwithstanding, the best guarantor for public interest are the traditional and other local leaders who are responsible members of their local communities and can inadvertently be part of the potentially displaced (economically or physically) individuals/households either in part or in whole.

The involvement of the PAPs, in case there is physical resettlement and the host communities, in planning prior to the move will be is critical since initial resistance to the idea of involuntary resettlement is expected. To obtain cooperation, participation and

feedback with the resettled persons and hosts, space will be provided for both to be actively involved in the preparation phase of the RAPs. They will also be able to choose from a number of acceptable resettlement alternatives. Particular attention will be given to vulnerable groups such as the landless, and women to ensure that they are represented adequately in such arrangements.

Conflicts between hosts and resettled persons may develop as increased demands are placed on land, water, forests, services etc. To mitigate the resettlement's impact on host populations, they will be informed and consulted and included in the planning meetings for the resettlement exercise of affected person and impact mitigation plan for the expansion of services. Any payments due to the hosts for land or other assets provided to resettled persons will be promptly made.

Conditions and services in host communities should improve, or at least not deteriorate with provision of improved education, water, health and production services as mitigation to both groups. This will foster a better social climate for their integration. In the long run, the extra investment will help prevent conflicts and secure the project's aim. Successful resettlement requires a timely transfer of responsibility from settlement agencies to the resettled persons. On the other hand, local leadership must be encouraged to assume responsibility for environmental management and infrastructure maintenance.

SCRCC and LRCC are expected to play an important role in the consultation process. They will be in close contact with the affected communities and in continuous communication with them about the KWSCR project, their impacts, resettlement and compensation processes, grievances management, among other things. They will also be the ones communicating the cut-off date and other project related issues to the PAPs.

### **DATA COLLECTING PHASE**

During the preparation of KWSCR RAPs, preliminary public consultations and socio-economic survey study will be undertaken. It will involve active participation of the all PAPs in provision of preliminary data. PAPs will be important information providers, enabling accurate and effective data. Information about proposed project will also be explained to PAPs in the local language that they understand. Besides, PAPs will be given platform to ask questions about the project, identify impact of the proposed KWSCR projects, suggest mitigation measures and alternatives to be considered in the technical design that limit impacts. The RAP preparation consultant will also labour to provide rationale for data collection, discuss data with PAPs and give PAPs feedback on the collected data.

### **IMPLEMENTATION OPERATION**

During implementation, the PAPs will be informed about their rights and options, at which point they will air their views. Cash compensation amount and size of land offered for compensation will be presented to each eligible PAPs for consideration and endorsement before cash payment or land compensation can be effected.



## **MONITORING AND EVALUATION PHASE**

The PAPs representatives will participate in the project completion workshops, to give their evaluation of the impacts of the project. They will also suggest corrective measures, which may be used to improve implementation of other KWSCRП supported projects. After completion of all expropriation/compensation operations, the PAPs will be consulted in a household survey to be undertaken as a monitoring and evaluation exercise.

## 14. ARRANGEMENTS FOR MONITORING AND EVALUATION

This chapter sets out requirements for the monitoring of the implementation of the RAPs which will be prepared in accordance to this RPF.

### Overview

The arrangements for monitoring will fit the overall monitoring plan of the entire KWSCRCP, which will be through the Ministry of Water and Irrigation and PMU. All RAPs will set major socio-economic goals by which to evaluate their success which will include (i) affected individuals, households, and communities being able to maintain their pre-project standard of living, and even improve on it, (ii) the local communities remaining supportive of the project and (iii) the absence or prevalence of conflicts (iv) project affected persons reporting satisfaction with the resettlement operation. In order to assess whether these goals are met, RAPs will indicate parameters to be monitored, institute monitoring milestones and provide resources necessary to carry out the monitoring activities.

The objective of the monitoring will be to determine;

- *If affected people are satisfied with the actual resettlement process.*
- *If affected people have been paid in full and before implementation of any KWSCRCP sub project that is causing resettlement.*
- *If affected individuals, households, and communities have been able to maintain their pre-project standard of living, and even improve on it.*

The census and/or the socio-economic survey study which are the basis for the preparation of investment specific RAPs under the KWSCRCP, will be used as the base line for the evaluation of the individual RAPs.

### INDICATORS TO DETERMINE STATUS OF AFFECTED PEOPLE

A number of indicators from the above studies will be used in order to determine the status of all affected people under KWSCRCP sub projects.

- *Size of land being used compared to before,*
- *Standard of house compared to before,*
- *Level of participation in project activities;*
- *Access to water, access to schools and health centres as it was before the project*
- *Status of vulnerable people compared to before*

Specific indicators may include the following, which would indicate a change:

- *access/ distance/ quality of agricultural plots*
- *quality of, and access to, water*
- *number of people employed*
- *number of 'vulnerable' people*

- *number of grievances and time taken to resolve them. If not resolved, what were the next steps*
- *The local communities remaining supportive of the project.*
- *The local communities reporting satisfaction with project resettlement*

Most of the information for these indicators will be collected through survey, interviews and focus group discussions with the affected communities. The data for these indicators will be collected every six months during the RAP implementation by the implementing agency, DRRC and an independent NGO working in the area to ensure triangulation of data. LRCCs will also assist with collection of monitoring data of the RAPs implementation.

The pre-project census information will provide most, if not all of the required information to set a baseline against which performance can be tracked.

In addition to the existing baseline data, the following steps will be taken to ensure the proper monitoring of the RAPs:

- *Questionnaire data will be entered into a database for comparative analysis;*
- *Each individual will have a compensation dossier recording his or her initial situation, all subsequent project use of assets/improvements, and compensation agreed upon and received;*
- *SCRCC specifically the land's office and Sub-County Social Development Officer will maintain a complete database on every individual impacted by the sub-project land use requirements.*
- *Regular resettlement status reports submitted by the implementing agency will be reviewed.*

## **MONITORING OF RPF/RAP IMPLEMENTATION**

SCRCC will assist in compiling basic information related to compensation and send them to the implementing agency as part of the regular monitoring. Some of the information which will be collected at the SCRCC level will include: time to gauge the performance of the:-

- *Length of time from project identification to payment of compensation to PAPs;*
- *Timing of compensation in relation to commencement of physical works;*
- *Amount of compensation paid to each PAP household (if in cash), or the nature of compensation (if in kind);*
- *Number of people raising grievances in relation to each project investment;*
- *Number of unresolved grievances.*
- *Number of vulnerable people assisted.*
- *Number of livelihoods restored and types of the livelihood restoration*

The KWSCR/PMU will review the statistics in order to determine whether the resettlement planning arrangements as set out in this RPF are being adhered to. The implementing agencies will directly monitor compensation as undertaken by NLC.

