



# **KENYA OFF-GRID SOLAR ACCESS PROJECT (K-OSAP)**

## **RESETTLEMENT POLICY FRAMEWORK (RPF)**

**Final**

**March 2017**

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## ACRONYMS AND ABBREVIATIONS

ARAPs	Abbreviated Resettlement Action Plans
CPS	Country Partnership Strategy
CRWC	County Resettlement Working Committee
DPs	Displaced Persons
EAC	East African Community (EAC)
EIA	Environmental Impact Assessment
EMS	Energy Management System
ERC	Energy Regulatory Commission
GCRC	Gross Current Replacement Cost
GDP	Gross Domestic Product
GOK	Government of Kenya
ICT	Information and Communications Technology and Petroleum Ministry of Finance
IDA	International Development Association
IPP	Independent Power Producers
KPLC	Kenya Power and Lighting Company
KSHS	Kenya Shillings
LA	Land Act 2012
LAC	Land Administration Committees
LACT	Land Acquisition Compensation Tribunal
LEP	Livelihoods Enhancement Programme
LLM	Live-line maintenance
LRA	Land Registration Act 2012
LRCC	Locational Resettlement and Compensation Committees
M&E	Monitoring and Evaluation
MOEP	Ministry of Energy
MTR	Mid-Term Review
NEMA	National Environment Management Authority
NES	National Electrification Strategy (NES)
NGO	Non-Governmental Organization
NLC	National Land Commission
NLP	National Land Policy
OP	Operational Policy
OVC	Orphaned Vulnerable Children
PAD	Project Appraisal Document

PAP	Project Affected Persons
PCU	Project Coordination Unit
PIM	Project Implementation Manual
PIU	Project Implementation Unit
PLO	Project Liaison Officer
PPA	Purchase Power Agreement (PPA)
PPP	Public-Private-Partnership
PPT	Project Preparation Team
RAPs	Resettlement Action Plans
REA	Rural Electrification Authority
RPF	Resettlement Policy Framework
USD	United States Dollar
VMGF	Vulnerable and Marginalized Groups Framework
VMGP	Vulnerable and Marginalized Groups Plan
VRB	Valuation Registration Board
WB	World Bank

## BASIC INFORMATION

1. Country and Project Name: KENYA OFF-GRID SOLAR ACCESS PROJECT (K-OSAP)
2. Project Development Objective: To increase access to electricity services in underserved counties in Kenya
3. Expected Project Benefits:

Beneficiaries will be households, public and community institutions, enterprises and community facilities that cannot access electricity through the national grid and whose use of electricity will replace kerosene and other fuels for lighting and other activities like pumping water.

Another set of beneficiaries of the project will be host communities around refugee camps who will be provided with efficient cooking stoves (*jikos*) to replace fuel wood and charcoal for cooking

4. Identified Project Social Risks:

Minimal adverse social risks are anticipated under this project because the installation of solar systems will take place within existing households and public facilities.

Responsible Government/Country Agency for RPF Implementation: Ministry of Energy and Petroleum, Rural Electrification Authority (REA), Kenya Power and Lighting Company Limited (KPLC), and County Governments in the target areas.

Total Project Cost (USD million): Approx. USD\$ 155

Date RPF Prepared: March , 2017



# **EXECUTIVE SUMMARY**

## **Background**

The Government of Kenya has pledged to stimulate economic growth and accelerate job creation to improve the economic wellbeing of Kenyans. Among the many interventions to achieve this is expansion of the power distribution system to be within reach and thus enable more Kenyans to connect to the grid at affordable cost and hence initiate economic activities at the micro-economic level.

## **KENYA OFF-GRID SOLAR ACCESS PROJECT**

### **Project Objectives**

The proposed Project Development Objectives (PDOs) Objective is to increase access to energy services in underserved counties of Kenya.

### **Kenya Off-Grid Solar Access Project (K-OSAP)**

Providing equal opportunities to the entire country is key to achieving vision 2030 and especially the national target of achieving universal access to electricity by 2020. This desire has led the Government of Kenya to seek to close the access gap by providing electricity services to remote, low density and traditionally underserved areas of the country. The proposed K-OSAP directly promotes these objectives by supporting use of solar technology to drive electrification of households (including host communities around the refugee camp), enterprises, community facilities and water pumps.

### **Project Scope of K-OSAP**

The project will target 14 out of the 47 counties in Kenya that have been defined as marginalized by the Commission on Revenue Allocation (CRA). The 14 underserved counties collectively represent 72% of the country's total land area and 20% of the total population. The population is highly dispersed at a density of 4 times lower than the national average. These counties are also characterized by infrastructural deficits, including lack of access to roads, electricity, water and social services most of which are soon going to be a thing of the past thanks to devolution. The 14 counties include; Garissa, Isiolo, Kilifi, Kwale, Lamu, Mandera, Marsabit, Narok, Samburu, Taita Taveta, Tana River, Turkana, Wajir and West Pokot. The total number of un-electrified households are roughly 1.2 million in these counties.

## **K-OSAP Components**

K-OSAP has four (4) different components as described below. However, this RPF focuses on component 1 and 3. The Project triggers Operation Policies OP/BP 4.01 Environmental Assessment, OP/BP 4.04 Natural Habitats, OP/BP 4.10 Indigenous People and OP/BP 4.12 Involuntary Resettlement hence the need for this RPF.

### **Component 1: Mini-grids for Community Facilities, Enterprises, and Households**

This component will support the electrification of areas where electricity supply through mini-grids represents the least cost option from a country perspective, as underpinned by the geospatial plan. Depending on the number of users to be supplied, and the service level defined for each type of user (households, enterprises, community facilities, etc.), the generation system of each specific mini-grid will combine solar PV, battery storage and thermal units running on diesel. Mini-grids will be developed under a Public-Private-Partnership (PPP) whereby private investment and public funds co-finance construction of generation facilities, and public funding is used to construct the distribution network. A single private service provider (PSP) will be responsible for construction (and partial financing) of the generation system and for construction of the distribution network of each mini-grid. The same PSP will sign two long-term contracts with KPLC: (i) a 7-10 year power purchase agreement (PPA) for the operation and maintenance of the generation system, and recovery of the privately financed part of the investment; and (ii) a 7-10 year service contract for operation and maintenance (O&M) of the distribution network, including revenue cycle services (as required). Ultimately, after the recovery of the private investments, all assets (both generation and distribution) will be in GoK ownership. All electricity consumers supplied through mini-grids will be KPLC customers, and pay the same tariff for each category charged to users connected to the national grid, ensuring effective implementation of a national uniform tariff policy.

The component will be implemented in approximately 120 locations throughout the 14 target counties, typically in mini-grids supplying 100-700 prospective users, with approximate total demand of 20-300kW. These potential sites, capturing approximately 27,000 consumers in total, have preliminarily been identified as part of the geospatial plan. Each service territory will comprise 20 or more mini-grids located in geographically contiguous areas, with 2,000 or more serviceable customers. There will be a mix of more densely populated sites and less densely populated sites in each lot, where possible, to enhance their overall commercial attractiveness. PSPs can bid separately for each lot, with multiple lots potentially awarded to the same PSP.

REA and KPLC will jointly implement the component, with the procurement of lots divided among them. This component will be complemented by technical assistance, under sub-component 4.2, to (i) confirm the sites through further feasibility studies and techno-economic analysis (ii) promote productive and efficient use of energy by users (iii) technical, legal, and procurement support to effectively design the bidding documents and supervise the construction of the mini-grid assets.

## **Component 2: Standalone Solar Systems and Clean Cooking Solutions for Households**

**Component 2A: Standalone Solar Systems for Households :** This component will support off-grid electrification of households in the 14 target counties where a standalone solar system is the most appropriate technology to deliver energy services, leveraging Kenya's unique off-grid solar market dynamics and innovations. The component will provide incentives for solar off-grid companies currently operating in the more densely populated areas of Kenya to expand to underserved counties and provide services to the off-grid households in these counties. These services, provided through portable solar home systems, are well-suited to some of the population in the underserved counties, as households do not always live in permanent structures. In addition, affordability is increased by allowing households to pay for systems over time. Willingness to pay analysis, confirmed by the preliminary results from the MTF surveys shows there to be over a half-million households that could theoretically afford a Tier 1 level solar home system<sup>1</sup>.

The component will be accomplished via two financing instruments to which eligible solar service providers (SSPs) will have access:

- i. *Grant Facility - Competitively awarded expansion grants*, to compensate SSPs for initial, ongoing incremental, and opportunity costs associated with an expansion of operations in underserved counties. A percentage cap will be set within each lot so that multiple service providers will have the opportunity to operate within the space. A competitive approach will be used, whereby service providers will bid based on a grant amount per household connection, with the lowest grant requirements winning. Results-based financing will specify installment payments based on the achievement of pre-agreed connection milestones and satisfactory after sales service support.
- ii. *Debt Facility - Debt financing to solar service providers*, to support upfront costs associated with getting hardware inventory into the market, and medium-term consumer financing to enable households to pay off the systems over time. Two typologies of business models underpin the majority of solar service providers that operate in the Kenyan market. First are service providers that sell solar products on an over-the-counter (cash sale) basis. These service providers require shorter term debt in USD or other major foreign currency to finance costs associated with hardware manufacture and transit to Kenya (typically from China) until a sale is made. This cycle typically lasts anywhere from 6 to 9 months. A second prevailing business model is pay-as-you-go, whereby customers pay for the systems in monthly installments (typically between 12-36 months), and SSPs carry the default risk during the payback period. These businesses typically require debt financing that is commensurate with the lending terms that they extend to their customers. Given that service providers' revenues are in local currency, the debt instrument will also offer loans in Kenyan Shillings in addition to USD.

The implementation of this component will be under a direct oversight of MoEP. MoEP will

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<sup>1</sup> Simulations using 2014 FinAccess household survey data show that in a scenario where 7 percent of household expenditures are made on stopgap lighting, over 500,000 of the 1.2 million off-grid households could afford a PAYG SHS offering (assuming a 3-light point system, offered on a monthly cost of KES 500 and paid off over 36 months).

competitively select the expansion debt-grant facility manager, which will be a consortium with demonstrated experience with managing similar instruments in Kenya and similar geographies. An OP 10.00 assessment of financial intermediary financing will be carried out for on the debt facility manager.

**Component 2B: Clean Cooking Solutions for Households:** This sub-component will support a transition from low-efficiency baseline stoves to cleaner, higher efficiency improved stoves. To accomplish this objective, cleaner household cooking appliances and fuels will be promoted. Activities will begin by focusing on four underserved counties in the northwestern part of the country (West Pokot; Turkana; Samburu; and Marsabit).

During project preparation, a Stove-Market Testing Program is being undertaken in the municipal, town, and densely settled parts of Turkana County. The stoves to be included will be determined following a call for Expressions of Interest for stove manufacturers wanting their products to be exposed to these new markets. To be eligible, a woodstove will have to prove that its efficiency tests it as a Tier 2 stove (roughly 30 percent efficient) and a charcoal stove will have to prove that its efficiency tests as a Tier 3 stove (roughly 40 percent efficient) to be eligible for inclusion in the market tests. These tests will involve exposing both consumers and suppliers (retailers, wholesalers, and distributors) in the urban areas of Turkana County to these improved stoves. The results will be shared with the communities and interested parties. Field testing for additional stoves models may be considered during the project implementation.

This sub-component will operate a window in the grant facility established for Component 2A to support sales of eligible stoves in targeted counties. The grant facility will provide the selected distributors with financial support on a matching grant and results-based scheme to enable them to market their stoves locally within the target counties; to increase their inventories of the selected higher quality stoves; to purchase and transport them to the target communities in number; and to sell them to willing buyers in the communities.

### **Component 3: Standalone Solar Systems and Solar Water Pumps for Community Facilities**

The community facilities considered in this component are the existing and upcoming: (i) Health facilities (Levels 2 and 3) (ii) Educational facilities (Secondary schools and Technical training institutes); (iii) Administrative offices (for example, assistant County Commissioner offices).

**Component 3A: Standalone Solar Systems for Community Facilities.** This component will support the provision of electricity services to community facilities in remote areas in underserved counties. A private sector contractor will be competitively selected for each service territory to supply, install, and maintain standalone solar systems in community facilities. A total of about 1100 facilities could be reached via this component.

KPLC, the implementing agency, would sign two (2) contracts with the contractor in each service territory – one for the supply and installation of the standalone solar systems and the second for the provision of maintenance services for 7-10 year duration. The contract would specify the

minimum requirements in terms of quality standards in electricity supply for the community facilities, developed by Ministry of Health, Ministry of Education, and Ministry of Interior. Contracts would stipulate the minimum package acceptable as “basic service”, but allow room for provision of additional services to community facilities. The proposed project will cover the supply and installation costs and KPLC will pay the contractor for fees under the maintenance contract with allocation or revenues from beneficiary facilities. The costs of maintenance contracts are expected to be passed through into tariff revenues recognized by ERC.

KPLC will take the retail risk of serving these new consumers, for which their payment record for such an arrangement is still unknown. Therefore, a payment risk mechanism would be available to KPLC, to which the proposed project will set aside funds equivalent to 6-12 months of maintenance fees that KPLC can draw upon in case of inadequate revenues to pay the contractor.

**Component 3B: Solar Water Pumps for Community Facilities:** This component will support financing solar powered pumping systems to increase sustainable access to water supply by equipping new boreholes and retrofitting existing diesel-powered boreholes associated with community facilities within the target counties. A private sector contractor will be competitively selected for each service territory to supply, install, and maintain standalone solar systems in community facilities.

REA, the implementing agency, would sign (2) contracts with the contractor in each service territory to – one for the supply and installation of the standalone solar systems and the second for the provision of maintenance services for 7-10 year duration - similar to the design in Component 3A. The payment for these maintenance services will be recouped on a monthly basis by the community facilities hosting these boreholes.

A payment risk mechanism would be available to REA, to which the proposed project will set aside funds equivalent to 6-12 months of maintenance fees that REA can draw upon in case of inadequate allocation from the beneficiary facilities to pay the contractor.

## **Component 4: Implementation Support and Capacity Building**

### **Component 4.1: Consumer Education and Citizen Engagement**

This sub-component will support the consumer education and citizen engagement activities for the program’s key delivery areas (households, community facilities, water facilities in the underserved counties). Consumers in these areas are unlikely to be aware of the new technologies being presented and have a right to expect clear, thorough information about the advantages of the services and how to access them. The activities supported under this sub-component will provide recurring opportunities for consumers to interact with service providers in order to share their feedback and concerns. For those who have some knowledge of the products, these outreach activities will provide them with the necessary guidance on how to get the best out of the products in the way they use and maintain them. Finally, in these target areas, acceptance and sustained demand is generated when the buy-in of key opinion leaders is obtained. The consumer education

and citizen engagement program will employ both Above the Line (mass media tools) and Below the Line (one on one) channels in reaching out to different target audiences while ensuring opportunities for two-way dialogue.