Financial records will be maintained by NLC and implementing agency to permit calculation of the final cost of resettlement and compensation per individual or household and they will be included in the monitoring report. The statistics will also be provided to the external independent consultant/agency that will be contracted on an annual basis to monitor the implementation of the RAPs.

# **ANNEXES**

ANNEX 1: GLOSSARY OF TERMS

ANNEX 2: SAMPLE RESETTLEMENT SCREENING FORM

ANNEX 3: CENSUS AND LAND ASSET INVENTORY FORM

ANNEX 4: COMMUNITY ASSET AND INFRASTRUCTURE

ANNEX 5: SAMPLE GRIEVANCE REDRESS FORM

ANNEX 6: TORS FOR DEVELOPING A RAP

ANNEX 7: OUTLINE FOR THE RAP

ANNEX 8: INVOLUNTARY RESETTLEMENT OP.4.12

## ANNEX 1: GLOSSARY OF TERMS

### DEFINITIONS

Unless the context dictates otherwise, the following terms will have the following meanings:

**“Replacement cost for houses and other structures”** 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 Assistance”** means the measures to ensure that KWSCRPA Affected Persons and Displaced Persons under various investments who may require to be physically relocated are provided with assistance during relocation, such as moving allowances, residential housing or rentals whichever is feasible and as required, for ease of resettlement.

**“The Resettlement Policy Framework (RPF)”** is an instrument to be used throughout the Kenya Water Security and Climate Resilience Program implementation. The RPF sets out the resettlement objectives and principles, organisational arrangements and funding mechanisms for any resettlement, that may be necessary during KWSCRPA investments implementation. The RPF guides the preparation of Resettlement Action Plans of individual investments in order to meet the needs of the people who may be affected by the project. The **Resettlement Action Plans (“RAPs”)** for various investments under the WSCRPA will therefore be prepared in conformity with the provisions of this RPF.

**“Census”** means a field survey carried out to identify and determine the number of Projected Affected Persons (PAP) or Displaced Persons (DPs) as a result of land acquisition and related impacts under various investments in the KWSCRPA. The census provides the basic information necessary for determining eligibility for compensation, resettlement and other measures emanating from consultations with affected communities and the local government institutions (LGIs).

**“Cut-off date”** is the date of commencement of the census of project affected persons, within various projects areas under KWSCRPA, when those who will move to the area after the time of census 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 various investments in KWSCRPA, 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 when the project affected people need to be relocated or give up their rights to land and other assets as a result of development projects or other reasons which are beyond their control in this case the KWSCR PPs.

**“Land”** refers to agricultural and/or non-agricultural land and any structures thereon whether temporary or permanent and which may be required for the KWSCR.

**“Land acquisition”** means the possession of or alienation of land, buildings or other assets thereon for purposes of the KWSCR.

**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 WSCR Program Affected Persons and Displaced Persons to improve their living standards, income earning capacity and production levels; or at least maintain them at pre-WSCR levels.

**Resettlement and Compensation Plan”, also known as a “Resettlement Action Plan (RAP)” or “Resettlement Plan”** - is a resettlement instrument (document) to be prepared for each individual investment under KWSCR which is prepared based on the principles of this RPF. 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. Individual RAPs are prepared by the agencies in charge of the development projects under the KWSCR. RAPs contain specific and legal binding requirements to resettle and compensate the affected party before implementation of a given investment Under WSCR program activities commences.

**“Replacement cost”** means replacement of assets with an amount sufficient to cover full cost of lost assets and related transaction costs. It includes expenses that a person will incur in order to replace his or her house or land (at market price) which could include taxes and moving allowance. In terms of land, this may be categorised as follows; (a) “Replacement cost for agricultural land” means the pre-KWSCR 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 others costs of: (b) preparing the land to levels similar to those of the affected land; and (c) any registration and transfer taxes;

**Program Affected Person(s) (PAPs)** are persons affected by land and other assets loss as a result of a number of projects under WSCR program. These person(s) are affected because they may lose, be denied, or be restricted access to economic assets; lose shelter, income sources, or means of livelihood. These persons are affected whether or not they will move to another location.

**“Compensation”** means the payment in kind, cash or other assets given in exchange for the acquisition of land including fixed assets thereon as well as other impacts resulting from WSCR activities.

## ANNEX 2: SAMPLE RESETTLEMENT SCREENING FORM

**Project name:**

**Project Location**

(Include map/sketch): (e.g. Sub-County, Division, Location, and Village etc).

**Type of activity:** (e.g. new construction, rehabilitation, periodic maintenance)

**Estimated Cost:**

(Kenyan Shillings)

**Proposed Date of Commencement of Work:**

**Technical**

**Drawing/Specifications**

**Reviewed :** (circle answer): Yes No

*This report is to be kept short and concise.*

**1. Site Selection:**

*When considering the location of a project, rate the sensitivity of the proposed site in the following table according to the given criteria. Higher ratings do not necessarily mean that a site is unsuitable. They do indicate a real risk of causing undesirable adverse environmental and social effects, and that more substantial environmental and/or social planning may be required to adequately avoid, mitigate or manage potential effects.*

Issues	Site Sensitivity			Rating
	Low Medium High	Low Medium High	Low Medium High	
Involuntary Resettlement	Low population density; dispersed population; legal tenure is well-defined.	Medium population density; mixed ownership and land tenure.	High population density; major towns and villages; low income families and/or illegal ownership of land; communal Properties.	



**2. Checklist questions:**

<b>Physical data:</b>	<i>Yes/No answers and bullet lists preferred except where descriptive detail is essential.</i>
Site area in ha	
Extension of or changes to existing alignment	
Any existing property to transfer to sub-project	
Any plans for new construction	

*Refer to project application for this information.*

<b>Land and resettlement:</b>	<i>Yes/No answers and bullet lists preferred except where descriptive detail is essential.</i>
Will the project involve loss of land and other resources?	
Will the project result into temporary or permanent loss of crops, household infrastructure like shelter, granaries or latrines?	
What is the likelihood of land purchase for the subproject?	
How will the proponent go about land purchase?	
What level or type of compensation is planned?	
Who will monitor actual payments?	