#### **Component 4.2: Implementation Support and Capacity Building**

This sub-component will support all technical studies, implementation support, and capacity building of sector and counties. More specifically, the following are included. First, build capacity and address the skill set requirements in KOSAP Project Coordination Unit in MoEP and KPLC PIU and REA PIU. Second, capacity building activities in the sector and counties, for instance related to solar technology, project management, procurement, environmental and social safeguards for the sector entities, and monitoring and evaluation. As such, funding will be used to cover the investment costs (equipment, software, training, etc.) incurred by ERC to establish a monitoring unit. Third, relevant studies and contracts for the investment components of the proposed projects. Fourth, support MoEP in the development of a Strategic Planning and Program Management (SPPM) unit with the objective of providing effective coordination and oversight in terms of policy development, strategic planning, and project design and implementation.

#### **World Bank safeguard policies**

The K-OSAP project has triggered the following Environmental and Social Safeguard policies of the World Bank: (a) Safeguard OP 4.01, Environmental Assessment; (b) OP 4.10, Indigenous People, (c) OP 4.04 Natural Habitats (d) OP 4.12, Involuntary Resettlement.

<b>OPERATIONAL SAFEGUARDS TRIGGERED BY THE K-OSAP COMPONENT</b>	<b>YES</b>	<b>NO</b>
OP/BP 4.01: Environmental Assessment	x	
OP/BP 4.04 Natural Habitats	x	
OP/BP 4.36 Forests		x
OP 4.09 Pesticide Management		x
OP/BP 4.11 Physical Cultural Resources		x
OP/BP 4.10 Indigenous Peoples	x	
OP/BP 4.12 Involuntary Resettlement	x	
OP/BP 4.37 Safety of Dams		x
OP 7.50 Projects in International Waters		x

This RPF has been prepared and will be publicly disclosed for the different components. The exact sub-project sites for the project components are not yet definitively identified. Therefore, at this stage it is not possible to determine the exact location, demography and impact on assets and/or livelihood of either the PAPs or the resettlement related impoverishment risks they might face. However, as noted no resettlement is envisaged and the siting of sub-project investments will, as

much as possible, take this into consideration. Moreover, the majority of adverse impacts are minimal given the nature of the investments.

Once the sites are established and it becomes clear that there will be economic or physical impacts that require compensation mitigation actions, sub-project RAPs will be prepared as required by World Bank social safeguard policies.

### **Purpose and Scope of RPF**

With regard to social safeguards the project will trigger OP 4.01, Environmental Assessment, OP 4.10, Indigenous People, OP 4.04 Natural Habitats and OP 4.12, Involuntary Resettlement for K-OSAP which includes construction of mini grids and solar power installations might require land acquisition. Minimal adverse social risks are anticipated under this project and no resettlement is expected under any component of this project. The RPF is prepared for cautionary purposes.

The Bank O.P.4.12 requires that the RPF report must be disclosed as a separate and stand-alone report by the Government of Kenya and the World Bank. The disclosure of this document should be both in locations where it can be accessed by the general public and at the Info shop of the World Bank.

### **Methodology for RPF Preparation and Legal Framework**

There are a number of national and local legal frameworks that regulate land relations in Kenya. These frameworks define land rights, ownership, procedures and requirements of transfer and acquisition of land between individuals and groups. They also provide procedures for the acquisition of land by the state or a public body for public projects.

Among the most important legal instruments in this regard which were reviewed are the Constitution of Kenya; Land Act 2012; Community Land Act 2016; National Land Commission Act 2012; Land Valuers Act Cap 532; Land Registration Act 2012 and Land Adjudication Act; and the Way leaves Act Cap 292.

The World Bank's safeguard policy on involuntary resettlement, OP 4.12 is to be complied with where involuntary resettlement, impacts on livelihoods, acquisition of land or restrictions to access to natural resources, may take place as a result of the project. Where there is a discrepancy between the national laws and the Bank OP 4.12, the higher of the two standards will be followed in this policy framework.

## **Potential Project Impacts and Mitigations**

### **Potential Impacts**

The projects are likely to have two categories of effects, permanent and temporary. Permanent effects will result into an infinite loss of use of property, vegetation, or land by the affected person as a result of the sub project activities. This is likely to occur where permanent installations are established. The effects will result in an interruption in the current use of property or land by the affected person as a result of the sub project activities. This is likely to occur during, for instance, installation of solar panels or minigrids.

Risk of sparks/fire from live conductors

- Solid waste
- Electric shocks and electrocution of people
- Occupation safety and health hazards
- Public health risk
- Construction material sourcing-wooden poles
- Oil Leaks from transformers
- Noise during construction

Provisions are made under this RPF and the related safeguards instruments (Environmental and Social Management Frameworks (ESMFs), the Social Assessment (SA) to minimize all such impacts. *Provisions are also made in this RPF to accommodate all potential situations, including the very unlikely cases that entail actual displacement and livelihood restoration assistance in accordance with the World Bank Policy on Involuntary Resettlement, OP 4.12. Every precaution will be taken to avoid resettlement.*

The potential social impacts to be addressed within the context of preparing this Resettlement Framework have been identified. It is expected though that site-specific social analysis/assessment studies will be carried out within specific localities, as and when required. The framework for the compensation/ resettlement will then be applied incorporating specific (1) institutional arrangements, (2) resettlement/ compensation eligibility criteria, (3) implementation procedures, (4) financial responsibilities, and (5) monitoring and evaluation plan.

### **Eligibility for Compensation**

Determination of the eligibility of the bona fide occupants of the assets/properties to be compensated shall be done through a transparent and legal process, taking into consideration all the existing laws of Kenya and policies of the World Bank. Compensation will be paid to all categories of Project Affected Persons as described in the eligibility criteria and entitlement matrix section of this report. All those persons enumerated before the cutoff date will be eligible for compensation. This RPF applies to all eligible persons regardless of the severity of impact and whether or not they have legal title to land.



## **Valuation Methods for compensation**

### ***Crops Compensation***

The compensation for the crops will be paid at market rate for the production lost. This rate incorporates the value of crops and the value of the labor invested in preparing new land. Market value is equivalent to average of last three 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. REA and KPLC will undertake an assessment of trees/crop damage through a census count of crops/trees affected by the sub-project investments (number, type and breast height diameter of mature trees, photographs of affected per each parcel affected).

### ***Agricultural land***

Compensations for agricultural land will be calculated as 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. However, the K-OSAP will be implemented among the pastoralist communities whose land is owned on communal basis. It will be the duty for the community to allocate land for this project where it's applicable.

### ***Land in rural areas***

Compensation for land in rural areas will be calculated as the pre-displacement market value of land of equal size and use, with similar or improved public infrastructure facilities and services and located in the vicinity of the affected land, plus the cost of any registration and transfer taxes.

### ***Houses and other structures***

This compensation shall comprise the current 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 labour and contractors' fees, plus the cost of any registration and transfer taxes.

### ***Loss of Income***

Losses of income for businesses will be estimated from net daily/monthly profit of the business verified by an assessment of visible stocks and activities. In addition to the compensation, disturbance allowances of 15% of total compensation will be considered. The estimation of supplementary assistance for affected commercial structures or business units will generally be based on the estimated income obtained from the use of the business/commercial unit and the estimated period of disruption of business activities.

## **Project Screening and Preparation**

### ***Sub-projects Screening***

Sub-projects might have a social impact on the community. Potential socio-economic impacts that will require mitigation measures, resettlement and compensation will have to be identified. The subprojects will be screened to know whether involuntary resettlement, land acquisition, or loss, denial or restriction of access to land and other economic resources will be caused by the implementation of the sub-project or whether the sub- project result in the permanent or temporary loss of crops, fruits and household infrastructures such as granaries, outside toilets, kitchens, and other structures.

### ***Preparation of RAPs***

Specific Resettlement Action Plans will be prepared by the Project Implementation Units (PIUs) to be set up specifically in REA, KPLC for the components 1-4 in consultation with other parties responsible for resettlement specifying the procedures it will follow and the actions it will take to properly resettle and compensate affected people and communities. The Abbreviated Resettlement Action Plan will be used where less than 200 individuals are displaced or less than 10% of affected land is lost. It should be noted that the project anticipates minimal relocation of households if at all.

### ***Community Sensitization***

Communities within the project areas will be sensitized on the project and likely project impacts and the extent of their involvement to ensure project success. Measures instituted to address negative project impacts will be well communicated to the community.

## **Public Consultations and Participation**

As per World Bank requirements the borrower or client is responsible for conducting and providing evidence of meaningful consultation with communities likely to be affected by environmental and social impacts, and with local stakeholders, and also for ensuring broad community support.

Participatory Stakeholder Forums have been held as per the table below to consult with stakeholders on the environmental and social safeguards document for KOSAP project.

No	Name of the County	Dates
1	Nairobi –REA	31/10/2016
2	Narok	28/11/2016
3	Taita Taveta	22/12/2016
4	Kwale	16/01/2017
5	Garissa	23/01/2017

6	Tana River	25/01/2017
7	Kilifi	30/01/2017
8	West Pokot	24/1/2017
9	Turkana	21/1/2017

The forums were by CEC-environmental and Energy ministers, government agencies from different counties in 14 counties, representatives of youths, people with disability and women, local NGOs and CBOs. A comprehensive list of the participants is included in the minutes of the stakeholder forum consultations appended to this report. The feedback was overall positive and stakeholders were supportive of the objectives of the project to be households, public and community institutions, enterprises and community facilities that cannot access electricity through the national grid and whose use of electricity will replace kerosene and other fuels for lighting and other activities like pumping water. Another set of beneficiaries of the project will be host communities around refugee camps who will be provided with efficient cooking jikos to replace fuel wood and charcoal for cooking.

They were also broadly satisfied with the proposed safeguards instruments and the mitigation measures provided for in the instruments. Consultations will be concluded in a timely manner in the context of key project preparation steps, in an appropriate language, and in accessible places. The results of the consultations will be adequately reflected in the project design and in the project documentation.

During implementation, (PAPs) will be informed about their rights and options. A grievance mechanism will be set up and all grievances will be recorded and acted upon.

**The compensation mechanisms will include:**

- (a) Sub-county Resettlement Compensation Committees (SCRCC) including representatives of the national land commission, the Implementing Agency (IA); county administration representative, sub-country land registrar, and two PAPs; and
- (b) Locational Resettlement Compensation Committees (LRCCs) based in each administrative location where sub-projects are located and shall be the voice of the PAPs to include location chief, assistant chiefs, men and women PAPs, youth and vulnerable groups' representatives.

The participation of local leaders and PAPs in disseminating information and resolving disputes will be important once RAP implementation starts. PAPs representatives will participate in the sub-project workshops at mid-term and at the end of RAP implementation. To the extent possible, the RAP should include social accountability tools to assess the quality of RAP implementation, and in some cases, assist the RAP team in tracking expenditures.

**Documentation**

The names and addresses of affected persons will be compiled and kept in a database including claims and assets. The records are also important especially for future monitoring activities. Documentation will include documents relevant to land transactions (voluntary and involuntary).

**Procedure for Delivery of Compensation**

Consultation and public participation with the PAPs will initiate the compensation process to ensure that all affected individuals and households are well informed and adequately involved in the entire process. Those who hold title to the land resources will be duly informed and in case there are no clearly identified owners or users of land to be acquired, MOEP, the respective county and national government administrations through the lands officers and the traditional leaders of the respective communities where the land is located will be solicited to help identify owners or users in order to sensitize them on the project and its implications.

The REA/PIU and KPLC/PIU either through their internal teams or through a consulting firm will undertake a detailed survey of all losses that will result for each household, enterprise, or community affected by the project. During inventories of assets, the owners or persons authorized to represent them on their behalf will be required to countersign them to minimize the possibility of subsequent claims or disputes regarding claims.

Compensation payment will be made by REA and KPLC to the PAPs or by court order on the amount of compensation where this has been the subject of litigation between the project and the Affected Entity in conjunction with National Land Commission.

**RPF Implementation and Monitoring**

*Compensation and Resettlement Committees* - The Compensation and Resettlement Committees at Sub County and Locational level will be responsible for organizing and ensuring that compensations payable to PAPs are made in line with the provisions and procedures of this RPF. *Grievance Redress Committee* - The Grievance Redress Committee will be responsible for receiving and logging complaints and resolving disputes. The GRC will resolve each grievance or dispute to ensure that redress actions are implemented by whoever is mandated to undertake such action. If affected persons are not satisfied with the GRC, they will be entitled to seek redress through the Courts of Law.

*Monitoring and Evaluation Team* - The monitoring and evaluation team will be responsible for the monitoring of the RAP implementation programme to ensure that stated targets are met and project

affected persons are duly compensated in line with the RAP requirements. This monitoring and evaluation will be constituted during the implementation of the K-OSAP. The sequence of implementation activities and responsibilities are summarized in the table below.

### *Roles and Responsibilities*

The MoEP will provide overall coordination of the Project and lead in the implementation of Component 2, which will include overall responsibility for safeguards due diligence, and compliance monitoring. MoEP will ensure that Terms of Reference (ToR) for hiring the Facility Management Consortium (FMC) contain clauses that relate to safeguards and Occupational Health and Safety (OHS) competencies and specific tasks related to safeguard monitoring and enforcement. The selected FMC (Grant and Debt Managers) will be responsible for coordinating and supporting the implementation of safeguards, and will prepare Facilities Implementation Manual (FIM) that will include checklist for subprojects, their potential threats, and mitigation measures as well as capacity building for safeguards implementation and compliance monitoring. MoEP will submit FIM to the Bank for review and clearance. Thus, solar companies who bid for any of the subprojects under this component will have to indicate their respective bids how they intend to address environmental and social sustainability issues that could be associated with the provisions of those services. The selected solar companies will be responsible for implementing the safeguards on the ground, including ensuring compliance with occupational health and safety imperatives and dealing with de-manufacturing of out-of-use solar devices, e-waste disposal and recycling. The generation of safeguard reports during implementation of project activities will start from the solar companies and through the FMC to MoEP.

KPLC and REA will jointly be responsible for the implementation of Components 1 and 3; Component-1 (Mini-grids for Community Facilities, Enterprises, and Households) will be developed under the Public Private Partnership (PPP) and a single contractor will be responsible for construction of the generation system, the contractor will prepare appropriate safeguards instruments that will be consulted upon, reviewed and cleared by the Bank and locally disclosed. Under Component 3 (Standalone solar systems for community facilities), KPLC and REA have overall responsibility for safeguards due diligence and the private sector contractors hired for supply, installation and maintenance will be responsible for preparing a checklist for subprojects, their potential threats, and mitigation measures as well for safeguards implementation and compliance monitoring. REA will be responsible for managing the carbon finance sub-component from Ci-Dev. KPLC and REA will establish their respective Project Implementation Units (PIUs) to manage their specific components.

Specifically, KOSAP PCU hosted in MoEP will be responsible for the overall coordination of the project implementation and oversight including the following: (i) defining, jointly with the respective county governments, the project areas based on technical and policy development priorities; (ii) resolving in consultation with the county governments challenges requiring high level intervention facing the project; (iii) monitoring the implementation of the project in consultation of the counties; and (iv) consolidating information

Each Implementing Agency (IA) namely MoEP, KPLC, REA, will establish Project Implementation Units (PIUs), that will lead project implementation through staff nominated into the PIUs or recruited. The KPLC PIU will be led by Chief Engineer (Rural Electrification) and will include procurement specialist, project economist, project finance specialist, environmental and social safeguards specialists, and project engineers. The REA PIU will be led by a project manager and will include a renewable energy officer, procurement officer, project engineers, and environmental and social safeguards specialist.

No	Institution	Responsibility
1	Ministry Energy and Petroleum	<ul style="list-style-type: none"> <li>Overall coordinator and supervision of the KOSAP project through the PCU and Implementation of Component 2.</li> </ul>
2	KPLC	<ul style="list-style-type: none"> <li>Preparations of the Social assessment documents</li> </ul>
3	REA	<ul style="list-style-type: none"> <li>Preparation of the ESMF and RFP documents.</li> </ul>
4	MoEP, REA and KPLC Project Implementation Unit	<ul style="list-style-type: none"> <li>To assist the community and support in the inventory of affected persons</li> <li>Oversee gender related issues to ensure that vulnerable women, the poor and elderly are compensated equally.</li> </ul>
5	REA and KPLC registered Land Valuation officers	<ul style="list-style-type: none"> <li>To carry out the valuation and compensation payment process and reporting for the affected persons. This will be undertaken by registered Valuers in the two organizations. In case of a dispute provisions will be made for independent registered Valuers.</li> </ul>
6	GRM Committee	<ul style="list-style-type: none"> <li>To liaise with county and Projected Affected Persons in ensuring peaceful implementation of the process including handling any grievances.</li> </ul>
7	REA, KPLC, and Resettlement Committees	<ul style="list-style-type: none"> <li>To assist the community and support in the inventory of the affected persons.</li> </ul>
9	PIU's, Environmental and Social departments REA, MoEP and PIU& SHE- KPLC in consultation with VMGOs and county administration	<ul style="list-style-type: none"> <li>To assist with implementation, capacity building, sensitization and monitoring where need be.</li> </ul>

9	Ministry Energy and Petroleum	Overall coordinator and supervision of the KOSAP project.
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### **Capacity for Implementation**

Borrower capacity in implementing the safeguards - In April 2008, KPLC established and Environmental Unit within its Safety, Health and Environmental (SHE) Department. The staffing of this unit consists of: -

	Professionals	Number in Department
1	Safety Engineers	10
2	Environmental Specialists	7
3	Socio- Economists	3
4	Occupational Health and Safety officer	1
5	Occupational Health and Public Safety	1

Since REA Environmental department is not well established REA and KPLC team will work together on the implementation of safeguards instruments for KOSAP project. Based on the preparation of ESMF and RPF instruments since then, and implementation of ESMPs, the SHE department has sufficient capacity to determine and monitor the mitigation of potential adverse environmental and social impacts. However, MoEP, REA and KPLC will undertake regular monitoring to ensure standard practice. Scheduling of compensation payments will be closely monitored to ensure that, in the majority of cases, compensation is paid prior to the start project implementation.

### **Monitoring Aspects**

The monitoring and evaluation will be the main mechanism to alert K-OSAP of any delays and problems and these activities will help measure the extent to which the main objectives of the RPF have been achieved. To ensure that the implementation of resettlement is executed in line with this RPF, the activities will be monitored and evaluated internally by MoEP, KPLC and REA PIUs at the national level and on field at the sub County level. The PIUs will undertake the routine internal monitoring and evaluation of the implementation of the resettlement issues so as to ensure that all the responsible units follow the schedule and comply with the principles of the resettlement plan. A number of objectively verifiable indicators shall be used to monitor the impacts of the compensation and resettlement activities. Annual evaluations will be made in order to determine

whether the PAPs have been paid in full and before implementation of the individual subproject activities, and whether the PAPs enjoy the same or higher standards of living than before.

### **Budget and Funding**

At this stage, it is not possible to confirm the exact number of people who may be affected. This is because the technical designs and details have not yet been developed and the sub projects have not yet been fully identified. The budgets (MoEP, REA and KPLC) will be developed from the specific social assessment studies and mitigation/livelihood restoration measures to be developed. The budgets will cover resettlement activities including compensation cost for affected assets.

### **Disclosure**

This RPF will be disclosed in compliance with relevant Kenyan regulations and the World Bank Operational Policy OP 4.12 on Involuntary Resettlement. The document will be disclosed at the Info-shop of the World Bank and will also be available to any interested persons. MoEP, REA and KPLC will disclose this RPF in their websites since it's a legal requirement.



# CHAPTER ONE: DESCRIPTION OF THE PROJECT

## 1.1 Context

Kenya has the largest economy in East Africa and its Gross Domestic Product (GDP) is estimated to have expanded by 6.2 per cent in 2016 which was a slight improvement compared to a 5.2 per cent growth in 2014. This growth was mainly supported by a stable macroeconomic environment and improvement in outputs of agriculture; construction; finance and insurance and real estate. Key macroeconomic indicators remained relatively stable and supportive of the growth during the year under review. Overall inflation eased from 6.9 per cent in 2015 to 6.2 per cent in 2016 mainly due to lower prices of energy and transport.

*Vision 2030*, Kenya's long-term development strategy, targets expanded infrastructure access as a key element in achieving higher levels of economic growth. *Vision 2030* targets an average annual economic growth rate of 10 percent between 2013 and 2030. This significantly higher economic growth will require modern, efficient infrastructure facilities to expand the productive sectors of the economy and improve access to markets. The upgrade of the infrastructure platform calls for rehabilitating the road network, upgrading the railways, improving urban public transport, and expanding access to electricity and safe water. The project aims at providing energy access to areas that are out of reach of the national grid

## 1.2 Current Electricity Access Rate in Off Grid Areas

The estimate of the national access rate to electricity as at April 2016 is 56%. This is based on total electricity customers of 4.6 million and average household size of 5.5. Conversely the unconnected population is 43% of the total, which is spread very unevenly across the country. After considering the geographic reach of the existing country wide interconnected power network, it can be determined that there are 14 counties out of the 47 whose unconnected population would to a significant extent best be served by mini-grid or off grid solutions. These 14 counties are Mandera, Wajir, Garissa, Lamu, Tana River, Turkana, West Pokot, Marsabit, Samburu, Kilifi, Taita Taveta, Kwale, Narok, and Isiolo. The average access rate for these counties is 12.6% and average population density is 19.8 persons per square km. These counties by virtue of the wide geographic dispersion of their populations would be the subject areas for mini-grid and off-grid solutions. Areas suitable for mini-grid and off grid solutions typically would have higher grid extension costs per customer as compared to areas requiring only grid extension solutions due to very low population densities outside the main towns.

Electricity access remains limited to only half of Kenya population. The interconnected electricity system covers primarily the densely populated southern and central belt of the country, thus large areas, especially the Northern and North Eastern counties has limited grid infrastructure. Accelerating the pace of electrification in line with the government's target of 70 percent electrification by 2020 can contribute to eliminating extreme poverty and achieving shared prosperity

### **1.3 Project Development Objective**

The proposed project development objective (PDO) is to increase access to energy services in underserved counties in Kenya.

### **1.4 Kenya Off-Grid Solar Access Project (K-OSAP)**

Providing equal opportunities to the entire country is key to achieving vision 2030 and especially the national target of achieving universal access to electricity by 2020. This desire has led the Government of Kenya to seek to close the access gap by providing electricity services to remote, low density and traditionally underserved areas of the country. The proposed K-OSAP directly promotes these objectives by supporting use of solar technology to drive electrification of households (including host communities around the refugee camp), enterprises, community facilities and water pumps.

### **1.5 Scope of K-OSAP**

The project will target 14 out of the 47 counties in Kenya that have been defined as marginalized by the Commission on Revenue Allocation (CRA). The 14 underserved counties collectively represent 72% of the country's total land area and 20% of the total population. The population is highly dispersed at a density of 4 times lower than the national average. These counties are also characterized by infrastructural deficits, including lack of access to roads, electricity, water and social services most of which are soon going to be a thing of the past thanks to devolution. The 14 counties include; Garissa, Isiolo, Kilifi, Kwale, Lamu, Mandera, Marsabit, Narok, Samburu, Taita Taveta, Tana River, Turkana, Wajir and West Pokot. The total number of un-electrified households is roughly 1.2 million in these counties.

### **1.6 K-OSAP Components**

KOSAP has 4 different components as described below. However, this RPF focuses on component 1 and 3 which are likely to trigger OP 4.12) hence the need for this RPF.

#### **Component 1: Mini-grids for Community Facilities, Enterprises, and Households**

This component will support the electrification of areas where electricity supply through mini-grids represents the least cost option from a country perspective, as underpinned by the geospatial

plan. Depending on the number of users to be supplied, and the service level defined for each type of user (households, enterprises, community facilities, etc.), the generation system of each specific mini-grid will combine solar PV, battery storage and thermal units running on diesel. Mini-grids will be developed under a Public-Private-Partnership (PPP) whereby private investment and public funds co-finance construction of generation facilities, and public funding is used to construct the distribution network. A single private service provider (PSP) will be responsible for construction (and partial financing) of the generation system and for construction of the distribution network of each mini-grid. The same PSP will sign two long-term contracts with KPLC: (i) a 7-10 year power purchase agreement (PPA) for the operation and maintenance of the generation system, and recovery of the privately financed part of the investment; and (ii) a 7-10 year service contract for operation and maintenance (O&M) of the distribution network, including revenue cycle services (as required). Ultimately, after the recovery of the private investments, all assets (both generation and distribution) will be in GoK ownership. All electricity consumers supplied through mini-grids will be KPLC customers, and pay the same tariff for each category charged to users connected to the national grid, ensuring effective implementation of a national uniform tariff policy.

The component will be implemented in approximately 120 locations throughout the 14 target counties, typically in mini-grids supplying 100-700 prospective users, with approximate total demand of 20-300kW. These potential sites, capturing approximately 27,000 consumers in total, have preliminarily been identified as part of the geospatial plan. Each service territory will comprise 20 or more mini-grids located in geographically contiguous areas, with 2,000 or more serviceable customers. There will be a mix of more densely populated sites and less densely populated sites in each lot, where possible, to enhance their overall commercial attractiveness. PSPs can bid separately for each lot, with multiple lots potentially awarded to the same PSP.

REA and KPLC will jointly implement the component, with the procurement of lots divided among them. This component will be complemented by technical assistance, under sub-component 4.2, to (i) confirm the sites through further feasibility studies and techno-economic analysis (ii) promote productive and efficient use of energy by users (iii) technical, legal, and procurement support to effectively design the bidding documents and supervise the construction of the mini-grid assets.

## **Component 2: Standalone Solar Systems and Clean Cooking Solutions for Households**

**Component 2A: Standalone Solar Systems for Households :** This component will support off-grid electrification of households in the 14 target counties where a standalone solar system is the most appropriate technology to deliver energy services, leveraging Kenya's unique off-grid solar market dynamics and innovations. The component will provide incentives for solar off-grid companies currently operating in the more densely populated areas of Kenya to expand to underserved counties and provide services to the off-grid households in these counties. These services, provided through portable solar home systems, are well-suited to some of the population in the underserved counties, as households do not always live in permanent structures. In addition, affordability is increased by allowing households to pay for systems over time. Willingness to

pay analysis, confirmed by the preliminary results from the MTF surveys shows there to be over a half-million households that could theoretically afford a Tier 1 level solar home system<sup>2</sup>.

The component will be accomplished via two financing instruments to which eligible solar service providers (SSPs) will have access:

- i. *Grant Facility - Competitively awarded expansion grants*, to compensate SSPs for initial, ongoing incremental, and opportunity costs associated with an expansion of operations in underserved counties. A percentage cap will be set within each lot so that multiple service providers will have the opportunity to operate within the space. A competitive approach will be used, whereby service providers will bid based on a grant amount per household connection, with the lowest grant requirements winning. Results-based financing will specify installment payments based on the achievement of pre-agreed connection milestones and satisfactory after sales service support.
- ii. *Debt Facility - Debt financing to solar service providers*, to support upfront costs associated with getting hardware inventory into the market, and medium-term consumer financing to enable households to pay off the systems over time. Two typologies of business models underpin the majority of solar service providers that operate in the Kenyan market. First are service providers that sell solar products on an over-the-counter (cash sale) basis. These service providers require shorter term debt in USD or other major foreign currency to finance costs associated with hardware manufacture and transit to Kenya (typically from China) until a sale is made. This cycle typically lasts anywhere from 6 to 9 months. A second prevailing business model is pay-as-you-go, whereby customers pay for the systems in monthly installments (typically between 12-36 months), and SSPs carry the default risk during the payback period. These businesses typically require debt financing that is commensurate with the lending terms that they extend to their customers. Given that service providers' revenues are in local currency, the debt instrument will also offer loans in Kenyan Shillings in addition to USD.

The implementation of this component will be under a direct oversight of MoEP. MoEP will competitively select the expansion debt-grant facility manager, which will be a consortium with demonstrated experience with managing similar instruments in Kenya and similar geographies. An OP 10.00 assessment of financial intermediary financing will be carried out for on the debt facility manager.

**Component 2B: Clean Cooking Solutions for Households:** This sub-component will support a transition from low-efficiency baseline stoves to cleaner, higher efficiency improved stoves. To accomplish this objective, cleaner household cooking appliances and fuels will be promoted. Activities will begin by focusing on four underserved counties in the northwestern part of the

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1 Simulations using 2014 FinAccess household survey data show that in a scenario where 7 percent of household expenditures are made on stopgap lighting, over 500,000 of the 1.2 million off-grid households could afford a PAYG SHS offering (assuming a 3-light point system, offered on a monthly cost of KES 500 and paid off over 36 months).

country (West Pokot; Turkana; Samburu; and Marsabit).