*Refer to the Resettlement Policy Framework.*

<b>Actions:</b>	
List outstanding actions to be cleared before project appraisal.	
Approval/rejection	Yes/No answers and bullet lists preferred except where descriptive detail is essential.

*Recommendations:*

Requires a RAP to be submitted on date: \_\_\_\_\_

Does not require further studies

Reviewer: \_\_\_\_\_

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

### ANNEX 3: CENSUS AND LAND ASSET INVENTORY FORM

#### Socio-economic Household Datasheet of PAPs

<i>Name of Interviewer</i>		<i>Signature</i>
<i>ID Code</i>		
<i>Name of Supervisor</i>		<i>(after verification of interview)</i>
<i>ID Code</i>		

<i>Cell Name</i>		<i>Number of Concession in Village</i>	
<i>ID Code</i>		<i>(GPS Coordinates)</i>	

Date: .....  
 Day Month Year

<i>Name of Head of Extended Family :</i>	
<i>Number of Nuclear Families in Extended Residential Group</i> <i>(including household of head of extended family)</i>	

### Household Interview

Name and Surname	Relationship to Head of Family	Sex		Place of Birth	Age	Marital Status	Residence Tenure	Ethnic Group	Religion	Educational Level	Income Earner		Economic Activities	
		M	F								Yes	No	Primary	Secondary
1.														
2.														
3.														
4.														
5.														
6.														
7.														

Relation to Head of Family : 1 HoH; 2 Spouse of HoH; 3 Child of HoH; 4 Spouse of child of HoH; 5 Grandchild of HoH; 6 Parent of HoH; 7; 8 9 Other (specify) ; 0 No Answer.

Marital Status : 1 Married ; 2 Widowed ; 3 Divorced ; 4 Unmarried; 0 No Answer.

Residential Status: 1 PRP (Permanent Resident) ; 2 RA (Resident absent) ; 3 Member of non-resident HH; 4 Visitor; 9 Other (specify) ; 0 No Answer.

Occupations: -

Principle Occupation: 1. Farmer ; 2 Shepherd; 3 Household ; 4 Merchant; 5 Religious leader, teacher ; 6 Artisan ; 7 Transport ; 8 Unemployed; 9 Other (specify) ; 0 No Answer Secondary Occupations: idem.

Educational Level : 1 Illiterate ; 2 Three years or less; 3 Primary School ; 4 Secondary School ; 5 Technical School ; 6 Religious School; 0 No Answer

Religion: 1 Christian (specify denomination) ; 2 Muslim ; 9 Other (specify) ; 0 No Answer

### Land asset inventory for Project Affected People

Village: \_\_\_\_\_

Date: \_\_\_\_\_

Cell: \_\_\_\_\_

Survey no.	Name of Head of Household	No. of Persons in household	Total land holding of Hhold (m <sup>2</sup> )	Land to be acquired (m <sup>2</sup> )	Land Use Type *	Loss of % total	Loss of assets	Loss of crops	Loss of other assets	Other losses						
							Structures Permanent	Structures temporary	Area of residential	Fruit trees	Agricultural land lost	Other (specify)	e.g. graveyards,	Residence (rented)	Business lost	Income loss

---

	<i>(m2)</i>	<i>(m2)</i>	<i>land lost (m2)</i>	<i>lost type and number</i>	<i>(m2)</i>	<i>wells, etc. (type and no.)</i>
--	-------------	-------------	---------------------------	---	-------------	---

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\* Land types are as follows (please fill in the types of land for Kenya)

- |    |    |
|----|----|
| 1. | 3. |
| 2. | 4. |

**Entitlements of Project Affected People**

Location: \_\_\_\_\_

Date: \_\_\_\_\_

Village: \_\_\_\_\_

Survey no.	Name of Head of Household	Compensation for Land			Compensation for structures			Compensation for crops and Trees			Compensation for other assets and losses (e.g., graveyards, wells, businesses, etc)			<i>Total (Ksh)</i>
		Quantity (m <sup>2</sup> )	Unit price (Ksh) per m	Entitlement (Ksh)	Quantity (m <sup>2</sup> )	Unit price (Ksh) per m	Entitlement (Ksh)	Quantity (m <sup>2</sup> )	Unit price (Ksh) per m	Entitlement (Ksh)	Quantity (m <sup>2</sup> )	Unit price (Ksh) per m	Entitlement (Ksh)	

**ANNEX 4: COMMUNITY ASSETS AND INFRASTRUCTURE**  
**Complete one form for each community asset**

<b>1. Village/town/city</b>						
<b>2. Location</b>						
<b>3. Camera and Photograph Number</b>						
<b>4. Type of structure or asset</b>						
01	School	08	Well	15	Water Supply	
02	Clinic	09	Public Latrine	16	Sewerage	
03	Church, Mosque or Temple	10	Public Laundry	17	Garbage Site/Dump	
04	Shrine	11	Play ground	18	Fish Pond	
05	Town Hall	12	Cemetery	20	Other	
06	Meeting Hall	13	Electric	If other(please Specify)		
07	Well	14	Public Telephone			
<b>4. Name of structure</b>						
<b>5. Formal owner of the structure</b>						
01	Sub-County Government					
02	Community or Voluntary Organization					
03	Private Individual					
04	Other(please Specify)					
<b>6.Name and Address of owner</b>						
(Please state name and address of responsible chairman or secretary if the structure is owned by a community organization or by government)						
<b>6. Plot Number</b>						
<b>7. Telephone Number</b>						
<b>8. Number of users of structure per month</b>						
<b>9. Plot Dimensions</b>						
				<b>M X</b>		M
<b>10. Plot Area</b>						M <sup>2</sup>
<b>11. Land value per m<sup>2</sup></b>						KES
<b>12. Land Value</b> (no.s 11x12 from Above)						KES
<b>13. Estimate of building area</b>						M <sup>2</sup>
<b>14. Building materials</b>						
<b>a. Floor</b>		<b>b. Walls</b>			<b>c. Roofs</b>	
1.	Earthen	1.	Earthen	1.	Earthen	
2.	2Cement-plastered earthen walls	2.	Cement-p hen walls	2.	Cement-plastered earthen walls	
3.	Straw or bamboo	3.	Straw or bamboo	3.	Straw or bamboo	
4.	Unbaked brick	4.	Unbaked brick	4.	Unbaked brick	
5.	Baked Brick	5.	Baked Brick	5.	Baked Brick	
6.	Cement block	6.	Cement block	6.	Cement block	
7.	Galvanized tin	7.	Galvanized tin	7.	Galvanized tin	
8.	Tile	8.	Tile	8.	Tile	
9.	Other (Specify)	9.	Other (Specify)	9.	Other (Specify)	
<b>15. Building Value per m<sup>2</sup></b>						M <sup>2</sup>
<b>16. Building Value (no.s 14x16)</b>						