During project preparation, a Stove-Market Testing Program is being undertaken in the municipal, town, and densely settled parts of Turkana County. The stoves to be included will be determined following a call for Expressions of Interest for stove manufacturers wanting their products to be exposed to these new markets. To be eligible, a woodstove will have to prove that its efficiency tests it as a Tier 2 stove (roughly 30 percent efficient) and a charcoal stove will have to prove that its efficiency tests as a Tier 3 stove (roughly 40 percent efficient) to be eligible for inclusion in the market tests. These tests will involve exposing both consumers and suppliers (retailers, wholesalers, and distributors) in the urban areas of Turkana County to these improved stoves. The results will be shared with the communities and interested parties. Field testing for additional stoves models may be considered during the project implementation.

This sub-component will operate a window in the grant facility established for Component 3A to support sales of eligible stoves in targeted counties. The grant facility will provide the selected distributors with financial support on a matching grant and results-based scheme to enable them to market their stoves locally within the target counties; to increase their inventories of the selected higher quality stoves; to purchase and transport them to the target communities in number; and to sell them to willing buyers in the communities.

### **Component 3: Standalone Solar Systems and Solar Water Pumps for Community Facilities**

The community facilities considered in this component are the existing and upcoming: (i) Health facilities (Levels 2 and 3) (ii) Educational facilities (Secondary schools and Technical training institutes); (iii) Administrative offices (for example, assistant County Commissioner offices).

**Component 3A: Standalone Solar Systems for Community Facilities.** This component will support the provision of electricity services to community facilities in remote areas in underserved counties. A private sector contractor will be competitively selected for each service territory to supply, install, and maintain standalone solar systems in community facilities. A total of about 1100 facilities could be reached via this component.

KPLC, the implementing agency, would sign two (2) contracts with the contractor in each service territory – one for the supply and installation of the standalone solar systems and the second for the provision of maintenance services for 7-10 year duration. The contract would specify the minimum requirements in terms of quality standards in electricity supply for the community facilities, developed by Ministry of Health, Ministry of Education, and Ministry of Interior. Contracts would stipulate the minimum package acceptable as “basic service”, but allow room for provision of additional services to community facilities. The proposed project will cover the supply and installation costs and KPLC will pay the contractor for fees under the maintenance contract with allocation or revenues from beneficiary facilities. The costs of maintenance contracts are expected to be passed through into tariff revenues recognized by ERC.

KPLC will take the retail risk of serving these new consumers, for which their payment record

for such an arrangement is still unknown. Therefore, a payment risk mechanism would be available to KPLC, to which the proposed project will set aside funds equivalent to 6-12 months of maintenance fees that KPLC can draw upon in case of inadequate revenues to pay the contractor.

**Component 3B: Solar Water Pumps for Community Facilities:** This component will support financing solar powered pumping systems to increase sustainable access to water supply by equipping new boreholes and retrofitting existing diesel-powered boreholes associated with community facilities within the target counties. A private sector contractor will be competitively selected for each service territory to supply, install, and maintain standalone solar systems in community facilities.

REA, the implementing agency, would sign (2) contracts with the contractor in each service territory to – one for the supply and installation of the standalone solar systems and the second for the provision of maintenance services for 7-10 year duration - similar to the design in Component 3A. The payment for these maintenance services will be recouped on a monthly basis by the community facilities hosting these boreholes.

A payment risk mechanism would be available to REA, to which the proposed project will set aside funds equivalent to 6-12 months of maintenance fees that REA can draw upon in case of inadequate allocation from the beneficiary facilities to pay the contractor.

## **Component 4: Implementation Support and Capacity Building**

### **Component 4.1: Consumer Education and Citizen Engagement**

This sub-component will support the consumer education and citizen engagement activities for the program's key delivery areas (households, community facilities, water facilities in the underserved counties). Consumers in these areas are unlikely to be aware of the new technologies being presented and have a right to expect clear, thorough information about the advantages of the services and how to access them. The activities supported under this sub-component will provide recurring opportunities for consumers to interact with service providers in order to share their feedback and concerns. For those who have some knowledge of the products, these outreach activities will provide them with the necessary guidance on how to get the best out of the products in the way they use and maintain them. Finally, in these target areas, acceptance and sustained demand is generated when the buy-in of key opinion leaders is obtained. The consumer education and citizen engagement program will employ both Above the Line (mass media tools) and Below the Line (one on one) channels in reaching out to different target audiences while ensuring opportunities for two-way dialogue.

### **Component 4.2: Implementation Support and Capacity Building**

This sub-component will support all technical studies, implementation support, and capacity building of sector and counties. More specifically, the following are included. First, build capacity and address the skill set requirements in KOSAP Project Coordination Unit in MoEP and KPLC PIU and REA PIU. Second, capacity building activities in the sector and counties, for instance

related to solar technology, project management, procurement, environmental and social safeguards for the sector entities, and monitoring and evaluation. As such, funding will be used to cover the investment costs (equipment, software, training, etc.) incurred by ERC to establish a monitoring unit. Third, relevant studies and contracts for the investment components of the proposed projects. Fourth, support MoEP in the development of a Strategic Planning and Program Management (SPPM) unit with the objective of providing effective coordination and oversight in terms of policy development, strategic planning, and project design and implementation.

## **1.7 Project's Development Impacts**

This project aims at providing electricity access to underserved counties of Kenya hosting the rural, poor and largely indigenous population and the development impact of transitioning to modern energy is significant. The use of electricity will benefit households in different ways. The immediate benefit of electrification comes through improved lighting, which promotes extended hours of study and reading and other household chores, and in turn contributes to better educational achievements. Lighting can also benefit many other household activities, such as sewing by women, social gatherings after dark, and many others. Electronic devices such as radios and television also improve the access to information by rural households and can provide entertainment to family members. In addition, households' economic activities both inside and outside the home benefit tremendously from electricity. For example, crop productivity can be increased by the application of electric irrigation pumps, businesses can be operated longer hours in the evening, electric tools and machinery can impart efficiency and production growth to industrial enterprises, and so on.

## **1.8 World Bank Safeguard Policy**

The OP/BP 4.12 Involuntary Resettlement of the World Bank was reviewed in detail to understand the project's direct economic and social impacts that may be caused by involuntary taking of land resulting in:

- a) Relocation or loss of shelter;
- b) Loss of assets or access to assets, or
- c) Loss of income sources or means of livelihood, whether or not the affected persons must move to another location.

The potential for involuntary restriction of access to legally designated areas and protected areas resulting in adverse impacts on the livelihoods of the displaced persons was also be assessed.

## **1.9 Need for a Resettlement Policy Framework (RPF)**

The RPF derives from the World Bank's Involuntary Resettlement Policy OP/BP/4.12, which sets out safeguard measures where a Bank-assisted project will involve involuntary resettlement of

persons to make way for implementation of the project, and/or where such resettlement may result in loss of assets for those being resettled. The RPF provides the basis for preparing Resettlement Action Plans for individual sub-projects once their location and scope will be identified to mitigate such effects.

### **1.10 Purpose of the Framework**

The purpose of this Resettlement Policy Framework is to establish the resettlement and compensation principles, organizational arrangements, and design criteria to be applied to meet the needs of the people who may be affected by the various sub-projects to be implemented under the K-OSAP and especially component 1 which proposes installation of mini grid system. The installation of mini grids may take place on private or communal lands or public land occupied illegally by squatters. Thus the Banks operational Policy on Involuntary Resettlement OP/BP/4.12 is be triggered. In particular, it will be used among others:

- To avoid, manage, and/or mitigate potential risks arising out of damage to assets, disruption to work, temporary negative impacts on livelihoods and/or in the unlikely case of displacement.
- To develop a Resettlement Action Plan and propose an implementation framework for RAP to mitigate such effects

### **1.11 Objectives of the RPF**

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

1. Establish the resettlement and compensation principles and implementation arrangements for K-OSAP components
2. Describe the legal and institutional framework underlying Kenyan approaches for resettlement, compensation and rehabilitation;
3. Define the eligibility criteria for identification of Project Affected Persons (PAPs) and entitlements;
4. Describe the consultation procedures and participatory approaches involving PAPs and other key stakeholders;
5. Provide procedures for filing grievances and resolving disputes; and
6. Development of an outline for the development of Resettlement Action Plans

### **1.12 Scope**

The resettlement policy framework covers the following elements, consistent with the provisions described in OP 4.12, paras. 2 and 4:



- a) Description of the project and components for which land acquisition and resettlement are required, and an explanation of why a resettlement framework is required
- b) Principles and objectives governing resettlement preparation and implementation;
- c) Description of the process for preparing and approving resettlement plans;
- d) Estimated population displacement and likely categories of displaced persons, to the extent feasible;
- e) Eligibility criteria for defining various categories of displaced persons;
- f) Legal framework reviewing the fit between borrower laws and regulations and Bank policy requirements and measures proposed to bridge any gaps between them;
- g) Methods of valuing affected assets;
- h) Organizational procedures for delivery of entitlements, including, for projects involving private sector intermediaries, the responsibilities of the financial intermediary, the government, and the private developer;
- i) Description of the implementation process, linking resettlement implementation to civil works;
- j) Description of grievance redress mechanisms;
- k) Description of the arrangements for funding resettlement, including the preparation and review of cost estimates, the flow of funds, and contingency arrangements;
- l) Description of mechanisms for consultations with, and participation of, displaced persons in planning, implementation, and monitoring; and
- m) Arrangements for monitoring by the implementing agency and, if required, by independent monitors.

### **1.13 Resettlement Implications of K-OSAP**

The proposed K-OSAP will not result in massive land acquisition. This is because the installation of solar systems will take place within existing household and public facilities. Consequently, (i) Component 2: Standalone Solar Systems and Cooking Solutions for Households (ii) Component 3: Standalone Solar Systems and Solar Water Pumps for Community Facilities (iii) Component 4: Implementation Support and Capacity Building . However, Component 1: Mini-grids for Community Facilities, Enterprises, and Households which involves installation of mini grids will require land acquisition and so the social safeguard that the project will trigger the Operational Policy (O.P/BP 4.12) Involuntary Resettlement. Minimal adverse social risks are anticipated under the other components.

### **1.14 Project Activities with displacement potential**

The main investments/sub projects envisaged to have displacement potential are listed below and mainly entail those under sub component (ii) the construction of the following infrastructure will lead to permanent or temporary land acquisition:

1. Land for setting up mini grids
2. Land that may be acquired for setting up new boreholes (green field boreholes)

The exact impact of the proposed investments is unknown at this stage and will only be known when further feasibility work is carried out in locations proposed by MoEP for the said components. Nevertheless, the construction of mini grids, and installation of solar panels that involve land acquisition has the potential of adversely affecting the livelihoods of communities in selected sites specifically through involuntary resettlement. Private land and assets (farmland), cultural and community assets as well as spiritual sites may also be affected.

### **1.15 Project Implementation and Institutional Arrangements**

The MoEP will provide overall coordination of the Project and lead in the implementation of Component 2, which will include overall responsibility for safeguards due diligence, and compliance monitoring. MoEP will ensure that Terms of Reference (ToR) for hiring the Facility Management Consortium (FMC) contain clauses that relate to safeguards and Occupational Health and Safety (OHS) competencies and specific tasks related to safeguard monitoring and enforcement. The selected FMC (Grant and Debt Managers) will be responsible for coordinating and supporting the implementation of safeguards, and will prepare Facilities Implementation Manual (FIM) that will include checklist for subprojects, their potential threats, and mitigation measures as well as capacity building for safeguards implementation and compliance monitoring. MoEP will submit FIM to the Bank for review and clearance. Thus, solar companies who bid for any of the subprojects under this component will have to indicate their respective bids how they intend to address environmental and social sustainability issues that could be associated with the provisions of those services. The selected solar companies will be responsible for implementing the safeguards on the ground, including ensuring compliance with occupational health and safety imperatives and dealing with de-manufacturing of out-of-use solar devices, e-waste disposal and recycling. The generation of safeguard reports during implementation of project activities will start from the solar companies and through the FMC to MoEP.

KPLC and REA will jointly be responsible for the implementation of Components 1 and 3; Component-1 (**Mini-grids for Community Facilities, Enterprises, and Households**) will be developed under the Public Private Partnership (PPP) and a single contractor will be responsible for construction of the generation system , the contractor will prepare appropriate safeguards

instruments that will be consulted upon, reviewed and cleared by the Bank and locally disclosed. Under Component 3 (Standalone solar systems for community facilities), KPLC and REA have overall responsibility for safeguards due diligence and the private sector contractors hired for supply, installation and maintenance will be responsible for preparing a checklist for subprojects, their potential threats, and mitigation measures as well for safeguards implementation and compliance monitoring. REA will be responsible for managing the carbon finance sub-component from Ci-Dev. KPLC and REA will establish their respective Project Implementation Units (PIUs) to manage their specific components.

Specifically, KOSAP PCU hosted in MoEP will be responsible for the overall coordination of the project implementation and oversight including the following: (i) defining, jointly with the respective county governments, the project areas based on technical and policy development priorities; (ii) resolving in consultation with the county governments challenges requiring high level intervention facing the project; (iii) monitoring the implementation of the project in consultation of the counties; and (iv) consolidating information

#### **1.16 Ministry of Energy and Petroleum**

MoEP will be responsible for the overall coordination of the project implementation and oversight including the following: (i) defining, jointly with the respective county governments, the project areas based on technical and policy development priorities; (ii) resolving in consultation with the county governments challenges requiring high level intervention facing the project; (iii) monitoring the implementation of the project in consultation of the counties; and (iv) consolidating information from implementing agencies on progress of implementation and evaluating the project.

The Ministry will be responsible for ensuring the successful implementation of the safeguards instruments prepared under the project. However, as the day-to-day running of the two financing instruments under the component will be delegated by the MoEP to a consortium of Fund/Facility Managers, the MoEP will ensure that the ToRs for the Fund/Facility Managers include clauses that clearly relate to safeguards and OHS competencies and that related tasks are reflected in the ToRs with regard to safeguards implementation, monitoring and enforcement. In addition, the Facilities Implementation Manual to be prepared by the Fund/Facility Management Consortium will include a checklist of the sub-projects, their potential threats and preventive or mitigation measures, as well as capacity building for safeguard implementation and compliance monitoring.

#### **1.17 Project Implementation Unit (PIU)**

REA and KPLC will establish Project Implementation Units to implement Component 1 and 3 of the Project

## **CHAPTER TWO: METHODOLOGY & CATEGORIES OF PROJECT AFFECTED PERSONS**

The preparation of this Resettlement Policy Framework (RPF) entailed the following;

### **2.1 A literature review**

Baseline information from secondary literature was reviewed in the process of preparing the RPF in order to increase project understanding. Documents reviewed include:

- *Project Appraisal Document (PAD)*
- *Constitution of Kenya, 2010*
- *Government of Kenya Valuation Act*
- *World Bank Involuntary Resettlement Operational Policy 4.12.*
- *Land Act, 2012*
- *Land Registration Act, 2012*
- *Land Adjudication Act, 2015*
- *Community Land Act, 2016*

### **2.2 Definition of Project Affected Persons**

This RPF describe and considers Project Affected Persons (PAPs) to be those who are adversely affected by the project's actions and 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 their 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 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 marginalized groups, or other economically and/or physically displaced persons.

### **2.3 Categories of PAPs**

The likely displaced persons (economically or physically) under component 1 and 4 investments are categorized into the following groups namely:

- (i) 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 especially component 1 (installation of mini grids) and probably component 4 on solar pumping for drinking water and irrigation.
- (ii) Project affected households are groups of PAPs in one household and where one or more of its members are directly affected by an investment as described in component 1 and 4.
- (iii) Vulnerable groups who could be a member of affected households. They include 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*.
- (iv) 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 component 1 can cause breakdown of communities and social networks due to physical separation as a result of the investment specific infrastructures if not mitigated. Component 1 under K-OSAP will not displace the community since the project land will be acquired through willing seller willing buyer or it can be allocated by the county government on the public land.

### **2.4 Approximate number of PAPs**

Determination of the number of PAPs is not possible at this time due to the nature of project components 1 and 4 investments, specifically locations, nature, scope and magnitude. At this stage, project descriptions (feasibility studies, technical designs) do not exist for any of the project

components 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 and guide the preparation of the RAPs for individual investments. The number of PAPs including determination of physical or economic displacement will only be established through the census which will be undertaken as part of the preparation of the investment specific RAP.

## **2.5 Potential sites for sub-projects**

Location for sub-project investments will be identified once the sites have been identified following which, if necessary sub project specific RAPs will be developed by KPLC & REA PIUs supported by the National Land Commission (NLC) and the Sub County and Locational Resettlement and Compensation Committee (SCRCCs and LRCCs) (explained later in the document) and project affected persons.

## **CHAPTER THREE PRINCIPLES & OBJECTIVES GOVERNING RESETTLEMENT PREPARATION & IMPLEMENTATION**

### **3.1 Introduction**

The procedures will be carried out throughout preparation and implementation of the components, and impacts of any potential resettlement will be included in monitoring and evaluation (M&E). When a 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 and resettlement.

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 with a well-designed compensation and relocation process;
- Minimizing the number of PAPs, to the extent possible;
- 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.

### **3.2 RPF principles under K-OSAP**

1. Involuntary resettlement and land acquisition will be avoided where feasible, or minimized or compensated 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. 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.
8. 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.
9. The implementation of individual RAPs must be completed prior to the implementation of the projects.

As noted above, investments 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.

### **3.3 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 and Poverty.

### **3.4 Entitlement under RPF**

#### ***3.4.1 Physical Displacement***

No physical displacement is envisaged in this project. If people must move to another location due to the implementation of a project under component 1 and 4, the GoK through the Implementing



Agency (IA) with engagement of National Land Commission<sup>2</sup> (NLC) as is required by the Land Act, 2012 will ensure that just compensation is provided. This RPF offers 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, 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. Replacement value includes all the expenses which replacing a property will cost. 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 maybe offered in lieu of cash compensation based upon mutual agreement between the REA/KPLC and PAPs as provided for by the Land Act 2012, provided this is in conformity with the requirements of OP 4.12. The Land Act 2012, the legal instrument governing land acquisition and compensation in Kenya, specifies that all PAPs must receive fair compensation. 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 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 by the implementing agency.

### **3.4.2      *Economic displacement***

The Land Act 2012, Part VIII, section 111 and 125, provides for 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 World Bank procedures that provide for the same will be followed instead of the host country regulations. If land acquisition for a given sub project 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.

## CHAPTER FOUR: LEGAL AND REGULATORY FRAMEWORK

### 4.1 Introduction

The chapter sets out the legal operating environment for acquisition of land as anticipated in the implementation of the K-OSAP. 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 K-OSAP Component 1 and maybe 4.

Legal Framework	Functional Relationship to Resettlement
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 valuer's 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.
Way Leaves Act Cap 292	Section 3 of the Act states that the Government may carry any works through.
Community Land Act (2016)	It provides for the role of county governments in community land and acquisition of the certificate of title.

## 4.2 The National Land Policy

The National Land Policy (“NLP” or “Policy”) 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. 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.” Under the current Constitution, 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. Similarly, the NLP empowers the National Land Commission to compulsorily acquire land.

## 4.3 The Constitution of Kenya, 2010

The Constitution of Kenya, 2010, protects the sanctity of private property rights and states that no property can be compulsorily acquired by the Government except in accordance with law. 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.*
  - (iii) 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. 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. 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.

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 ecologically sensitive areas. These principles must be implemented through a national land policy reviewed regularly by the national government and through legislation.

#### **4.4 Land Tenure System in Kenya**

Land tenure in Kenya is classified as public, community or private. Public land consists of government forests (other than those “lawfully held, managed or used by specific communities as community forest, grazing areas or shrines”), government game reserves, water catchment areas, national parks, government animal sanctuaries and specially protected areas. Public land will be managed by the National Land Commission (NLC). 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.” 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.).

##### ***4.4.1 Customary Land Tenure***

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

- (i) 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.
- (ii) Individuals or families thus claim property rights by virtue of their affiliation to the group.

#### ***4.4.2 Freehold Tenure***

This tenure confers the greatest interest in land called absolute right of ownership or possession of land for an indefinite period of time, or in perpetuity. 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, which restrict the use for say agricultural or ranching purposes only. Land individualization was demanded by the colonial settlers who required legal guarantee for the private ownership of land without which they were reluctant to invest.

#### ***4.4.3 Leasehold Tenure***

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

#### ***4.4.4 Public Tenure and the National Land Commission***

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. 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 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.

#### **4.5 Land Act, 2012**

The Land Act 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.

#### **4.6 The Way Leaves Act Cap 292**

The Act provides for certain undertakings to be constructed e.g. transmission lines, pipelines, canals, pathways etc. through, over or under any lands. Section 3 of the Act states that the Government may carry any works through, over or under any land whatsoever provided it shall not interfere with any existing building or structures of an ongoing activity. Where any developments are affected, the Act recommends for spelt out compensation. Section 6 (1), “the Government shall make good all compensation to the owner of any tree or crop destroyed or damage”, The Act further explains the process of resolving conflicts that arise in determining the compensation value. The implementation of component 1 and 4 will require land acquisition i.e. way leaves within the affected areas. In accordance with the Act (Section 4), notice will be given



before carrying out works with full description of the intended works and targeted place for inspection. Any damages caused by the works would then be compensated to the owner as per section 6 and as per the provisions of World Bank OP/BP 4.12 Involuntary Resettlement as spelt out in the framework.

## **4.7 Land Acquisition Process**

### ***4.7.1 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 defense, 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.

### ***4.7.2 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.

### ***4.7.3 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.

### ***4.7.4 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*. It will then serve a copy of the notice to every person interested in the land and deposit the same copy to the Registrar. 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. 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.

#### ***4.7.5 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.

#### ***4.7.6 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.

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 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.

#### ***4.7.7 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 would 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.

#### ***4.7.8 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. 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:

- (i) 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.*
- (ii) It is accrued by land use contrary to the law or detrimental to the health of the occupiers of the premises or public health.*
- (iii) Any damages sustained or likely to be sustained by reason of severing such land from other land owned by the claimant.*
- (iv) Any damage sustained or likely to be sustained if the acquisition of the land had negative effects on other property owned by the claimant.*
- (v) 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).*
- (vi) 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.*

*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.*
- 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.*

#### ***4.7.9 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. The law

stipulates that any dispossessed person shall be awarded the market value of the land. 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, the NLC prepares and serves a written award of compensation to each legitimate claimant. 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. 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.

#### ***4.7.10 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 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.” 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.

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 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

All cost related to compensation and resettlement of PAPs will be financed by the Government of Kenya and is a condition for the loan from the World Bank.

#### ***4.7.11 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.

#### ***4.7.12 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.

#### ***4.7.13 Urgent Acquisition***

Section 75 of the constitution states as follows” no property of any description shall be compulsorily taken possession of, and no interest in right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied-

- a) The taking of or acquisition is necessary in the interest of defence, public safety, public order, public morality, public health, town and country planning or the development or utilization of property so as promote the public benefit; and
- b) The necessary thereof is such as to afford reasonable justification that may result to any person having an interest in or right over the property: and
- c) Provision is made by a law applicable to that taking of possession or acquisition for the prompt payment of full compensation.

In cases 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.

#### **4.7.14 Opportunity for Appeal**

The Kenya Constitution establishes Environment and Land Court 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 resolution mechanisms.

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

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

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

#### **4.8 Children and Orphans –Provision of Land Possession**

The Land Act 2012, Part III, section 27 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.

#### **4.9 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 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. The Valuers Act does not provide for a description of the valuation procedures and methods.

In case of professional misconduct, the registered Valuers 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 Ksh 400,000 at 1 per cent. Residue at 0.5 per cent” is paid by those who requested the valuation. Sub-project RAPs will make use of the services of registered Valuers who are approved by Valuers Registration Board.

#### **4.10 Comparison of Kenyan Laws and World Bank Requirements**

The legal framework on land acquisition and resettlement vary to a given extent when compared to the World Bank’s Operational Policy on Involuntary Resettlement (O.P.) which is widely accepted as reflecting international standards on involuntary resettlement.

Table 2 next page outlines World Bank policies on involuntary resettlement and compares them to Kenyan legislation on the same. Whenever the Kenya regulations on land acquisition are less stringent than that of OP. 4.12 the bank procedures will apply.

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

<b>OP 4.12</b>	<b>Kenyan Legislation</b>	<b>Comparison</b>	<b>Recommendation to Address Gap</b>
<b>GENERAL REQUIREMENTS</b>			
<p>World bank OP4.12 has overall policy objectives, requiring that:</p> <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>1. For each of the subproject, ensure that resettlement issues are considered at the design stage of the project in order to avoid/ minimize resettlement.</li> <li>2. Implement World Bank OP 4.12 policy;</li> <li>3. Displaced persons should assisted in improving/restoring their livelihood to pre-project status.</li> </ol>
<b>PROCESS</b>			
			N/A



<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>Way Leaves Act Cap 292. The Act explains the process of resolving conflicts that arise in determining the compensation value.</p>	<p>Kenyan legislation meets OP4.12 requirements.</p>	
<p><b>Eligibility Criteria</b> <i>Defined as:</i></p> <ol style="list-style-type: none"> <li>1. those who have formal legal rights to land (including customary and traditional rights recognized under the laws of the country);</li> <li>2. those who do not have formal legal rights to land at the time the census begins but have a claim to such land or assets - provided that such claims are recognized under the laws of the country or become recognized through a process identified in the resettlement plan (see Annex 10 A, para. 7(f)); and 19 (c) those who have no</li> </ol>	<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 as pastoralist or who use the land for their livelihood.</p> <p>The constitution recognizes ‘occupants of land even if they</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><b>Eligibility Criteria</b> <i>Defined as:</i></p> <ol style="list-style-type: none"> <li>1. those who have formal legal rights to land (including customary and traditional rights recognized under the laws of the country);</li> <li>2. 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—</li> </ol> <p>Ensure ALL users (including illegal squatters, laborers, rights of access) of affected lands are</p>

<p>recognizable legal right or claim to the land they are occupying</p> <p><i>To determine eligibility:</i> Carryout resettlement census. Cut-off date for eligibility is the day when the census begins.</p>	<p>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>Same as World Bank</p>	<p>included in the census survey or are paid (see Section 4). Implement cut-off procedures as outlined in the RPF and Kenyan Law</p>
<p><b>Measures:</b> Preference should be given to land based resettlement strategies for displaced persons whose livelihoods are land-based.</p> <p>Cash based compensation should only be made where (a) land taken for the project is a small fraction of the affected asset and the residual is economically viable; (b) active markets for lost assets exist and there is sufficient supply of land and housing; or (c) livelihoods are not land- based.</p> <p>World Bank OP4.12 Article 6(a) requires that displaced persons are provided with prompt and effective compensation at full replacement cost for losses of assets attributable directly to the project. If physical relocation is</p>	<p>Legislation provides for land for land compensation but the Land Act 2012 does not state whether preference should be granted to land to land compensation.</p> <p>Land Act 2012 appears to prefer mode of compensation by the Government to the affected population.</p> <p>Way leaves Act Cap 292 notes that where any developments are affected, the Act recommends for 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>Cash based compensation seems to be the preferred mode of awarding compensation to the affected population by Government of Kenya</p> <p>Just compensation as stipulated in the Land Act not yet specifically defined.</p> <p>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>Ensure that all alternative options are considered in preference to providing cash compensation (as outlined in the Entitlement Matrix).</p> <p>Use World Bank OP4.12 procedures in determining form of compensation</p> <p>Implement prompt and effective compensation at full replacement cost for the losses of the assets.</p> <p>Implement World Bank policy on Attorney's fees.</p>

<p>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. 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>Section 6 (1), “the Government shall make good all compensation to the owner of any tree or crops destroyed or damaged”.</p> <p>Land Act provides for prompt, just and full compensation before the acquisition of land has not been put in place.</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>The Act is does not out rightly stipulate assistance for relocation but we can interpret that relocation cost will be included in just compensation.</p>	<p>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>
<p><b>Valuation:</b> With regard to land and structures, “replacement cost” is defined as follows: 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</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</p>	<p>Though one could argue that there is some form of consistency between the Kenyan Law and World Bank OP.4.12,</p> <p>Interpretation of ‘just and fair compensation has not been defined.</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>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 labour and contractors' fees, plus the cost of any registration and transfer taxes.</p>	<p>valuation of an asset is expected to pay the Valuers.</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. Way leaves Act Cap 292 notes that where any developments are affected, the Act recommends for compensation. Section 6 (1), "the Government shall make good all compensation to the owner of any tree or crops destroyed or damaged".</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 OP 4.12 and Kenyan Law.</p>

#### 4.11 Comparative Analysis of World Bank OP 4.12 and Kenya's requirements Relevant to the Process

**Table 2: Comparative Analysis of World Bank OP 4.12 and Kenya's requirements relevant to the process**

Category of PADs and Type of Lost Assets	Kenyan Law	World Bank OP 4.12
Land Owners	Fair and just compensation which could be inform 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 Kenya 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 labour 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	Entitled to in-kind compensation or cash compensation at full replacement cost

	granted to the owner for the permanent building	including labour 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,

## CHAPTER FIVE: ELIGIBILITY CRITERIA, ENTITLEMENT, VALUATION & COMPENSATION

This chapter is a summary description of the category of the affected groups 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.