Signature of owner of structure	
Print name (Block Capitals)	
Signature of Valuation Surveyor	
Print name (Block Capitals)	
Date	

## ANNEX 5: SAMPLE GRIEVANCE REDRESS FORM

<b>Grievance Form</b>				
Grievance Number		Copies to forward to:		
Name of the Recorder		(Original)-Receiver Party		
Sub-County		(Copy)-Responsible Party		
Date				
INFORMATION ABOUT GRIEVANCE				
Define The Grievance:				
INFORMATION ABOUT THE COMPLAINANT				Forms of Receive
Name-Surname				<input type="checkbox"/> Phone Line <input type="checkbox"/> Community/ Information Meetings <input type="checkbox"/> Mail <input type="checkbox"/> Informal <input type="checkbox"/> Other
Telephone Number				
Address				
Village				
Sub-County				
Signature of Complainant				
DETAILS OF GRIEVANCE				
<b>1. Access to Land and Resources</b>  a) Fishing grounds b) Lands c) Pasturelands d) House e) Commercial site f) Other	<b>2. Damage to</b>  a) House b) Land c) Livestock d) Means of livelihood e) Other	<b>3. Damage to Infrastructure or Community Assets</b>  a) Road/Railway b) Bridge/ Passageways c) Power/Telephone Lines d) Water sources, canals and water infrastructure for irrigation and animals e) Drinking water f) Sewerage System g) Other	<b>4. Decrease or Loss of Livelihood</b>  a) Agriculture b) Animal husbandry c) Beekeeping d) Small scale trade e) Other	<b>5. Traffic Accident</b>  a) Injury b) Damage to property c) Damage to livestock d) Other
<b>6. Incidents Regarding Expropriation and Compensation (Specify)</b>	<b>7. Resettlement Process (Specify)</b>	<b>8. Employment and Recruitment (Specify)</b>	<b>9. Construction Camp and Community Relations</b> a) Nuisance from dust b) Nuisance from noise c) Vibrations due to explosions d) Misconduct of the project personal/worker e) Complaint follow up f) Other	<b>10. Other (Specify)</b>



## **ANNEX 6: DRAFT TORS FOR THE DEVELOPMENT OF RESETTLEMENT ACTION PLAN (RAP)**

The scope and level of detail for the development of resettlement action plan will involve the following the following.

**a) Description of the investment/project under KWSCR, project area and area of influence:** Information presented in this section will include description of the project area showing location, sitting of plants, structures, lands, affected dwellings etc; KWSCR objectives and strategy; the investment/project objectives; policy and legal framework; timeframe; geographical coverage; project strategic context and rationale.

**b) Potential Impacts:** Description of investment/project components or activities which would trigger resettlement; the cultural, social, economic and environmental impacts envisioned; and the alternatives considered to avoid or minimize resettlement.

**c) Community Participation:** This sub-section includes:-

- Description of the consultation and participation of the displaced and host communities in design and implementation of resettlement activities including a summary of the views expressed and how these views were incorporated during the preparation of the resettlement plan.
- A review of the resettlement alternatives identified and choices made by the displaced people, including choices related to forms of compensation and resettlement assistance, relocating as individual families or as part of pre-existing families and to retaining access to cultural property (e.g. cemeteries, places of worship etc)
- Description of procedures for redress of grievances by affected people throughout the planning and implementation period.
- Description of measures aimed at sensitizing and educating the affected and host communities on matters of resettlement.

**e) Integration with host communities**

- Arrangements for consultation with host communities and procedures for prompt payment to the host for land and other assets should be provided to the resettled persons.
- Arrangements for resolving conflicts which may arise between the resettled persons.
- Arrangements for resolving conflicts which may arise between the resettled persons and host communities should be put in place.
- Appropriate measures to augment public services such as education, water, health in host communities in order to avoid disparities between resettled persons and the host communities should be put in place.
- Plan for resettled persons should be integrated economically and socially into host communities so that adverse impacts to host communities are minimized.

**f) Socio-economic Studies**

These will include the following:- Population census of the project area including a description of production systems, household organization, baseline information on livelihoods and standards of living of the displaced population (and host communities)

- An inventory of assets of displaced households; the magnitude of the expected loss (total or partial for individual or group assets); and extent of physical and economic displacement;
- Information on disadvantaged/vulnerable groups or persons for whom special provisions may have to be made. Such groups and persons include those living below the poverty line, the landless, the elderly, women, children, indigenous people, ethnic minorities and displaced persons who are not protected through national land compensation legislation. Resettlement involving vulnerable/disadvantaged groups/persons should be preceded by a social preparation phase to build their capacity to deal with issues of resettlement;
- Provisions for updating information on the livelihood of displaced people and their standards of living at regular intervals;
- Description of land tenure systems including common property and non-title based land ownership or allocation recognized locally and related issues;
- Public infrastructure and social services that will be affected; and
- Social and cultural characteristics of displaced and host communities. Appropriate patterns of social organization should be promoted and the existing social and cultural institutions of resettled persons and their host should be retained, supported and used to the extent possible.

**(g) Institutional arrangement and responsibilities**

This will be the same as the RPF

**(h) Eligibility**

Definition of displaced persons and criteria for compensation and other resettlement assistance including relevant cut off dates. The assurance should be given that lack of legal title should not bar affected persons from being compensated.

**(i) Valuation and Compensation for losses**

- The methodology to be employed for valuing losses in order to determine their replacement cost. This is a description of the levels of compensation under the local laws and supplementary measures aimed at determining replacement of cost for lost assets.
- A description of the packages of compensation and other resettlement measures that will ensure that each category of eligible displaced persons get their fair compensation. In conformity with the World Bank Operational Policy (OP.4.12 of Dec 2001, updated February 2011), displaced persons should be assisted in their efforts to improve their livelihoods and standards of living or at least to restore them to pre-displacement levels or to levels prevailing prior to the start of project implementation whichever is higher.