### 5.1 Category of Project Affected Persons

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

Affected Household – A household is affected if one or more of its members are affected by 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:

- (i) *Any members in the households, men, women, children, dependent relatives and friends, tenants;*
- (ii) *Vulnerable individuals who may be too old or ill to farm along with the others;*
- (iii) *Relatives who depend on one another for their daily existence;*

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.

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.:

- (i) Female headed households;
- (ii) Poor
- (iii) Non-farming residents;
- (iv) Elderly;
- (v) Disabled;
- (vi) Persons Living With HIV/AIDS

- (vii) Marginalized and Vulnerable Persons; and
- (viii) Orphans and Vulnerable Children

Following is a brief explanation of some of the vulnerable groups identified for this RPF:

- (i) *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 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.
- (ii) *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 programs from the government, international organizations and the NGO community.
- (iii) *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.
- (iv) *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.
- (v) *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.

- (vi) *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.
- (vii) *Affected 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 can cause breakdown of communities and social networks due to physical separation as a result of the investment specific infrastructures if not mitigated.

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 sub 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 sub project specific RAPs needs to be exhaustive in the category of the affected people and their sources of livelihoods.

## 5.2 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 where other types of impacts could be identified.

- i. Land
- ii. Property
- iii. Land and property
- iv. Structures on land
- v. Crops and trees
- vi. Livelihoods
- vii. Grazing land
- viii. Businesses
- ix. Community assets

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 during the census exercise.

**Table 4 below summarizes the entitlements for each group of affected persons.**

**Table 3: Entitlement Matrix**

Land and Assets	Type of Impact	Person (s) Affected	Compensation/Entitlement/Benefits
Agricultural land	Less than 20% of land holding affected	Farmer/ title holder	Cash compensation for affected land equivalent to replacement value, taking into account market values for land.
	Land remains economically viable.	Community land	Cash compensation for affected land equivalent to replacement value taking into account market 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	Farmer/ Title holder	Land for land replacement where feasible, or compensation in cash for the entire landholding according to PAP's choice equal to replacement cost. Community land – land for land replacement where feasible or compensation in cash. The county government will be approached to allocate land for this project.
	Land does not become economically viable.		
		Tenant/Lease holder	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.
			Relocation assistance (costs of shifting + assistance in re- establishing economic status + livelihood rehabilitation assistance)
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	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).
	Limited loss	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.		
	<p>Land and assets used for residence severely affected</p> <p>Remaining area insufficient for continuing use or become smaller than minimally accepted under zoning laws</p>	Title holder	<p>Land for land replacement or compensation in cash according to PAP's choice, based on the replacement cost.</p> <p>Land for land replacement shall be of minimum plot of acceptable size under the 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 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		Cash assistance to cover costs of restoration of the remaining structure
		Rental/lease holder	Cash compensation for affected assets (verifiable improvements to the property by the tenant).  Disturbance compensation equivalent to two months rental costs
	Entire structures are affected or partially affected	Owner	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.
	Remaining structures not suitable for continued use		Right to salvage materials without deduction from compensation  Relocation assistance (costs of shifting + allowance)  Rehabilitation assistance if required (assistance with job placement, skills training)
		Rental/lease holder	Cash compensation for affected assets (verifiable improvements to the property by the tenant)  Relocation assistance (costs of shifting + allowance equivalent to four months rental costs)  Assistance to help find alternative rental arrangements  Rehabilitation assistance if required (assistance with job placement, skills training)
		Squatter/informal dweller	Cash compensation for affected structure without depreciation  Right to salvage materials without deduction from compensation

			<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</p>

			<p>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	Replace water access: 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 buildings	Loss of access to these sites, temporarily or permanently, loss of investment made.	Communities affected	Consultation: Undertake consultation with affected households to determine appropriate arrangements and compensation if suitable. Replacing the social building such as schools and dispensaries.
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)



### **5.3 Processes of compensation and entitlement**

#### ***5.3.1 Formal Processes Involved In 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 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.

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 Valuers 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 instruct 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"*.

#### **5.4 Establishment of Resettlement and Compensation Committee**

This RPF outlines the establishment of Sub County and Locational Resettlement Committees in each of the project affected Sub Counties and locations. They will be established to assist the smooth implementation of the RAP, and ensure participatory and transparent implementation of the RAP. These committees will not engage in land acquisition or compensation, as this remains the prerogative of the NLC but will instead facilitate the process for transparency and ownership. The committees will ensure effective communication among affected persons, NLC and implementing agency and will also include representative of implementing agency or acquiring authority, county representatives, representative of NGO, and representative of the PAPs.

## **5.5 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 sub 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.

Where there are clearly no identified owners or users of land or assets, the respective 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.

## CHAPTER SIX METHODS OF ASSETS VALUATION

Valuation is the process of determining the value of land, or an asset that PAPs possess or use.

Compensation for all land use and assets in kind or cash will be required for the following:

- i. Land;
- ii. Residential buildings, any structures and fixtures;
- iii. Cultivated crops (both cash and food crops) and trees; and
- iv. Loss of businesses or employment.

Replacement cost is used for land and properties affected by investments under components 1 and 4. For agricultural land, the replacement value 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.

For houses and other structures, it is the market cost for replacing the property, including 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.

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 be used to establish actual compensation for all sub projects to be funded. A registered Valuers with Valuers Registration Board (VRB) will undertake the valuation exercise, using existing market price, to establish replacement cost and 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, and to mitigate against possible

impoverishment resulting from cash compensation, sensitization and training on how to invest compensation cash would be undertaken. For payment of compensation in-kind, the timing and alternative locations will have to be decided and agreed upon by each recipient.

## **6.1 Valuation Process of Assets**

### ***6.1.1 Field Preparation of Asset Inventory***

The first step will be to carry out an asset valuation survey as part of the RAP preparation. KPLC and REA will form teams comprising of; Socio-Economists, Registered Valuers, Lawyers, Accountants, among other relevant professional who will be required for this assignment of carrying out the RAP. The REA and KPLC teams will work closely with Sub County Resettlement Committees, which will be established for the implementation of the RAP in a given sub project 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:

- (i) Census results;*
- (ii) Asset inventory and valuation;*
- (iii) Photographs; and*
- (iv) Any other relevant information including current livelihood strategies of households.*

The type of compensation will be an individual choice although every effort will be made to instill 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 4: 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 labor

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 the resettlement committees.

## **6.2 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 Valuers 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:

### ***6.2.1 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.

#### ***6.2.2 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 on unit price for compensation purpose.

#### ***6.2.3 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.

#### ***6.2.4 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.

### **6.3 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.

#### ***6.3.1 Schedule of rates from National Construction Authority***

The National Construction Authority have a schedule of rates for preparing estimates for construction projects, which the REA and KPLC teams can use to assess costs for construction materials and labor. 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.

#### ***6.3.2 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 sub projects that have significant impacts.

#### ***6.3.3 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.

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

The 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 labor 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, and 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.

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

For purposes of measuring land, 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 meters 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.

#### ***6.3.6 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 labor 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.

#### **6.3.7 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 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.

#### **6.3.8 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:

- (i) *Measurements of structures and detail of materials used;*
- (ii) *Average replacement costs of different types of household buildings and*
- (iii) *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.).*
- (iv) *Prices of these items collected in different local markets;*

- (v) *Costs for transportation and delivery of these items to acquired/ replacement land or building site;*
- (vi) *Estimates of construction of new buildings including labor required;*
- (vii) *Any associated taxes, registration fees.*

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

Community assets include community-owned assets such as water points, wells, marketplaces and community/ public facilities (e.g., schools, wells, clinics police posts). Community assets will be identified through the census and enumerated. In the event that community assets are affected, new facilities will be provided as per the needs of the PAPs. 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 cases may need to be moved, therefore the cost of moving graves and related structures should be considered.

#### **6.3.10 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 be restricted only to; museums, altars, initiation centers, 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.

#### ***6.3.11 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.

#### ***6.3.12 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.

#### ***6.3.13 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 would 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 labor 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.

***6.3.14 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.

***6.3.15 Compensation for livelihood that are not necessarily land based***

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 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 plus training and capacity building to engage in new occupation, including activities created by a given sub project.

## **CHAPTER SEVEN PREPARING & APPROVING RESETTLEMENT AND COMPENSATION PLANS**

This chapter describes how a determination will be made (screening) on whether investments under the mentioned component 1&4 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.

### **7.1 The Screening and Resettlement Processes and planning process**

#### ***7.1.1 Screening***

Screening will be based on the defined area of impact, primary engineering drawings, maps and, if available, satellite images of the sub project area showing homes, farms, workplaces, schools, health posts, places of worship and other individual and community assets. If screening determines that there will be involuntary resettlement-related impacts, the next step will be to initiate consultations and the preparation of a RAP to mitigate such impacts. In this case these will be quite modest given the modest impacts anticipated. The steps to be undertaken for each individual Resettlement Action Plan (RAP) include; an identification and enumeration of Project Affected Persons (PAPs), a socioeconomic survey, census and asset inventory of the affected assets, and consultation. Each RAP when prepared will contain the analysis of alternative sites undertaken during the land screening process.

#### ***7.1.2 Resettlement Processes and planning,***

Once the decision is made on the location of a given sub project and the census is conducted for a preparation of the RAP for a given investment, the implementing agency starts the RAP processes, including the preparation of the RAP as explained below.

### **7.2 Preparation of a Project specific RAP**

As soon as a sub-project is approved under the said categories the implementing agency will initiate a consultative and participatory process for preparing the RAP as follows:

- (i) A socio-economic survey and 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 consultation process, and 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 Valuers) – may help to identify eligible PAPs. The RAP team, in consultation with the PAPs, will agree the cutoff date and the basis thereof, and will notify all PAPs about the established cut-off date and its significance. They will be notified both in writing, accessible public notices and by verbal notification delivered in the presence of all the relevant stakeholders, e.g. through public barazas.
- (iii). Notification to NLC: One of the first steps in this process once the census undertaken for the preparation of the RAP is done; the implementing agency makes a written request to NLC of

the intention for the acquisition of the identified area for a given investment. NLC will inspect the land and grant approval for the land to be acquired for the implementation of the project. With this approval, NLC will make a written notification through the *Kenya Gazette* or *County gazette* of the intention to acquire the identified land for public purposes.

- (iv). Documentation and verification of land and other assets; NLC, the legal agency responsible for the approval of compulsory land acquisition and compensation for national and county development projects, together with a contracted registered Valuers, and the resettlement committees, 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 and respected community member. The reports will be regularly updated and monitored.
- (v). Compensation and valuation. All types of compensation will be clearly explained to the individual and households involved by REA and KPLC teams, NLC representative and resettlement committees. 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 resettlement committees, 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. Compensation costs will met by the Government of Kenya.



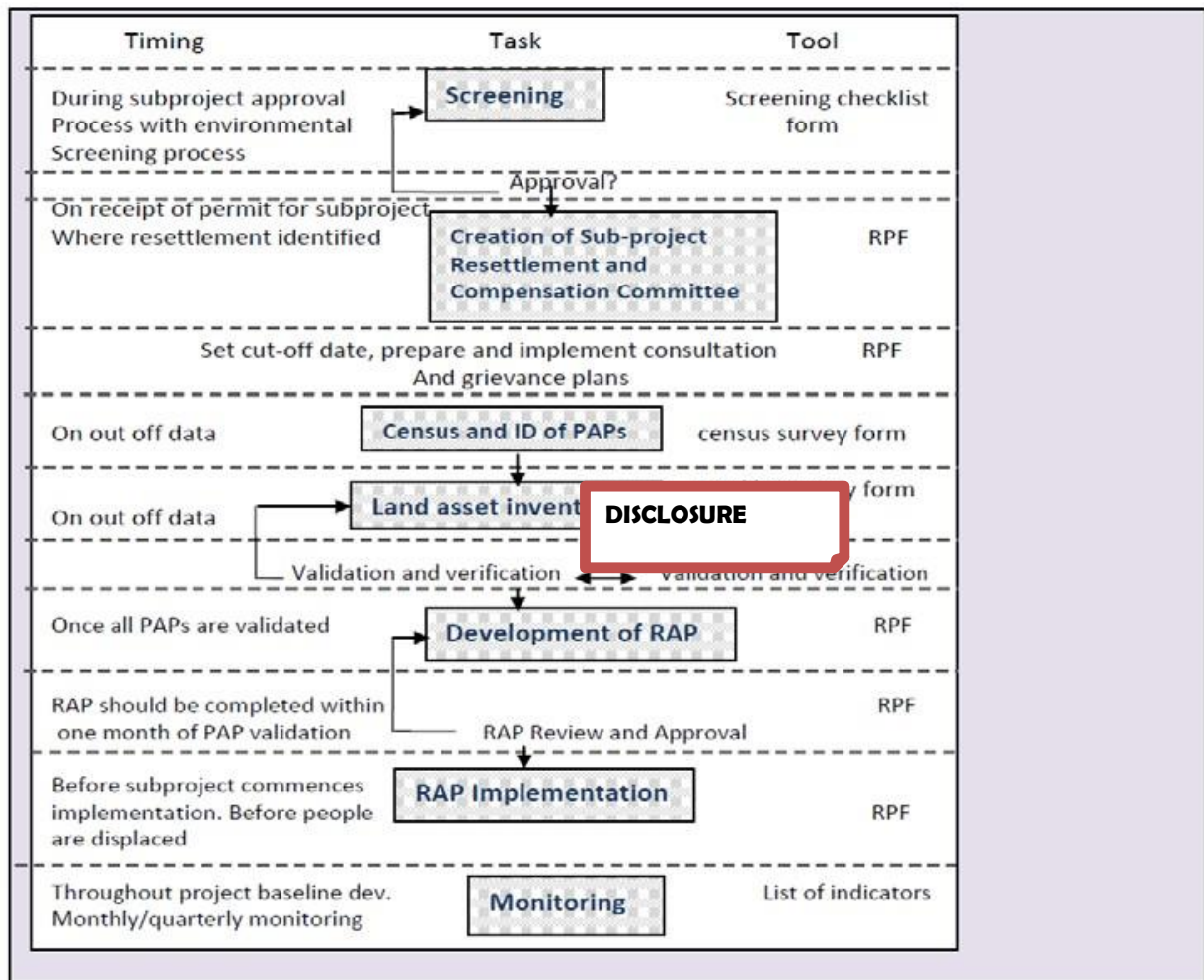
- (i). From this point, the provisions of this RPF will be utilized up to payment of the compensation package including resettlement support where appropriate. The costs associated with resettlement or relocation will be included in the RAP budgets for all investments.
- (ii). Payments: The Government of Kenya through the Ministry of Finance will provide funding to the Ministry of Energy and Petroleum, which is the overall implementing agency for the K-OSAP. Ministry of Energy and Petroleum shall upon receipt of request from the implementing agency for the cost of the RAP implementation, provide funds to the implementing agency for the actual RAP implementation. The compensation amount for the land and properties then is provided to the NLC, which will be in charge of land acquisition. The NLC will make award to the PAPs for the affected land and properties
- (iii). Grievance Mechanism: Establishment of grievance mechanism will be one of the key requirements of the RAP processes for every investment. One of the key roles of the proposed Sub County Resettlement Committees, under individual projects, will be to address disputes. Grassroots based disputes will be dealt by Location Resettlement Compensation Committee (LRCC) led by the administrative chiefs (explained in Chapter 9, under Implementation Arrangements. All PAPs will be informed 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. 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.
- (iv). Consultation: All the investments will provide for informed participation of affected persons and communities, including host communities, in decision-making processes related to resettlement.