**(k) Identification of alternative sites, selection of resettlement site(s), site preparation and relocation**

- Institutional and technical arrangements for identifying and preparing relocation sites for which a combination of productive potential, location advantages and other factors, should be at least comparable to ancillary resources.
- Procedures for physical relocation including timetable for site preparation and land title transfer and description of resettlements sites.
- Measures to prevent the influx of ineligible person (encroachers and squatters) into the selected sites such as the identification and recording of affected people at the project identification stages.
- Legal arrangements for regularizing tenure and transferring titles to resettled persons.

**(l) Shelter, infrastructure and social services**

This sub-section provides details regarding plans to provide or finance housing, infrastructure (e.g. roads, water supply etc) and social services (schools, health services) and plans aimed at ensuring that services and any necessary site development to host.

**(m) Environmental protection:** An assessment of possible environmental impacts of the proposed resettlement and measures to mitigate and manage the impacts.

**(n) Implementation Schedules**

An implementation schedule covering all resettlement activities from project preparation through implementation to monitoring and evaluation. The schedule should indicate dates for achievement of expected benefits to resettled persons and hosts and dates for terminating the various forms of assistance.

**(o) Costs and Budget**

The breakdown of cost estimates for all resettlement activities including allowances for inflation and other contingencies, timetable for expenditures, sources of funds and arrangements for timely disbursement of funds.

**(p) Monitoring and evaluation**

Under this sub-section, information regarding arrangements for monitoring of resettlement activities by the implementing agency is presented. When appropriate, independent monitors will supplement the role of the implementing agency to ensure objectivity and completeness of information. Performance indicators for measuring inputs, outputs and outcomes of resettlement activities and for evaluating impacts for a reasonable period of time after the resettlement activities have been completed are also presented. (Similar to the RPF)

**(q) Commitment to follow RPF guidelines and requirement**

A statement of assurance that the implementing agency will follow the guidelines and requirement of the RPF should be included in the RAP.

**(r) Description of programmes for improvement and restoration of livelihoods and standards of living of the affected people.**

Programmes aimed at improving and restoring the livelihoods and standards of living of the affected people in line with the Resettlement Policy framework

## **ANNEX 7: OUTLINE OF RESETTLEMENT ACTION PLAN**

### **Introduction**

- It briefly describes the project.
- Lists project components including associated facilities (if any).
- Describes project components requiring land acquisition and resettlement; give overall estimates of land acquisition and resettlement.

### **Minimizing Resettlement**

- Describes efforts made to minimize displacement.
- Describes the results of these efforts.
- Describes mechanisms used to minimize displacement during implementation.

### **Census and Socio-economic Surveys**

- Provides the results of the census, assets inventories, natural resource assessments, and socioeconomic surveys.
- Identifies all categories of impacts and people affected.
- Summarizes consultations on the results of the various surveys with affected people.
- Describes need for updates to census, assets inventories, resource assessments, and socio economic surveys, if necessary, as part of RAP monitoring and evaluation.

### **Legal Framework**

- Describes all relevant local laws and customs that apply to resettlement.
- Identifies gaps between local laws and World Bank Group policies, and describe project-specific mechanisms to address conflicts.
- Describes entitlement policies for each category of impact and specify that resettlement implementation will be based on specific provisions of agreed RAP.
- Describes method of valuation used for affected structures, land, trees, and other assets.
- Prepares entitlement matrix.

### **Resettlement Sites**

- Describes the specific process of involving affected populations in identifying potential housing sites, assessing advantages and disadvantages, and selecting sites.
- Describes the feasibility studies conducted to determine the suitability of the proposed sites, including natural resource assessments (soils and land use capability, vegetation and livestock carrying capacity, water resource surveys) and environmental and social impact assessments of the sites.
- Demonstrates that the land quality and area are adequate for allocation to all of the people eligible for allocation of agricultural land.
- Provides data on land quality and capability, productive potential, and quantity.
- Give calculations relating to site requirements and availability.
- Describes mechanisms for: 1) procuring, 2) developing and 3) allotting resettlement sites, including the awarding of title or use rights to allotted lands.
- Provides detailed description of the arrangements for site development for agriculture, including funding of development costs.
- Have the host communities been consulted about the RAP? Have they participated in the identification of likely impacts on their communities, appropriate mitigation measures, and preparation of the RAP?
- Do the host communities have a share of the resettlement benefits?

### **Income Restoration**

- Describes if there are compensation entitlements sufficient to restore income streams for each category of impact?
- Describes additional economic rehabilitation measures are necessary?
- Briefly spell out the restoration strategies for each category of impact and describe their institutional, financial, and technical aspects.
- Describes the process of consultation with affected populations and their participation in finalizing strategies for income restoration.
- Explains if income restoration requires change in livelihoods, development of alternative farmlands or some other activities that require a substantial amount of training, time for preparation, and implementation?
- Describes how the risks of impoverishment are to be addressed?
- Describes the the main institutional and other risks for the smooth implementation of the resettlement programmes?
- Describes the process for monitoring the effectiveness of the income restoration measures.
- Describes any social or community development programmes currently operating in or around the project area.
- If programmes exist, do they meet the development priorities of their target communities? Are there opportunities for the project proponent to support new programme or expand existing programmes to meet the development priorities of communities in the project area?

### **Institutional Arrangements**

- Describes the institution(s) responsible for delivery of each item/activity in the entitlement policy
- Describes the Implementation of income restoration programmes; and coordination of the activities associated with and described in the resettlement action plan.
- States how coordination issues will be addressed in cases where resettlement is spread over a number of jurisdictions or where resettlement will be implemented in stages over a long period of time.
- Identifies the agency that will coordinate all implementing agencies. Does it have the necessary mandate and resources?
- Describes the external (non-project) institutions involved in the process of income restoration (land development, land allocation, credit, and training) and the mechanisms to ensure adequate performance of these institutions.
- Discusses institutional capacity for and commitment to resettlement.
- Describes mechanisms for ensuring independent monitoring, evaluation, and financial audit of the RAP and for ensuring that corrective measures are carried out in a timely manner.

### **Implementation Schedule**

- Lists the chronological steps in implementation of the RAP, including identification of agencies responsible for each activity and with a brief explanation of each activity.
- Prepares a month-by-month implementation schedule of activities to be undertaken as part of resettlement implementation.
- Describes the linkage between resettlement implementation and initiation of civil works for each of the project components.

### **Participation and Consultation**

- Describes the various stakeholders.
- Describes the process of promoting consultation/participation of affected populations and stakeholders in resettlement preparation and planning.
- Describes the process of involving affected populations and other stakeholders in implementation and monitoring.
- Describes the plan for disseminating RAP information to affected populations and stakeholders, including information about compensation for lost assets, eligibility for compensation, resettlement assistance, and grievance redress.

### **Grievance Redress**

- Describes the step-by-step process for registering and addressing grievances and provide specific details regarding a cost-free process for registering complaints, response time, and communication methods.
- Describes the mechanism for appeal.
- Describes the provisions for approaching civil courts if other options fail.

### **Monitoring and Evaluation**

- Describes the internal/performance monitoring process.
- Defines key monitoring indicators derived from baseline survey. Provide a list of monitoring indicators that will be used for internal monitoring.
- Describes institutional (including financial) arrangements.
- Describes frequency of reporting and content for internal monitoring.
- Describes process for integrating feedback from internal monitoring into implementation.
- Defines methodology for external monitoring.
- Defines key indicators for external monitoring.
- Describes frequency of reporting and content for external monitoring.
- Describes process for integrating feedback from external monitoring into implementation.
- Describes arrangements for final external evaluation.

### **Costs and Budgets**

- Provides a clear statement of financial responsibility and authority.
- Lists the sources of funds for resettlement and describe the flow of funds.
- Ensures that the budget for resettlement is sufficient and included in the overall project budget.
- Identifies resettlement costs, if any, to be funded by the government and the mechanisms that will be established to ensure coordination of disbursements with the RAP and the project schedule.
- Prepares an estimated budget, by cost and by item, for all resettlement costs including planning and implementation, management and administration, monitoring and evaluation, and contingencies.
- Describes the specific mechanisms to adjust cost estimates and compensation payments for inflation and currency fluctuations.
- Describes the provisions to account for physical and price contingencies.

- Describes the financial arrangements for external monitoring and evaluation including the process for awarding and maintenance of contracts for the entire duration of resettlement.

**Annexes**

- Copies of census and survey instruments, interview formats, and any other research tools.
- Information on all public consultation including announcements and schedules of public meetings,
- Meeting minutes, and lists of attendees.

## **ANNEX 8: OP 4.12 - INVOLUNTARY RESETTLEMENT**

*Revised February 2011*

1. Bank experience indicates that involuntary resettlement under development projects, if unmitigated, often gives rise to severe economic, social, and environmental risks: production systems are dismantled; people face impoverishment when their productive assets or income sources are lost; people are relocated to environments where their productive skills may be less applicable and the competition for resources greater; community institutions and social networks are weakened; kin groups are dispersed; and cultural identity, traditional authority, and the potential for mutual help are diminished or lost. This policy includes safeguards to address and mitigate these impoverishment risks.

### **Policy Objectives**

2. Involuntary resettlement may cause severe long-term hardship, impoverishment, and environmental damage unless appropriate measures are carefully planned and carried out. For these reasons, the overall objectives of the Bank's policy on involuntary resettlement are the following:

(a) Involuntary resettlement should be avoided where feasible, or minimized, exploring all viable alternative project designs.

(b) Where it is not feasible to avoid resettlement, resettlement activities should be conceived and executed as sustainable development programs, providing sufficient investment resources to enable the persons displaced by the project to share in project benefits. Displaced persons should be meaningfully consulted and should have opportunities to participate in planning and implementing resettlement programs.

(c) Displaced persons should be assisted in their efforts to improve their livelihoods and standards of living or at least to restore them, in real terms, to pre-displacement levels or to levels prevailing prior to the beginning of project implementation, whichever is higher.

### **Impacts Covered**

3. This policy covers direct economic and social impacts that both result from Bank-assisted investment projects, and are caused by

(a) the involuntary taking of land resulting in

(i) relocation or loss of shelter;

(ii) lost of assets or access to assets; or

(iii) loss of income sources or means of livelihood, whether or not the affected persons must move to another location; or



(b) the involuntary restriction of access to legally designated parks and protected areas resulting in adverse impacts on the livelihoods of the displaced persons.

4. This policy applies to all components of the project that result in involuntary resettlement, regardless of the source of financing. It also applies to other activities resulting in involuntary resettlement, that in the judgment of the Bank, are

(a) directly and significantly related to the Bank-assisted project,

(b) necessary to achieve its objectives as set forth in the project documents; and

(c) carried out, or planned to be carried out, contemporaneously with the project.

5. Requests for guidance on the application and scope of this policy should be addressed to the Resettlement Committee (see [BP 4.12, para. 7](#)).

### **Required Measures**

6. To address the impacts covered under para. 3 (a) of this policy, the borrower prepares a resettlement plan or a resettlement policy framework (see paras. 25-30) that covers the following:

(a) The resettlement plan or resettlement policy framework includes measures to ensure that the displaced persons are

(i) informed about their options and rights pertaining to resettlement;

(ii) consulted on, offered choices among, and provided with technically and economically feasible resettlement alternatives; and

(iii) provided prompt and effective compensation at full replacement cost for losses of assets attributable directly to the project.

(b) If the impacts include physical relocation, the resettlement plan or resettlement policy framework includes measures to ensure that the displaced persons are

(i) provided assistance (such as moving allowances) during relocation; and

(ii) provided with residential housing, or housing sites, or, as required, agricultural sites for which a combination of productive potential, locational advantages, and other factors is at least equivalent to the advantages of the old site.

(c) Where necessary to achieve the objectives of the policy, the resettlement plan or resettlement policy framework also include measures to ensure that displaced persons are

(i) offered support after displacement, for a transition period, based on a reasonable estimate of the time likely to be needed to restore their livelihood and standards of living; and

(ii) provided with development assistance in addition to compensation measures described in paragraph 6(a);

(iii) such as land preparation, credit facilities, training, or job opportunities.