### **7.3 Approval of Resettlement Action Plans:**

The PIUs in REA and KPLC and World Bank will review all RAPs developed. For quality assurance, it is required that RAPs prepared for specific investments be submitted to the World Bank for review and clearance 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 KPLC and REA teams (PIUs).

Once the individual RAPs are approved, they will be disclosed in the REA & KPLC websites, and in the Bank InfoShop. In addition, each RAP will be available in the localities (Local Chief's Office) where the investments are intended. The entitlement section of each RAP and the entitlement matrix will be translated into the Kiswahili (where need be) and be distributed among the affected communities.

FIGURE 1. RAP SCREENING AND APPROVAL PROCESS



#### **7.4 Implementation Arrangements**

The Ministry of Energy and Petroleum MoEP will be responsible for overall coordination of the project and consolidate the information related to the project implementation and implementing Component 2. KPLC and REA will be responsible for the implementation of Resettlement Framework Plan, Environmental Social Management Framework and Social Assessment.

Institutional Roles for RAPs preparation and implementation under K-OSAP Resettlement implementation, will be done at different levels namely, implementing agencies and National land commission; at the county level the Resettlement and Compensation Committee; and then at the grassroots level, locational Resettlement and Compensation Committee.

The Ministry of Energy and Petroleum (MoEP) will be Responsible for overall coordination and oversight of the KOSAP project, including (i) implementation of Component 2 (ii) definition of areas to be electrified based on technical and policy development priorities ;(iii) Consolidating information from Geospatial, implementing agencies (iv) Monitoring the implementation of project; and (iv) evaluating the project.

The REA and KPLC Implementing Agency of government under the MoEP will implement KOSAP project Component 1 and 3, and Carbon Financing. Its mandate under the Energy bill is proposed to be expanded to include promotion and development of renewable energy resources. It will be responsible in;

- (i) project preparation;(ii) Appraising and approving sub projects, organizing the management resources;(iii) Ensuring adequate and capable management resources;(iv) conducting appraisals and approval of technical design, total cost estimates and cost estimates of the sub; (v) negotiating, signing and supervising the implementation of contracts;(vi) implementation of safeguards activities;(vii) mini grids land and way leaves acquisition (if required), and (viii) signing the on-lending and on-grant agreements with National Treasury for the credit and grant, repaying credit proceeds.
- (ii) REA and KPLC will be also responsible for the needed safeguards instrument, in this

case RAP for the Component 1 and 3, in accordance to the RPF. KPLC and REA will screen the proposed KOSAP project to determine their viability and feasibility. Once the KOSAP projects is proposed for funding, they will form a RAP team that will prepare RAP forward to the World Bank for review. The preparation and implementation of individual RAPs is the responsibility of the relevant implementing agencies.

Kenya Power and Lighting Company will have the responsibility for implementing component 1-3 which will involve: (i) project preparation; (ii) Appraising and approving sub projects, organizing the management resources; (iii) Ensuring adequate and capable management resources; (iv) conducting appraisals and approval of technical design, total cost estimates and cost estimates of the subproject; (v) negotiating, signing and supervising the implementation of contracts; (vi) implementation of safeguards activities; (vii) Mini-grids land and way leaves acquisition (if required), and (viii) signing the on-lending and on-grant agreements with National Treasury for the credit and grant, repaying credit proceeds.

Kenya Power and Lighting Company will be also responsible for the needed safeguards instrument, in this case RAP for the Component 1 , in accordance to the RPF. KPLC will screen the proposed KOSAP project to determine their viability and feasibility. Once the KOSAP projects is proposed for funding, KPLC will form a RAP team that will prepare RAP forward to the World Bank for review. The preparation and implementation of individual RAPs is the responsibility of the relevant implementing agencies.

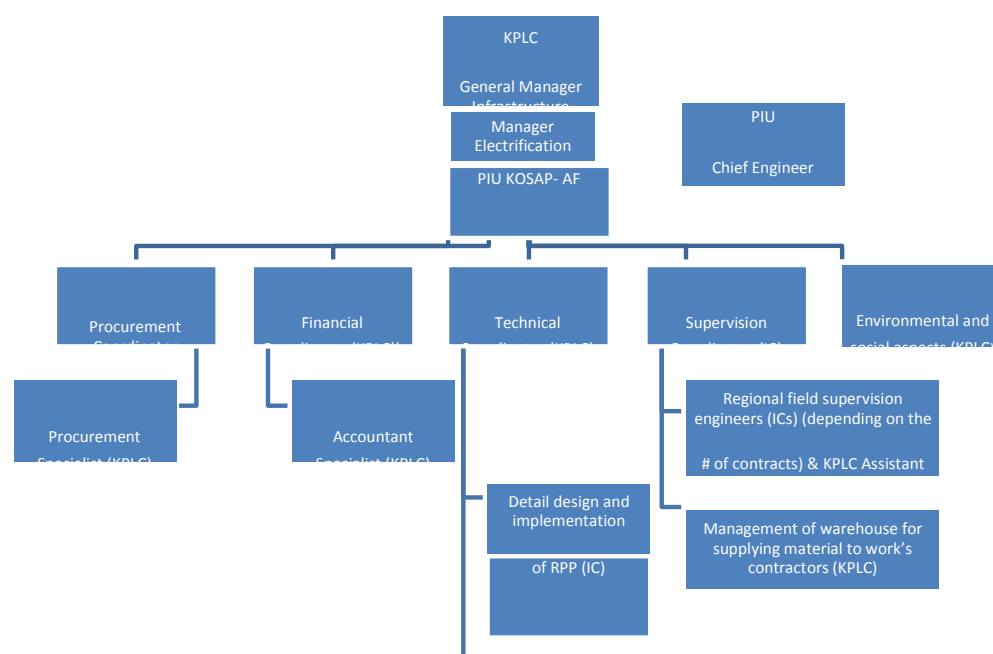
The REA will implement Component 1 and 3. MoEP will be in charge of all the technical assistance and capacity building, including technical analysis to support the investment components and studies in the broader interest of the sector.

MoEP will establish a PCU reporting to the Director of Renewable Energy, MoEP will establish a PCU reporting to the Director of Renewable Energy, the KPLC, REA will have representatives at the MoEP PCU. This unit is expected to be part of the new Strategic Planning and Program Management Unit to be set up in MoEP, supported by this project and envisaged to possess a broader mandate. All the World Bank funded PIUs in MoEP will be merged into one, responding

to the directive by National Treasury. Therefore, the project coordinator of KOSAP PCU will be same as for the ongoing World Bank projects. The PCU will be the secretariat for steering group, technical working group, and county working group. The PCU will be strengthened with a procurement specialist, a FM specialist, a M & E specialist, a communications specialist, an environment and social safeguards specialist, two technical advisors, and fourteen county renewable energy officers. The county renewable energy officers will be located in each county and will be the project liaison person during the project implementation. The county project coordinator will work under the guidance of the PCU Project Coordinator and the county executive for energy and will be responsible for organizing the county working group meetings.

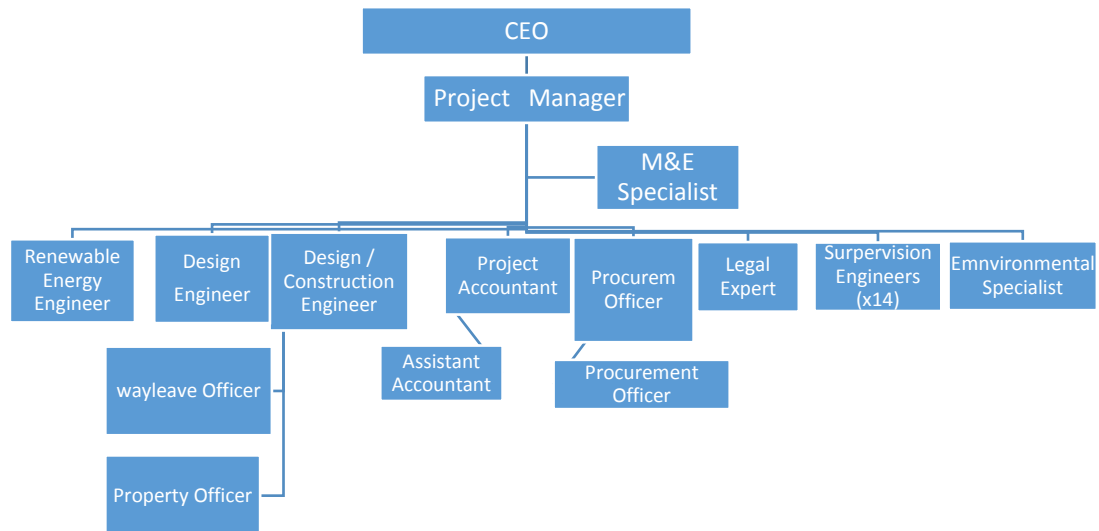
KPLC, REA, Project Implementation Units (PIUs). Each agency will have specific PIUs for project implementation seconded from their existing staff cadre. The KPLC PIU will be led by Chief Engineer (Rural Electrification) and will include procurement specialist, project economist, project finance specialist, environmental and social safeguards specialists, and project engineers. The REA PIU will be led by a project manager and will include a renewable energy officer, procurement officer, project engineers, and environmental and social safeguards specialist.

#### KPLC Project Implementation Structure



#### REA Project Implementation Unit (PIU)

Figure 2: REA Project Implementation



REA and KPLC will assign a dedicated team the responsibility for the project implementation including contract award and supervision. The PIU is composed of staff members of various departments to carry out day to day activities of implementation. Additionally, the PIU will be supported by some technical consultants (where need be) for the technical design of the KOSAP project.

### **National Land Commission (NLC)**

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 will include: provide approval 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 MOEP for actual payment of entitlement awards to PAPs.

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

NLC have devolved to the county and have they have adequate structures and representation on the ground hence making the implementation of the RAPs proper and efficient since this RPF proposes the formation of SCRCCs for each project. SCRCCs will be established at the sub county level to ensure participatory and transparent implementation of the RAP. The SCRCCs will not engage in land acquisition or compensation as this remains the prerogative of the NLC. For purposes of this RPF, SCRCC will help NLC carry out its mandate efficiently- particularly ensuring effective communication of NLC with the affected communities. 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 outlined in Land Act 2012 and binding document of the RPF are adhered to.



- Representative of the implementing agency as the acquiring institution.
- The County Administration representative, which will provide the much needed community mobilization, and support to the sub project and to the process of resettlement
- Sub County Land Survey Officer will survey all affected land and produce acquisition map.
- The Sub County Gender and Social Development Officer who will be responsible for livelihood restoration programs.
- The Sub County Lands Registrar will verify all affected land and validate the same.
- 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 and the implementing agency and the PAPs
- Coordinate Locational Resettlement and Compensation Committees (LRCCs), validate inventories of PAPs and affected assets;
- 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.
- Resolving disputes that may arise relating to resettlement process. If it is unable to resolve any such problems, channel them through the appropriate formal grievance procedures laid out in this RAP.
- Assist with the livelihood restoration activities.

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

Since sub counties are fairly large, further decentralized resettlement unit will be formed at the location of the sub project. Subsequently, Locational Resettlement and Compensation Committees

(LRCCs), based in each administrative location of sub projects, will be established. The LRCCs will be constituted by implementing agencies and SCRCCs through consultation with the PAPs 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 supports 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
- Male representatives elected by the members of the PAPs
- 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 be automatic 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 REA and KPLC team working on RAP preparation and validation of it
- Resolve manageable disputes that may arise relating to resettlement and compensation process. If it is unable to resolve/help refer such grievances to the independent Grievance

mechanism is instituted – independent of the compensation committee whose members are elected by the PAPs after sensitization on the roles of such a mechanism.

- Ensure that the concerns of vulnerable persons such as the disabled, widowed women, orphaned children affected by the sub project are addressed.
- Assist the PAPs in the process of compensation, including helping those who cannot write or read.
- Help the vulnerable during the compensation and restoration for their livelihoods
- Ensure that all the PAPs in their locality are informed about the content of the RAP.

## **CHAPTER EIGHT: IMPLEMENTATION SCHEDULE, LINKING RESETTLEMENT IMPLEMENTATION TO CIVIL WORKS**

### **8.1 An overview**

Before any project investment is implemented, PAPs will need to be fully compensated by NLC in accordance with the principles of this RPF and 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, MOEP, 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 and properties used by PAPs, 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 determined by the NLC in consultation with the implementing agency, 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.

## **8.2 Implementation schedule**

Each investment/sub project once identified and screened, if required, will prepare an individual implementation schedule, 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 host 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 sub 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) describing institutional arrangements and mechanisms for payment of compensation, (iii) defining tasks and responsibilities of each stakeholder and (iv) establishing a work plan in accordance to individual tasks in RAP.

## **8.3 Grievances Redress Mechanism**

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 K-OSAP, 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.

The Land Act 2012 and National Land Commission Act 2012 obligate the NLC to support grievances and disputes related to resettlement or land amicably in conjunction with KPLC/REA. KPLC/REA will be expected to put in place mechanisms and structures that arbitrate or negotiate with PAPs or landowners whenever there are any grievances concerning their compensation.

#### **8.4 Key element of resettlement activities**

A key element of resettlement activities will be the development and implementation of a grievance mechanism in all 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 independent grievance redress committee at the county level which will be elected by the PAPs.

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 by the representative of implementing agency. LRCC will act as the voice of the PAPs and will work under guidance and coordination of SCRCC in handling PAPs' grievances. Some of the grievances can be resolved at this level. If not, the LRCC will assist the PAPs to address their grievances to the SCRCC.

The grievance procedure outlined in this RPF will not replace existing legal dispute and grievance redress in the country especially in respect to what will be set up by the NLC, which PAPs will be persuaded to use an option of last resort if they feel dissatisfied.

Based on consensus, the SCRCCs and LRSCs 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 sub project. If the grievance procedure fails to provide a result, complainants can still seek legal redress.

Steps involved with the grievance management include:

- *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.*
- *In cases where a solution cannot be found at the locational or LRCC level reference will be made to the SCRCC.*
- *Traditional local mechanisms will be used and will include local leaders and the affected persons trying to find a solution with the concerned parties.*
- *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.*
- *All the processes will be documented, including the names, the type of the grievances, what was done to resolves it, if it was resolved, if not what was the next step taken.*

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

## **8.5 The Grievance redress process**

As noted earlier, grievance redress will be the functions of the LRCC and SCRCC committees. A grievance log will be established 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.

### ***Detailed procedures for grievance management***

The procedure for managing grievances under all 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 sub project LRCC. The grievance note should be signed and dated by the aggrieved person. A selected member of the LRCC will act as the sub Project Liaison Officer (PLO) who will be the direct liaison with PAPs.

The PLO will be working in collaboration with the other LRCCs members as well as SCRCC. 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 sub 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 sub Project Liaison Officer to SCRCC.



- 1) *The Sub Project Liaison Officer and 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 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 Sub 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 County Land Office, also mandated to help resolve such matters and NLC, once is function, which will be the main formal body for grievance mechanisms).*
- 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.*

#### **8.5.1 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 Sub project database;*
- *Date information on proposed corrective action sent to complainant;*
- *The date the complaint was closed; and*
- *Date response was sent to complainant.*

#### **8.5.2 Monitoring Complaints**

The Sub-Project Liaison Officer will be responsible for:

- *Providing the sub project SCRCC with a weekly report detailing the number and status of complaints;*
- *Any outstanding issues to be addressed;*
- *Referring the complaints to the SCRCC if not solved at the LRCC level and*
- *Monthly reports, including analysis of the type of complaints, levels of complaints, and actions to reduce complaints.*

### **8.6 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. In practice this can be the village head and other local or traditional dispute resolution mechanisms.

## CHAPTER NINE: RPF IMPLEMENTATION BUDGET

The actual cost of resettlement and compensation for each 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. At this stage, it is not possible to estimate the exact number of people who may be affected 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 investment projects.

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, 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.

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

Asset acquisition	Amount or	Total estimated cost	Agency responsible
Land			
Structure			
Crops and economic tress			
Community infrastructure			
Land Acquisition and Preparation			
Land,			
Structure,			
Crops areas and others			

Community infrastructure			
Relocations			
Transfer of possessions			
Installation costs			
Economic Rehabilitation			
Livelihoods restoration			
Training			
Capital Investments			
Technical Assistance			
NGO support			
Monitoring			
Contingency			

No.	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 for 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/Expense	/household	This cost is to facilitate transportation, etc.
9	Cost of Restoration of Individual	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 Ksh/person
12	NGO support	Number/years	Administrative support to undertake livelihood restoration or monitoring and evaluation of RAPs implementation
13	Cost of restoration of livelihood for vulnerable	/year/	Assumed to be higher than the GPP/capita

The RPF implementation budget refers to all costs that will be incurred to implement the requirements or recommendations of this safeguard instrument. The RPF requirements ensure that implementation of the projects integrates social issues for the sustainability of the project as well as the sub-projects. Among other things the RPF recommends the following key issues, namely; training, capacity building, public consultation, information dissemination, stakeholders engagement, grievance redress mechanism system, screening, reviewing and monitoring mechanisms. These issues are clearly described here under; the staff- who will be involved in the implementation of the project should be trained to enhance their skills on social land acquisition issues. Building the capacity of staff from implementing division/departments/ sections such as Projects and SHE will enable them to screen, review and monitor social issues K-OSAP Components to ensure compliance with requirements of the national policies and Acts as well as World Bank Safeguard Policies. The estimated budget for technical assistance for capacity building, stakeholder engagement, information dissemination and awareness creation, monitoring, screening and public consultations among others would be Kshs. 31,000,000.00 as per the table below

### Estimated level of costs for RPF implementation

S/NO	RPF proposed actions)	Concerned institutions	Level of cost (Kshs.)
1	Training and capacity Building	KPLC, REA Environmental Units on (Social Impact Assessment, Public Engagement, Land Acquisition, Monitoring and Evaluation Courses)	10,000,000
2	Public Consultation, information dissemination, stakeholders' engagement	KPLC, REA Environmental Unit and project implementation opinion leaders, 14 underserved counties	10,000,000
3	Grievance redress mechanism	KPLC, REA Environmental Unit and project implementation opinion leaders, 14 underserved counties	5,000,000
4	Screening and reviewing	Project Implementation Unit	3,000,000
5	Monitoring activities	MoEP, KPLC, REA PIU, NEMA	3,000,000
<b>Total Costs</b>			<b>31,000,000</b>

## **CHAPTER TEN: PUBLIC PARTICIPATION AND CONSULTATION**

### **10.1 Introduction**

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 traditional and cultural practice that makes public consultations with the rural communities, indispensable. 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 preparation of the compensation contract.

Public participation and consultations was done through public meetings/barazas, for the explanations of project ideas and requirements, preparation of the RAPs and ESIAs, making public documents, including the RPF and consequents RAPs, available at the national, local levels at suitable locations like the official residences/offices of local chiefs/elders. These measures were taken 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, including the host communities, in case there is physical resettlement and there is a host community, in planning prior to the move will be 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 was given 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 projects, their impacts, resettlement and compensation processes, and grievances management, among other things. They will also be the ones communicating the cut-off date and other project related issues to the PAPs.

## **10.2 Data collecting phase**

During the preparation of RAPs, preliminary public consultations and socio-economic survey study was undertaken. It involve active participation of the all PAPs in provision of preliminary data. PAPs was an important information providers, enabling accurate and effective data.

Information about proposed project was also explained to PAPs in the local language that they understand. Besides, PAPs they were given platform to ask questions about the project, identify impact of the proposed projects, suggest mitigation measures and alternatives to be considered in the technical design that limit impacts. The KPLC and REA teams responsible for RAP preparation will also provide rationale for data collection discuss data with PAPs and give PAPs feedback on the collected data.

### **10.3 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.

### **10.4 Monitoring and Evaluation phase**

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

The public consultations were done carried out on the different platforms that is national level, county level and sub county level on different dates. On the National level the County executives of Energy and Environment were invited. The land acquisition matters, compensation of property and capacity building were main discussions among others. REA and KPLC representatives assured them that of transparency and proper mechanisms have been put in to place. This forum was held on 31<sup>st</sup> November 2016(See Annex10).The county and sub county level the following forums were held on different dates in the following counties; Turkana, Garissa, Kwale, Kilifi, West Pokot, Taita Taveta and Tana River. The issues discussed were job opportunities, partnerships, community land, site selection and electricity connection fees among others. The issues were addressed and comments taken. (See Annexes11,12,13,14,15,16,17and 18). The analysis has been done for all the forums. (See Annexes 9)

## **CHAPTER ELEVEN MONITORING AND EVALUATION**

### **11.1 Overview**

The arrangements for monitoring will fit the overall monitoring plan of the entire K- OSAP. 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 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, will be used as the base line for the monitoring and evaluation of the individual RAPs.

### **11.2 Who will do the Monitoring**

RAP monitoring will be done at two levels, during the regular monitoring of the project by the implementing entities MoEP, KPLC, REA, SCRCC, LRCC and by the World Bank every six months.

### **11.3 Methodology Use for the RAP Monitoring**

Base line data will be collected from different sources, including the census and socioeconomic study undertaken for the preparation of individual RAPs. In addition, the information collected by

the SCRCC and LRCC will be used. Finally, questionnaire (in the case of independent monitoring), and focus groups discussions will be used to collect data and information.

#### 11.4 Indicators to Determine Status of Affected People

A number of indicators will be used in order to determine the status of all affected people as shown in the table below.

**Table 5: Monitoring Indicators will depend on nature of the project**

Subject	Indicator	Variable
Land	Acquisition of land	<ul style="list-style-type: none"> <li>• Area of cultivation land acquired for developments</li> <li>• Area of communal land acquired for developments</li> <li>• Area of private land acquired?</li> </ul>
Buildings/ Structures	Acquisition of buildings	<ul style="list-style-type: none"> <li>• Number, type and size of private buildings acquired</li> <li>• Number, type and size of community buildings acquired</li> <li>• Number, type and size of government buildings</li> </ul>
	Acquisition of other structures	<ul style="list-style-type: none"> <li>• Number, type and size of other private structures acquired</li> <li>• Number, type and size of other community structures acquired</li> </ul>
Trees and Crops	Acquisition of trees	<ul style="list-style-type: none"> <li>• Number and type of trees cut</li> </ul>
	Destruction of crops	<ul style="list-style-type: none"> <li>• Crops destroyed by area, type and ownership</li> </ul>

Compensation, Re-establishment and Rehabilitation	Compensation and re-establishment of affected owners/individuals	<ul style="list-style-type: none"> <li>• Number of homesteads affected (buildings, land, trees, crops)</li> <li>• Number of owners compensated by type of loss</li> <li>• Amount compensated by type and owner</li> <li>• Number of replacement houses constructed</li> <li>• Size, construction, durability and environmental suitability of replacement houses</li> <li>• Possession of latrines</li> <li>• Water supply access</li> <li>• Number of replacement businesses constructed</li> </ul>
	Re-establishment of community resources	<ul style="list-style-type: none"> <li>• Number of community buildings replaced</li> <li>• Number of seedlings supplied by type</li> <li>• Number of trees planted</li> </ul>
Hazards and Disturbances	Introduction of nuisance factors	<ul style="list-style-type: none"> <li>• Number of homesteads affected by hazards and disturbances from construction (noise levels, blasting, increased traffic levels)</li> </ul>
Social/Demographic	Changes to homestead structure	<ul style="list-style-type: none"> <li>• Household size (average number of households)</li> <li>• Status of “vulnerable” homesteads</li> <li>• Residential status of homestead members</li> <li>• Movement in and out of the homestead (place and residence of homestead members)</li> </ul>
	Access to social facilities	<ul style="list-style-type: none"> <li>• Distance/travel time to nearest market centre, church, shop.</li> </ul>

	Changes to health status	<ul style="list-style-type: none"> <li>• Nutritional status of resettled homestead members</li> <li>• Number of people with disease, by type (STDs, diarrhea, malaria, malnutrition conditions)</li> <li>• Mortality rates-Deaths registered per household</li> <li>• Access to health care services (distance to nearest facility, cost of services, quality of services)</li> <li>• Utilization of health care services</li> <li>• Disease prevention strategies</li> <li>• Extent of educational programmes</li> <li>• Latrine provision at schools</li> <li>• Access to clean water sources</li> </ul>
	Changes to educational status	<ul style="list-style-type: none"> <li>• Literacy and educational attainment of homestead members</li> <li>• Access to education facilities</li> <li>• School attendance rates (age, gender)</li> <li>• Number, type of educational establishments</li> </ul>
	Changes to status of women	<ul style="list-style-type: none"> <li>• Participation in training programmes</li> <li>• Use of credit facilities</li> <li>• Landholding status</li> <li>• Participation in KPLC and REA-related activities and enterprises</li> </ul>

Homestead earning capacity	<ul style="list-style-type: none"> <li>• Ownership of capital assets</li> <li>• Landholding size, area cultivated and production volume/value, by crop (cash and subsistence crops)</li> <li>• Landholding status (tenure)</li> <li>• Changes to livestock ownership: pre- and post-disturbance</li> <li>• Value of livestock sales, and imputed value of barter transactions</li> <li>• Employment status of economically active members</li> <li>• Skills of homestead members</li> <li>• Earnings/income by source</li> <li>• Changes to income-earning activities (agriculture) – pre- and post-disturbance</li> <li>• Changes to income-earning activities (off-farm)– pre- and post-disturbance</li> <li>• Amount and balance of income and expenditure</li> <li>• Realization of homestead income restoration plans (components implemented, net income achieved)</li> <li>• Possession of bank and savings accounts</li> </ul>
Changes in social organization	<ul style="list-style-type: none"> <li>• Organizational membership of homestead members</li> <li>• Leadership positions held by homestead members</li> </ul>
Population influx	<ul style="list-style-type: none"> <li>• Growth in number and size of settlements, formal and informal</li> <li>• Growth in market areas</li> </ul>

Consultation	Consultation programme operation	<ul style="list-style-type: none"> <li>• Number of local committees established</li> <li>• Number and dates of local committee meetings</li> <li>• Type of issues raised at local committees' meetings</li> <li>• Involvement of local committees in KPLC development planning</li> </ul>
	Information dissemination	<ul style="list-style-type: none"> <li>• Meetings held</li> <li>• Minutes of meetings</li> <li>• Modes of communication used</li> </ul>
	Grievances resolved	<ul style="list-style-type: none"> <li>• Number of grievances registered, by type</li> <li>• Number of grievances resolved</li> <li>• Number of cases referred to court</li> </ul>
Training	Operation of training programme	<ul style="list-style-type: none"> <li>• Number of local committee members trained</li> <li>• Number of affected population trained in Project-related training courses</li> </ul>
Management	Staffing	<ul style="list-style-type: none"> <li>• Number of implementing agencies by function</li> <li>• Number of GoK ministry officials involved by function</li> </ul>
	Procedures in operation	<ul style="list-style-type: none"> <li>• Census and asset verification/quantification procedures in place</li> <li>• Effectiveness of compensation delivery system</li> <li>• Number of land transfers effected</li> <li>• Co-ordination between local community structures,</li> </ul>

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, SCRCC and World Bank. 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 implementing agency 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.*

### **11.5 Regular 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*

REA, KPLC will review the statistics in order to determine whether the resettlement planning arrangements as set out in this RPF are being adhered to.

Financial records will be maintained by NLC and REA and KPLC 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 9; ANALYSIS FOR THE RESPONSE /COMMENTS AND REMARKS**

**ANNEX 10: MINUTES FOR PUBLIC CONSULTATION HELD IN NAIROBI**

**ANNEX 11: MINUTES OF PUBLIC CONSULTATION FOR NAROK COUNTY**

**ANNEX 12: MINUTES OF PUBLIC CONSULTATION FOR TAITA TAVETA COUNTY**

**ANNEX 13: MINUTES OF PUBLIC CONSULTATION FOR GARISSA COUNTY**

**ANNEX 14: MINUTES OF PUBLIC CONSULTATION FOR Tana River COUNTY**

**ANNEX 15: MINUTES OF PUBLIC CONSULTATION FOR KILIFI COUNTY**

**ANNEX 16: MINUTES OF PUBLIC CONSULTATION FOR KWALE COUNTY**

**ANNEX 17: MINUTES OF PUBLIC CONSULTATION FOR TURKANA COUNTY**

**ANNEX 18: MINUTES OF PUBLIC CONSULTATION FOR WEST POKOT**