7. In projects involving involuntary restriction of access to legally designated parks and protected areas (see para. 3(b)), the nature of restrictions, as well as the type of measures necessary to mitigate adverse impacts, is determined with the participation of the displaced persons during the design and implementation of the project. In such cases, the borrower prepares a process framework acceptable to the Bank, describing the participatory process by which

(a) specific components of the project will be prepared and implemented;

(b) the criteria for eligibility of displaced persons will be determined;

(c) measures to assist the displaced persons in their efforts to improve their livelihoods, or at least to restore them, in real terms, while maintaining the sustainability of the park or protected area, will be identified; and

(d) potential conflicts involving displaced persons will be resolved.

The process framework also includes a description of the arrangements for implementing and monitoring the process.

8. 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,<sup>15</sup> ethnic minorities, or other displaced persons who may not be protected through national land compensation legislation.

9. Bank experience has shown that resettlement of indigenous peoples with traditional land-based modes of production is particularly complex and may have significant adverse impacts on their identity and cultural survival. For this reason, the Bank satisfies itself that the borrower has explored all viable alternative project designs to avoid physical displacement of these groups. When it is not feasible to avoid such displacement, preference is given to land-based resettlement strategies for these groups (see para. 11) that are compatible with their cultural preferences and are prepared in consultation with them (see [Annex A, para. 11](#)).

10. The implementation of resettlement activities is linked to the implementation of the investment component of the project to ensure that displacement or restriction of access does not occur before necessary measures for resettlement are in place. For impacts covered in para. 3(a) of this policy, these measures include provision of compensation and of other assistance required for relocation, prior to displacement, and preparation and provision of resettlement sites with adequate facilities, where required. In particular, taking of land and related assets may take place only after compensation has been paid and, where applicable, resettlement sites and moving allowances have been provided to the displaced persons. For impacts covered in para. 3(b) of this policy, the measures to assist the displaced persons are implemented in accordance with the plan of action as part of the project (see para. 30)

11. Preference should be given to land-based resettlement strategies for displaced persons whose livelihoods are land-based. These strategies may include resettlement on public land

(see footnote 1 above), or on private land acquired or purchased for resettlement. Whenever replacement land is offered, resettlers are provided with land for which a combination of productive potential, locational advantages, and other factors is at least equivalent to the advantages of the land taken. If land is not the preferred option of the displaced persons, the provision of land would adversely affect the sustainability of a park or protected area, or sufficient land is not available at a reasonable price, non-land-based options built around opportunities for employment or self-employment should be provided in addition to cash compensation for land and other assets lost. The lack of adequate land must be demonstrated and documented to the satisfaction of the Bank.

12. Payment of cash compensation for lost assets may be appropriate where (a) livelihoods are land-based but the land taken for the project is a small fraction of the affected asset and the residual is economically viable; (b) active markets for land, housing, and labor exist, displaced persons use such markets, and there is sufficient supply of land and housing; or (c) livelihoods are not land-based. Cash compensation levels should be sufficient to replace the lost land and other assets at full replacement cost in local markets.

13. For impacts covered under para. 3(a) of this policy, the Bank also requires the following:

(a) Displaced persons and their communities, and any host communities receiving them, are provided timely and relevant information, consulted on resettlement options, and offered opportunities to participate in planning, implementing, and monitoring resettlement. Appropriate and accessible grievance mechanisms are established for these groups.

(b) In new resettlement sites or host communities, infrastructure and public services are provided as necessary to improve, restore, or maintain accessibility and levels of service for the displaced persons and host communities. Alternative or similar resources are provided to compensate for the loss of access to community resources (such as fishing areas, grazing areas, fuel, or fodder).

(c) Patterns of community organization appropriate to the new circumstances are based on choices made by the displaced persons. To the extent possible, the existing social and cultural institutions of resettlers and any host communities are preserved and resettlers' preferences with respect to relocating in preexisting communities and groups are honored.

### **Eligibility for Benefits**

14. Upon identification of the need for involuntary resettlement in a project, the borrower carries out a census to identify the persons who will be affected by the project (see the [Annex A, para. 6\(a\)](#)), to determine who will be eligible for assistance, and to discourage inflow of people ineligible for assistance. The borrower also develops a procedure, satisfactory to the Bank, for establishing the criteria by which displaced persons will be deemed eligible for compensation and other resettlement assistance. The procedure includes provisions for meaningful consultations with affected persons and communities, local authorities, and, as appropriate, nongovernmental organizations (NGOs), and it specifies grievance mechanisms.

15. *Criteria for Eligibility.* Displaced persons may be classified in one of the following three groups:

(a) those who have formal legal rights to land (including customary and traditional rights recognized under the laws of the country);

(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 A, para. 7\(f\)](#)); and

(c) those who have no recognizable legal right or claim to the land they are occupying.

16. Persons covered under para. 15(a) and (b) are provided compensation for the land they lose, and other assistance in accordance with para. 6. Persons covered under para. 15(c) are provided resettlement assistance in lieu of compensation for the land they occupy, and other assistance, as necessary, to achieve the objectives set out in this policy, if they occupy the project area prior to a cut-off date established by the borrower and acceptable to the Bank. Persons who encroach on the area after the cut-off date are not entitled to compensation or any other form of resettlement assistance. All persons included in para. 15(a), (b), or (c) are provided compensation for loss of assets other than land.

### **Resettlement Planning, Implementation, and Monitoring**

17. To achieve the objectives of this policy, different planning instruments are used, depending on the type of project:

(a) a resettlement plan or abbreviated resettlement plan is required for all operations that entail involuntary resettlement unless otherwise specified (see para. 25 and [Annex A](#));

(b) a resettlement policy framework is required for operations referred to in paras. 26-30 that may entail involuntary resettlement, unless otherwise specified

(c) a process framework is prepared for projects involving restriction of access in accordance with para. 3(b) (see para. 31).

18. The borrower is responsible for preparing, implementing, and monitoring a resettlement plan, a resettlement policy framework, or a process framework (the "resettlement instruments"), as appropriate, that conform to this policy. The resettlement instrument presents a strategy for achieving the objectives of the policy and covers all aspects of the proposed resettlement. Borrower commitment to, and capacity for, undertaking successful resettlement is a key determinant of Bank involvement in a project.

19. Resettlement planning includes early screening, scoping of key issues, the choice of resettlement instrument, and the information required to prepare the resettlement component or subcomponent. The scope and level of detail of the resettlement instruments vary with the magnitude and complexity of resettlement. In preparing the resettlement component, the borrower draws on appropriate social, technical, and legal expertise and on relevant community-based organizations and NGOs. The borrower informs potentially displaced persons at an early stage about the resettlement aspects of the project and takes their views into account in project design.

20. The full costs of resettlement activities necessary to achieve the objectives of the project are included in the total costs of the project. The costs of resettlement, like the costs of other project activities, are treated as a charge against the economic benefits of the project; and any net benefits to resettlers (as compared to the "without-project" circumstances) are added to the benefits stream of the project. Resettlement components or free-standing resettlement projects need not be economically viable on their own, but they should be cost-effective.

21. The borrower ensures that the Project Implementation Plan is fully consistent with the resettlement instrument.

22. As a condition of appraisal of projects involving resettlement, the borrower provides the Bank with the relevant draft resettlement instrument which conforms to this policy, and makes it available at a place accessible to displaced persons and local NGOs, in a form, manner, and language that are understandable to them. Once the Bank accepts this instrument as providing an adequate basis for project appraisal, the Bank makes it available to the public through its InfoShop. After the Bank has approved the final resettlement instrument, the Bank and the borrower disclose it again in the same manner.

23. The borrower's obligations to carry out the resettlement instrument and to keep the Bank informed of implementation progress are provided for in the legal agreements for the project.

24. The borrower is responsible for adequate monitoring and evaluation of the activities set forth in the resettlement instrument. The Bank regularly supervises resettlement implementation to determine compliance with the resettlement instrument. Upon completion of the project, the borrower undertakes an assessment to determine whether the objectives of the resettlement instrument have been achieved. The assessment takes into account the baseline conditions and the results of resettlement monitoring. If the assessment reveals that these objectives may not be realized, the borrower should propose follow-up measures that may serve as the basis for continued Bank supervision, as the Bank deems appropriate (see also [BP 4.12, para. 16](#)).

## **Resettlement Instruments**

### *Resettlement Plan*

25. A draft resettlement plan that conforms to this policy is a condition of appraisal (see [Annex A, paras. 2-21](#)) for projects referred to in para. 17(a) above. However, where impacts on the entire displaced population are minor, or fewer than 200 people are displaced, an abbreviated resettlement plan may be agreed with the borrower (see [Annex A, para. 22](#)). The information disclosure procedures set forth in para. 22 apply.

### *Resettlement Policy Framework*

26. For sector investment operations that may involve involuntary resettlement, the Bank requires that the project implementing agency screen subprojects to be financed by the Bank to ensure their consistency with this OP. For these operations, the borrower submits, prior to appraisal, a resettlement policy framework that conforms to this policy (see [Annex A, paras. 23-25](#)). The framework also estimates, to the extent feasible, the total population to be displaced and the overall resettlement costs.

27. For financial intermediary operations that may involve involuntary resettlement, the Bank requires that the financial intermediary (FI) screen subprojects to be financed by the Bank to ensure their consistency with this OP. For these operations, the Bank requires that before appraisal the borrower or the FI submit to the Bank a resettlement policy framework conforming to this policy (see [Annex A, paras. 23-25](#)). In addition, the framework includes an assessment of the institutional capacity and procedures of each of the FIs that will be responsible for subproject financing. When, in the assessment of the Bank, no resettlement is envisaged in the subprojects to be financed by the FI, a resettlement policy framework is not required. Instead, the legal agreements specify the obligation of the FIs to obtain from the potential subborrowers a resettlement plan consistent with this policy if a subproject gives rise to resettlement. For all subprojects involving resettlement, the resettlement plan is provided to the Bank for approval before the subproject is accepted for Bank financing.

28. For other Bank-assisted project with multiple subprojects that may involve involuntary resettlement, the Bank requires that a draft resettlement plan conforming to this policy be submitted to the Bank before appraisal of the project unless, because of the nature and design of the project or of a specific subproject or subprojects (a) the zone of impact of subprojects cannot be determined, or (b) the zone of impact is known but precise sitting alignments cannot be determined. In such cases, the borrower submits a resettlement policy framework consistent with this policy prior to appraisal (see [Annex A, paras. 23-25](#)). For other subprojects that do not fall within the above criteria, a resettlement plan conforming to this policy is required prior to appraisal.

29. For each subproject included in a project described in para. 26, 27, or 28 that may involve resettlement, the Bank requires that a satisfactory resettlement plan or an abbreviated resettlement plan that is consistent with the provisions of the policy framework be submitted to the Bank for approval before the subproject is accepted for Bank financing.

30. For projects described in paras. 26-28 above, the Bank may agree, in writing, that subproject resettlement plans may be approved by the project implementing agency or a responsible government agency or financial intermediary without prior Bank review, if that agency has demonstrated adequate institutional capacity to review resettlement plans and ensure their consistency with this policy. Any such delegation, and appropriate remedies for the entity's approval of resettlement plans found not to be in compliance with Bank policy, are provided for in the legal agreements for the project. In all such cases, implementation of the resettlement plans is subject to ex post review by the Bank.

### *Process Framework*

31. For projects involving restriction of access in accordance with para. 3(b) above, the borrower provides the Bank with a draft process framework that conforms to the relevant provisions of this policy as a condition of appraisal. In addition, during project implementation and before enforcing of the restriction, the borrower prepares a plan of action, acceptable to the Bank, describing the specific measures to be undertaken to assist the displaced persons and the arrangements for their implementation. The plan of action could take the form of a natural resources management plan prepared for the project.

### **Assistance to the Borrower**

32. In furtherance of the objectives of this policy, the Bank may at a borrower's request support the borrower and other concerned entities by providing

(a) assistance to assess and strengthen resettlement policies, strategies, legal frameworks, and specific plans at a country, regional, or sectoral level;

(b) financing of technical assistance to strengthen the capacities of agencies responsible for resettlement, or of affected people to participate more effectively in resettlement operations;

(c) financing of technical assistance for developing resettlement policies, strategies, and specific plans, and for implementation, monitoring, and evaluation of resettlement activities; and

(d) financing of the investment costs of resettlement.

33. The Bank may finance either a component of the main investment causing displacement and requiring resettlement, or a free-standing resettlement project with appropriate cross-conditionalities, processed and implemented in parallel with the investment that causes the displacement. The Bank may finance resettlement even though it is not financing the main investment that makes resettlement necessary.